

against him for an offence under section 211." Following these rulings I hold that the order in question was not a proper order. I therefore set it aside.

APPELLATE CIVIL.

Before Sir George Knox, Kt., Acting Chief Justice, and Mr. Justice Richards.
 MOHSAN SHAH AND OTHERS (PLAINTIFFS) v. MAHBUB ILAHI AND OTHERS
 (RESPONDENTS).*

*Act No. XIX of 1873 (N.-W. P. Land Revenue Act), sections 194(g) and 203
 —Act (Local) No. III of 1899 (Court of Wards Act), sections 9, 35 and
 47—Power of Court of Wards to sell property under its superintendence.*

The estate of a Muhammadan lady, named Hawa Begam, was at her own request taken under the superintendence of the Court of Wards under section 194, clause (g), of Act No. XIX of 1873. This was in 1896. In 1902 the Court of Wards sold a portion of Hawa Begam's property, as was alleged, without her consent. Held on suit by persons claiming title through Hawa Begam to recover the property so sold, that the Court of Wards was under the circumstances entitled to sell, even without the owner's consent, and that its discretion could not be questioned in any Civil Court.

Semble that if the property had been placed under the superintendence of the Court of Wards, under section 9 of Local Act No. III of 1899, and if the sale had been made without the consent of the proprietor otherwise than on the ground set out in the concluding paragraph of section 35, the sale would have been a bad sale and the Civil Court could have entertained a suit to question the power of the Court of Wards to sell.

IN 1896, under the provisions of the North-Western Provinces Land Revenue Act, section 194(g), the Court of Wards, at the instance of the proprietor, assumed the superintendence of the property of one Musammat Hawa Begam. In 1902, after the coming into force of the local Court of Wards Act, 1899, the Court of Wards sold a portion of Hawa Begam's property. After Hawa Begam's death, certain persons claiming to be her heirs sued to recover from the purchase the property so sold upon the ground that the sale was without Hawa Begam's consent and *ultra vires* of the Court of Wards. The Court of first instance (Subordinate Judge of Meerut) dismissed the suit, and this decree was on appeal confirmed by the Additional District Judge. The plaintiffs thereupon appealed to the High Court.

* Second Appeal No. 1109 of 1906, from a decree of Munshi Muhammad Ahmad Ali Khan, Additional District Judge, Meerut, dated the 22nd of August 1906, confirming a decree of Mr. H. David, Subordinate Judge of Meerut, dated the 11th of December 1905.

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EMPEROR

v.
TULA.

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May 14.

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MOHSAN
SHAH
v.
MAHBUB
LAHRI.

The Hon'ble Pandit *Madan Mohan Malaviya* and *Dr. Satish Chandra Banerji* for the appellants.

Mr. Abdul Majid, for the respondents.

KNOX, ACTING C. J., and RICHARDS, J.—The property in dispute in this appeal was the property of one Musammat Hawa Begam, deceased. In the year 1896, according to the plaint, Musammat Hawa Begam asked that her property might be placed under the superintendence of the Court of Wards. This prayer of hers was granted, and the property was taken charge of by the Court of Wards. We must, however, point out that the Court of Wards assumed the superintendence of this property under clause (g) of section 194 of Act No. XIX of 1873 and not under section 9 of the Local Act No. III of 1899. At the time when the Court of Wards took over the superintendence of this property, the Court had full power, under section 203 of Act No. XIX of 1873, to mortgage or sell the whole or any part of such property. The sale complained of was made in 1902, and section 35 of Act No. III of 1899 applies to that sale. This section gives the Court of Wards full power to mortgage or sell the whole or any part of the property under its superintendence, subject to one limitation, *viz.* where property has been placed under its superintendence under section 9 of the Local Act, such property cannot be sold without the consent of the proprietor. We need not consider the rest of the second paragraph of section 35. This property was not placed under the superintendence of the Court of Wards under section 9 of the Court of Wards Act, which had not then found its place in the statute book. Accordingly the Court had full power to make the sale in question. It is then urged that a question may arise as to whether the discretion given to the Court of Wards has been properly exercised and whether the sale was for the benefit of the ward or of the property. Section 47 of the Local Act provides that the exercise of any discretion conferred by the Court of Wards Act on the Court of Wards shall not be questioned by any Court. It is clear, therefore, that the question of discretion raised in this second appeal cannot be entertained in the Civil Court. We, therefore, arrive at the same conclusion as the Court below, but upon different grounds. If the property had been placed under the superintendence of the

Court of Wards under section 9 of the Local Act, and if the sale had been made without the consent of the proprietor otherwise than on the ground set out in the concluding paragraph of section 35, the sale would have been a bad sale and the Civil Court could have entertained a suit to question the power of the Court of Wards to sell. The learned vakil for the appellant has contended very earnestly and said all that could be said on behalf of his clients, but the fact that the estate was taken under the superintendence of the Court of Wards under the provisions of Act No. XIX of 1873 renders his position untenable. The appeal is dismissed with costs.

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MOHSAN
SHAH
v.
MAHBUB
LAARI.

Appeal dismissed.

Before Mr. Justice Aikman.

RAM SUKH (PLAINTIFF) v. RAM SAHAI (DEFENDANT).*

Civil Procedure Code, section 316—Execution of decree—Sale in execution—Decree reversed before confirmation of sale.

Held that the title of an auction purchaser at a sale held in execution of a decree does not become absolute if the decree under which the sale took place is reversed at any time before a certificate of sale is granted to the purchaser.

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May 14.

IN execution of a decree against one Ram Sukh a house belonging to the judgment-debtor was sold by auction and purchased by one Ram Sahai. Before, however, the sale was confirmed, the decree was set aside in appeal. Thereafter Ram Sukh applied to the Court to be allowed to withdraw the purchase money deposited in Court; but the auction purchaser objected to this, and the parties were referred to a Civil Court. Ram Sukh then filed the present suit in which he asked in the alternative either to be given the price deposited in Court or to be restored to possession of the house. The Court of first instance (Munsif of Sambhal) gave the plaintiff a decree for the money. The defendant appealed, and the lower appellate Court (officiating Subordinate Judge of Moradabad) reversed the decree of the Munsif and directed the house to be restored to the plaintiff. The plaintiff appealed to the High Court.

* Second Appeal No. 1270 of 1905, from a decree of Pandit Mohan Lal, Officiating Subordinate Judge, Moradabad, dated the 6th of September 1905, reversing a decree of Babu Sheodharshan Dayal, Munsif of Sambhal, dated the 5th of April 1905.