

1908

JAGAR NATH  
SINGH  
v.  
LALTA  
PRASAD.

*Richards, J.*

in respect of this sum of Rs. 1,674-8-0 were practically equal in amount and I treat them as equal. Lalta had had a further advance of Rs. 665 on foot of the mortgage made by him and his uncle on 9th June 1897, and under the terms of the sale-deed, this mortgage was also paid off. It may therefore be said that on the sale of the 28th of June 1899, debts of Lalta's to third parties were discharged as follows. Rs. 665, Rs. 837-4-0 (half of Rs. 1,674-8-0) and Rs. 52-8-0 costs, total Rs. 1,554-12-0. In the case of Bhuaneshri, debts were in like manner discharged: Rs. 837-4-0 (half of Rs. 1,674-8-0) and Rs. 52-8-0 costs, total Rs. 889-12-0. Lalta was married in 1897 and the Rs. 665 were paid for his marriage expenses. I think that it would be reasonable under the provisions of section 41 of the Specific Relief Act to direct that plaintiff Lalta should pay to the defendants the sum of Rs. 1,554-12-0 as a condition to getting possession, and that the plaintiff Bhuaneshri should in like manner pay the sum of Rs. 889-12-0, and I would to this extent modify the decree of the lower Court. These sums represent mortgage debts paid to third parties. The mortgages have never been set aside, and I think that these mortgage debts stand on a different basis from the other moneys which the Court below has directed the plaintiffs to pay as a condition precedent to getting possession. I would dismiss the defendants' appeal, and allow the appeal of the plaintiffs to the extent mentioned above.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

1908

*November 12.*

*Before Mr. Justice Richards and Mr. Justice Karamat Husain.*

EMPEROR v. DUNGAR SINGH\*

*Act No. II of 1899 (Indian Stamp Act), schedule I, article 53 (c)—Stamp—Receipt for rent—Receipt for money paid out of Court in satisfaction of a decree for rent.*

*Held* that, although a receipt for rent of an agricultural holding is exempt from payment of stamp duty under article 53 (c) of the first schedule to the Indian Stamp Act, 1899, a receipt for payment out of Court of money due under a decree for such rent is not so exempt.

\* Criminal Revision No. 654 of 1908 from an order of B. J. Dallal, Sessions Judge of Agra, dated the 14th of August 1908.

1908

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 EMPROB  
 v.  
 DUNGAR  
 SINGH.

ONE Dungar Singh, as agent for a zamindar, obtained a decree for rent against a tenant. On account of that decree the judgment-debtor paid certain moneys to Dungar Singh, who granted a receipt therefor, but omitted to stamp it. For this Dungar Singh was tried by a magistrate of the first class for an offence under section 62 of the Indian Stamp Act, 1899; was convicted, and was sentenced to a fine of Rs. 40 or in default to forty days' simple imprisonment. Against his conviction and sentence Dungar Singh applied in revision to the Sessions Judge of Agra, who being of opinion that article 53 (c) of the first schedule to the Stamp Act applied, and that no stamp was required for such a receipt, submitted the case to the High Court under the provisions of section 433 of the Code of Criminal Procedure with the recommendation that the conviction and sentence should be set aside.

The Assistant Government Advocate (Mr. *W. K. Porter*) for the Crown.

RICHARDS and KARAMAT HUSAIN, JJ.—Dungar Singh was convicted under section 62, of the Indian Stamp Act (II of 1899) and sentenced to a fine of Rs. 40 or to suffer simple imprisonment for 40 days. It appears that the accused held a decree for rent against a certain tenant and gave a receipt for the amount of the decree to the tenant without any stamp denoting payment of duty. The accused Dungar Singh was himself merely an agent of a zamindar. Generally speaking, receipts must be stamped, but an exemption is made by article 53 (c), schedule I, of the Stamp Act in favour of receipts for payment of rent by cultivators on account of land assessed to Government revenue. The learned Sessions Judge has referred the matter to this Court under section 433, Criminal Procedure Code, suggesting that the conviction is wrong and should be set aside, inasmuch as a receipt for money paid under a decree for rent must be treated as a receipt for rent. A learned Judge of this Court considering the matter of general importance has referred the case to a Bench of two Judges. In our judgment the conviction was correct. The debt of rent merged in the decree, and it is admitted that a receipt for money payable under a decree must bear a stamp. We do not think that there was any intention to defraud the revenue. Absence of such intention though not sufficient to make a

1908

EMPEROR  
v.  
DUNGAR  
SINGH.

conviction bad, may be taken into consideration in awarding punishment. We alter the sentence from a fine of Rs. 40 to a fine of Rs. 5, or in default imprisonment for 40 days. If the fine has already been paid Rs. 35 will be refunded. Let the record be returned.

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## REVISIONAL CIVIL.

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1908  
November 20.

*Before Mr. Justice Richards and Mr. Justice Griffin.*

MAZHAR HASAN (APPLICANT) v. SAID HASAN (OPPOSITE PARTY)\*  
*Civil Procedure Code, section 622—Criminal Procedure Code, sections 195, 439—Act No. XVIII of 1879 (Legal Practitioners Act), section 14—Jurisdiction.*

A complaint made by letter by a litigant to the Subordinate Judge charging a pleader with professional misconduct was "filed" by the Subordinate Judge; but on a similar complaint being sent to the District Judge, the District Judge, having inquired into its authenticity, sent it to the Subordinate Judge for inquiry and report. The Subordinate Judge thereupon instituted an inquiry under section 14 of the Legal Practitioners Act, as a result of which he granted sanction to the pleader to prosecute for perjury one of the witnesses who had appeared before him in the course of the inquiry, and this order was confirmed by the District Judge.

*Held* that the High Court had no jurisdiction to interfere with the order of the Subordinate Judge under either section 195 or section 439 of the Code of Criminal Procedure; nor could it interfere under section 622 of the Code of Civil Procedure, inasmuch as the Subordinate Judge, though he possibly mistook the meaning of the District Judge's order addressed to him, had jurisdiction to inquire into the truth of the charge made against the pleader.

THIS was a case arising out of a suit brought by a Muhammadan lady to recover her dower. The plaintiff obtained a decree from the Court of the Subordinate Judge of Moradabad, but in the course of execution proceedings a compromise was filed by the plaintiff's vakil. After this the plaintiff sent letters to the Subordinate Judge, the District Judge and the High Court, complaining that the compromise had been filed contrary to her interests and in collusion with the other side. Neither the Subordinate Judge nor the District Judge took any notice of these communications, but the High Court sent the letter which it had received to the District Judge. The District Judge having ascertained that it was really the letter of the plaintiff sent it on to the

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\* Civil Revision No. 29 of 1908, from an order of W. F. Kirtou, District Judge of Moradabad, dated the 14th April 1908.