

he may institute such suit notwithstanding anything contained in order II, rule 2." In our opinion the plaintiff had a right under the terms of the mortgage to recover the interest due on the mortgage from the defendant personally. Plaintiff had not sought in the first suit any relief as against the mortgaged property and under the provisions referred to above the mortgagee was entitled to recover the amount due on the mortgage in spite of the provisions of order II, rule 2. Order XXXIV, rule 14 has been interpreted by this Court in various cases and it has been held that a mortgagee in spite of having sued for a simple money decree in respect of a claim arising under a mortgage was entitled to institute a suit for sale: See *Indarpal Singh v. Mewa Lal* (1). We are therefore of opinion that there is no force in this appeal and we dismiss it.

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PUBAN LAL.

REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

GHAMANDI NATH v. BABU LAL.*

Criminal Procedure Code, sections 240, 403—Conviction on one of two charges—Withdrawal of revision application by complainant in respect of the other charge—Operates as acquittal on that charge—Trial for act falling within two sections of the Penal Code—Conviction under one section—Second trial under the other section barred.

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G was tried for offences under sections 211 and 500 of the Indian Penal Code on the complaint of M that G had made a false report against M, and B alleging that they had taken part in a dacoity. G was convicted under section 500 only. M applied in revision to the High Court for a sentence under section 211 also, but withdrew the application. There-

*Criminal Reference No. 198 of 1929.

(1) (1914) I. L. R., 36 All., 264.

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after *B* filed a complaint against *G* under section 211. On the question whether *G* could be tried again,—

Held, that the withdrawal by *M* of his application in revision, with the consent of the High Court, amounted to a withdrawal of the charge under section 211; and according to section 240 of the Criminal Procedure Code, which was applicable to every grade of court and not only the trial court, the withdrawal had the effect of an acquittal on a charge under section 211 and *G* could not be tried again on it.

Also, by reason of the provisions of section 403 (2) of the Criminal Procedure Code, when a separate charge has been framed against a person under any of the sub-sections other than sub-section (1) of section 235, he cannot be tried for the separate charge when he has once been convicted or acquitted of one charge; and in the present case the two separate charges, namely under section 211 and under section 500 of the Indian Penal Code, were framed not under sub-section (1) but under sub-section (2) of section 235. *Sharbekhan v. The Emperor* (1), followed.

Mr. Shambhu Nath Chaube, for the applicant.

Mr. Iqbal Ahmad, for the opposite party.

DALAL, J. :—One Ghamandi Nath made a report to the police on the 21st of April, 1928, that on the previous night a burglary or dacoity had been committed at his house and that two men, Manni Lal, and Babu Lal, were standing at his door armed with a spear and a sword, directing the operations of the burglars or dacoits. The report was found to be false so far as Manni Lal and Babu Lal were concerned. Ghamandi Nath was thereupon tried for offences under sections 211 and 500 of the Indian Penal Code on the complaint of Manni Lal, who is a brother of Babu Lal. The Magistrate convicted Ghamandi Nath under section 500 and sentenced him to three months' simple imprisonment. He adopted a very weak attitude and refrained from passing any order on the charge

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under section 211 of the Indian Penal Code. Manni Lal thereupon applied in revision to this Court to enhance the sentence under section 500 of the Indian Penal Code and to inflict a sentence under section 211 of the Indian Penal Code. This Court agreed that the sentence of three months' simple imprisonment was ludicrously inadequate, but as Manni Lal withdrew his application the court refrained from issuing notice to Ghamandi Nath to show cause why the sentence passed on him should not be enhanced. Babu Lal thereupon took up the running and filed in the court of a Magistrate a complaint against Ghamandi Nath under section 211 of the Indian Penal Code, and the Magistrate accepted this complaint. The District Magistrate in revision has submitted the record to this Court for dismissing the complaint. He has taken no legal ground but has expressed the view that further proceedings against Ghamandi Nath would amount to persecution in satisfaction of a private grudge and it was not advisable that he should be further prosecuted. This is a sound reason and I would accept the reference on this ground. It appears to me, however, that in law also the complaint to the Deputy Magistrate is not justified. It was rightly pointed out by Mr. *Chaube* that there was a withdrawal by the complainant, with the consent of the Court here, of a charge under section 211, and so the provisions of section 240 of the Code of Criminal Procedure applied and Ghamandi Nath must be considered to have been acquitted of that charge. It was argued that there was no specific consent of this Court and that the provisions applied only to the trial court. When this Court accepted the withdrawal by the complainant Manni Lal, it may be presumed that it gave its consent to such a withdrawal. In his application for revision Manni Lal had desired a sentence under section 211

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of the Indian Penal Code, also, to be imposed; so his withdrawal of that application amounted to a withdrawal of the charge for that offence. The provisions of section 240 apply to every grade of court, not only to the court of trial. There is also another reason why the complaint to the Deputy Magistrate would conflict with the provisions of section 403, clauses (1) and (2), of the Code. Clause (1) deals with acquittals of offences covered by sections 236 and 237. As to offences covered by section 235, clause (2) lays down: "A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1)". Reading this in conjunction with the provisions of clause (1), it would follow that when a separate charge has been framed against a person under any of the sub-sections other than sub-section (1) of section 235 he cannot be tried for the separate charge when he has once been convicted or acquitted of one charge. To the case of Ghamandi Nath sub-section (2) of section 235 would apply, because the acts alleged against him of making a false report constitute an offence falling within two definitions of the Indian Penal Code, namely those of section 211 and section 500, and he could be charged with them and tried at one trial for each of such offences. When he was convicted of one of such offences, namely an offence under section 500, he could not be tried over again for an offence under section 211 of the Indian Penal Code. This view is supported by a Bench ruling of the Calcutta High Court, *Sharbekhan v. The Emperor* (1). There a person had been tried for offences under sections 201 and 202 of the Indian Penal Code and acquitted by the Sessions Court. When he was tried again

(1) (1905) 10 C. W. N., 518.

for an offence under section 176 based on the same facts, the High Court held that he could not be so prosecuted as the case did not fall under sub-section (1) of section 235 of the Criminal Procedure Code, but under sub-section (2) of that section.

I direct, therefore, that the proceedings against the applicant under section 211 of the Indian Penal Code be quashed and Babu Lal's complaint dismissed.

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APPELLATE CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Young.

CHANDU MAL (DEFENDANT) v. DARBARI LAL
(PLAINTIFF).*

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May, 10.

Act (Local) No. III of 1901 (Land Revenue Act), sections 175, 233 (l)—Applicable to taxes realizable as land revenue—Income-tax—Sale for realization—Suit for setting aside sale on the ground of fraud.

Section 233 (l) of the Land Revenue Act covers the case of a sale of immovable property for realization of taxes and dues which are recoverable as if they were arrears of land revenue. Accordingly, a suit to set aside on the ground of fraud a sale of immovable property for the realization of income-tax and irrigation dues is maintainable.

Dr. M. L. Agarwala and Messrs. Kamala Kant Verma and Hanuman Prasad Agarwal, for the appellant.

Messrs. Girdhari Lal Agarwala, Indu Bhushan Banerji and Panna Lal, for the respondents.

MUKERJI and YOUNG, JJ. :—The respondent, Darbari Lal, was assessed with income-tax to the amount of about Rs. 83. He also owed, it appears, a small amount of money on account of irrigation dues. Both

*Second Appeal No. 89 of 1927, from a decree of J. Allsop, District Judge of Aligarh, dated the 13th of May 1926, confirming a decree of Piarey Lal, Subordinate Judge of Aligarh, dated the 2nd of January, 1926.