

Rs. 1,898-10-6 be substituted therefor. Lastly, hat all items entered in the specification of property with the exception of the first item be struck out. To this extent we allow the appeal; *quoad ultra* it is dismissed. The parties will pay and receive costs in this Court proportionate to failure and success.

*Decree modified.*

1904

JAMNA DAS  
v.  
SRI LAL.

*Before Mr. Justice Knox and Mr. Justice Aikman.*

MATA AMBER AND ANOTHER (DECREE-HOLDERS) v. SRI DHAR  
(JUDGMENT-DEBTOR).\*

1904

March 14.

*Act No. IV of 1882 (Transfer of Property Act), sections 90, 92 and 93—  
Prior and subsequent incumbrancers—Redemption of mortgage—Execution of decrees.*

A puisne mortgagee of certain property sued the prior mortgagees for redemption. A decree was passed for redemption or sale. The plaintiff did not pay the amount decreed, and the property was sold, but it failed to realize the amount of the debt and costs due to the prior mortgagees.

*Held* that the decree, so far as it affected the puisne mortgagee, not being a personal decree, the prior mortgagees could not recover the balance of the amount decreed by arrest of the puisne mortgagee. Section 90 of the Transfer of Property Act, 1882, could not be so construed as to make it applicable to the present case. *Ram Lal v. Sil Chand* (1) referred to.

THIS was an appeal arising out of proceedings in execution of a decree. The facts are as follows:—Mata Amber and Sukhdeo were prior mortgagees and Sri Dhar a puisne mortgagee of the same property. Sri Dhar brought a suit to redeem the prior mortgage. In this suit he obtained a decree for redemption upon payment of Rs. 4,577 plus Rs. 699 on account of costs. The money, however, was not paid by the decree-holder within the time limited by the decree, and consequently the mortgaged property was sold. The sale realized some Rs. 700 less than the amount which had been found due to the prior mortgagees. This amount the prior mortgagees sought to recover by means of an application for execution by arrest of the puisne mortgagee. The executing Court (Subordinate Judge of Allahabad) rejected the application, and on appeal by the prior mortgagees the District Judge agreed with the first

\* Second Appeal No. 1124 of 1902 from a decree of C. Rustomjee, Esq., District Judge of Allahabad, dated the 17th September 1902, confirming a decree of Mr. H. David, Subordinate Judge of Allahabad, dated the 15th February 1902.

1904

MATA  
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Court and confirmed its order. From this order the prior mortgagees appealed to the High Court.

Pandit *Buldeo Ram Dave*, for the appellants.

The Hon'ble Pandit *Madan Mohan Mulaviya* and Munshi *Jang Bahadur Lal*, for the respondent.

KNOX and AIKMAN, JJ. — The appellants to this second appeal are prior mortgagees. A suit was brought by the respondent, who is a puisne mortgagee, for redemption of the prior mortgage. He sought to effect this by payment of Rs. 2,000. The Court found that Rs. 4,577 was due on account of principal and that a further sum of Rs. 699 was due by the plaintiff on account of costs. The whole amount thus due was Rs. 5,276. A decree was given in terms of section 92 of the Transfer of Property Act ordering that upon the plaintiff paying to the defendants or into Court this sum on a day fixed, the plaintiff was to have redemption of the property, but if such payment was not made, the property mortgaged was to be sold.

The plaintiff failed to pay the sum thus fixed, and on the application of the appellants the property was sold and realized some Rs. 700 short of what had been found due to the prior mortgagee. The appellants now seek to recover the balance by arrest of the respondent. The Courts below have thrown out the application, and the appellants come here in second appeal. The learned vakil who appears for them failed to point out to us any words in the decree justifying the order he asks for. The only penalty in the decree for non-payment of the mortgage money and costs was a sale of the property, and that has taken place. There are no words in the decree rendering the respondent personally liable. It is a remarkable circumstance that whilst section 93 provides for the sale realizing more than the amount due. it makes no provision for the contingency of the sale realizing less. In a very able and ingenious argument the learned vakil sought to show that the language of section 90 was wide enough to cover the present case. Even if the words "such sale" could be given the extended meaning asked for, there is the further difficulty of the word "defendant" which occurs in that section, and which

has been interpreted by this Court in *Ram Lal v. Sil Chand* (1) in a sense adverse to the present contention.

We regret that we are unable to help the appellants, but we think that they might have foreseen this difficulty and have moved this Court to make an order rendering the respondent personally liable for the costs they incurred in answering him. For the above reasons we dismiss this appeal, but under the circumstances we make no order as to costs.

*Appeal dismissed.*

1904

MATA  
AMBER  
v.  
SRI DHAR.

## REVISIONAL CRIMINAL.

1904  
March 14.

*Before Mr. Justice Blair and Mr. Justice Banerji.*

EMPEROR v. BABU RAM. \*

*Act No. XLV of 1860 (Indian Penal Code), section 191—False evidence—  
Perjury not necessarily on a point material to the case.*

*Semble* that to constitute the offence defined by section 191 of the Indian Penal Code it is not necessary that the false evidence should be concerning a question material to the decision of the case in which it is given; it is sufficient if the false evidence is intentionally given, that is to say, if the person making that statement makes it advisedly knowing it to be false, and with the intention of deceiving the Court and of leading it to be supposed that that which he states is true. *The Queen v. Mahomed Hossain* (2) and *The Queen v. Shib Prosad Giri* (3) referred to. *Emperor v. Ganga Sawai* (4) discussed.

But if the false evidence does not bear directly on a material issue in the case, being relative to incidental or trivial matters only, that would be a matter to be taken into consideration in fixing the sentence.

In a suit in the Court of the Munsif of Bareilly city one Babu Ram appeared as a witness and made a statement concerning the existence of a certain *kachcha* well which, according to the witness, had been filled up several years before suit. The object of Babu Ram in testifying to the existence of this *kachcha* well was to induce the Court to believe that the boundary of certain property in dispute in the suit extended further in a certain direction than it really did. This statement was, however, disbelieved, and Babu Ram was prosecuted for the offence of giving false evidence under section 193 of the Indian

\* Criminal Revision No. 785 of 1903.

(1) (1901) I. L. R., 23 All., 439.

(3) (1873) 19 W. R., 69.

(2) (1871) 16 W. R., 37.

(4) Weekly Notes, 1903, p. 68.