

In my judgment the passing of a general order for all cases whether of a sub-division or particular villages or village is not a compliance with the Act or rules. It is stated that the practice adopted in this case is a general practice. If this is the case, the practice in my judgment ought to cease.

On the general merits of the case it would appear that the persons seizing the property were acting in good faith under colour of their office. The convictions might be sustained under sections 352 and 147 of the Indian Penal Code, if not under section 353. It is unnecessary, however, to alter the convictions in view of the order which I now intend to make. Being of opinion that the applicants have been sufficiently punished by the imprisonment they have already undergone, I direct that in the cases of those applicants whose terms of imprisonment have not yet expired, they be immediately released. In the cases of the other applicants I make no order. The record may be returned.

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EMPREOB  
D.  
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## APPELLATE CIVIL.

1907  
January 7.

*Before Mr. Justice Sir George Knox and Mr. Justice Richards.*

INTIAZI BEGAM (JUDGMENT-DEBTOR) v. DHUMAN BEGAM (DECREE-HOLDER) AND BANDE ALI (AUCTION PURCHASER).\*

*Civil Procedure Code, sections 310A, 244 (c)—Execution of decrees—Order refusing to accept a deposit tendered under section 310A—Appeal.*

*Held* that an order refusing to accept a deposit tendered under the provisions of section 310A of the Code of Civil Procedure is an order falling within the purview of section 244 (c) of the Code and is appealable as such. *Gulzari Lal v. Madho Ram* (1) and *Phul Chand Ram v. Nursingh Pershad Misser* (2) referred to. *Bashir-ud-din v. Jhori Singh* (3) not followed.

IN this case Dhuman Begam in execution of a decree against Intiazi Begam caused certain immovable property of the judgment-debtor to be sold. The sale was held on the 13th of September 1905, and the property was purchased by Bande Ali and Ali Husain. On the 2nd of November 1905, the day upon

\* Second Appeal No. 377 of 1906 from a decree of H. W. Lyle, Esq., District Judge of Farrukhabad, dated the 3rd of January 1906, confirming a decree of Babu Gopal Das Mukorji, Munsif of Kaimganj, dated the 6th of December 1905.

(1) (1904) I. L. R., 26 All., 447. (2) (1898) I. L. R., 28 Calc., 78.  
(3) (1898) I. L. R., 19 All., 140.

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which the Civil Courts reopened after the Dashera vacation, the judgment-debtor made an application under section 310A of the Code of Civil Procedure to have the sale set aside; but did not deposit the necessary amount in the treasury until the 3rd of November. The Court of first instance (Munsif of Kaimganj) dismissed the application as barred by limitation. An appeal was preferred by the judgment-debtor to the District Judge of Farrukhabad who, however, held that no appeal lay. The judgment-debtor then appealed to the High Court.

*Munshi Gulzari Lal*, for the appellant.

The respondents were not represented.

KNOX and RICHARDS, JJ.—The lower appellate Court, following the decision of this Court in *Bashir-ud-din v. Jhori Singh* (1), dismissed the appeal pending before it on the ground that no appeal lies from an order passed under section 310A of the Code of Civil Procedure, refusing to accept a deposit tendered under that section on the ground that it was too late. In the case cited this Court came to that conclusion in consequence of the view then taken "that a purchaser at an auction sale was not a representative, within the meaning of section 244 of the Code of Civil Procedure, of a party to the suit in execution of the decree in which the sale had taken place." Since then, however, this same question as to whether a purchaser at auction sale is or is not a representative, within the meaning of section 244, of a party to a suit, came up for decision before a Full Bench of this Court, and it was laid down in the case of *Gulzari Lal v. Madho Ram* (2) that an auction purchaser at a sale held in execution of a simple money-decree against a judgment-debtor whose property has been ordered to be sold at the suit of mortgages in a mortgage suit is a representative of the judgment-debtor within the meaning of section 244(c) of the Code of Civil Procedure. The result of this is that the case of *Bashir-ud-din v. Jhori Singh* can no longer be cited as an authority, and an appeal does lie from an order passed under section 310A. The same view was taken by the Calcutta High Court in *Phul Chand Ram v. Nursingh Pershad Misser* (3). The appeal is decreed, the decree of the lower appellate Court is set aside, and the proceedings are

(1) (1896) I. L. R., 19 All., 140.

(2) (1904) I. L. R., 26 All., 447.

(3) (1899) I. L. R., 28 Cal., 73.

remanded to that Court with instructions to that Court to readmit them on the file of pending appeals and dispose them of according to law. We make no order as to the costs of this appeal.

*Appeal decreed and cause remanded.*

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## REVISIONAL CIVIL.

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1907

January 9.

*Before Mr. Justice Sir George Knox and Mr. Justice Richards.*

RAM NARAIN DUBE (PLAINTIFF) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT).\*

*Regulation No. V of 1799, section 7—Escheat—Property taken charge of by District Judge—Period from which title vests in the Secretary of State.*

Where property of a person dying intestate is taken charge of by a District Judge acting under section 7 of Regulation No. V of 1799, such property does not vest in the Secretary of State until the period prescribed by the Regulation has expired.

THE facts out of which this application arose are as follows. The District Judge of Benares purporting to act under the provisions of section 7 of Regulation No. V of 1799 took temporary custody of the property of one Musammat Janki, who had died within his jurisdiction, as was alleged, intestate. There was no immediate claimant to the property. Whilst the property of Musammat Janki was in the custody of the District Judge, one Ram Narain Dube instituted in the Court of Small Causes a suit against the Secretary of State seeking to recover certain arrears of house rent which he alleged to have been due to him by Musammat Janki. The Judge of the Court of Small Causes dismissed the suit on the finding that according to the provisions of Regulation V of 1799 the Secretary of State had not at the time the suit was brought become the owner of the property which had been of Musammat Janki in her life-time. The plaintiff then came to the High Court under section 25 of the Provincial Small Cause Courts Act.

Munshi Gokul Prasad, for the applicant.

Mr. A. E. Ryves for the opposite party.

KNOX and RICHARDS, JJ.—Ram Narain Dube, the petitioner in this case, brought a suit against the Secretary of State for India

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\* Civil Revision No. 27 of 1906.