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with the wood improperly taken from the reserved forest of Timli would have been superfluous, even if made at the time of conviction, as such wood being the property of Government was *de facto* confiscate, and all that he need have done was to have directed that it should be taken charge of by some forest-officer. In saying this I assume that the conviction of the applicant for the substantive offence against s. 25 related to the whole of the wrongfully taken wood found in the six stacks of the applicant. As to the residue, which it was admitted the applicant was entitled to cut under the terms of his contract, the Magistrate's order in respect thereof was altogether indefensible, and could not for a moment be upheld. For it is only to forest-produce, with regard to which an offence has been committed, that power to direct confiscation is given by law. Having regard to the preceding remarks, I have no alternative but to direct that the Magistrate's order of the 15th July, 1881, and that of the Judge of the 26th August following, be quashed.

Orders quashed.

CIVIL JURISDICTION.

1882
May 5.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.

MUHAMMAD ALI AND OTHERS (DEFENDANTS). v. DEBI DIN RAI
(PLAINTIFF)*

Pre-emption—Conditional decree—Question as to whether purchase-money has been paid within time—Act X of 1877 (Civil Procedure Code), ss. 214, 244,

The plaintiff in a suit to enforce a right of pre-emption obtained a decree to the effect mentioned in s. 214 of the Civil Procedure Code. On payment by him of the purchase-money into court, the defendants objected, in the execution department, to such payment on the ground that it had not been made within time. The Court which made the decree disallowed the objection. The defendants appealed from the order disallowing the objection. They had previously appealed from the decree. The appellate Court heard both appeals together, and holding that the purchase-money had not been paid into court within time, reversed the decree, and allowed the objection. The plaintiff preferred a second appeal to the High Court from the appellate Court's decree, which was admitted. He also preferred an appeal from the appellate order allowing the objection, but this appeal was rejected as being beyond time, and such order became final.

Held that, inasmuch as the question whether the plaintiff had paid the purchase-money into court within time was not one relating to the execution of the decree

Application, No. 103 of 1881, for review of judgment.

within the meaning of s. 244 of the Civil Procedure Code, but was one which should be decided in the suit itself, and therefore the proceedings in the execution department touching that question were ill-founded, such order was not a bar to the hearing of the second appeal preferred by the plaintiff.

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THIS was an application by the respondents in S. A. No. 912 of 1880, decided by Stuart, C. J., and Straight, J., on the 14th June, 1881, for review of judgment (1). The appellant in that case had sued the respondents in the Court of the Munsif of Azamgarh to enforce a right of pre-emption. On the 12th December, 1879, the Munsif gave the appellant a decree declaring that he should obtain possession of the property in suit on payment of the purchase-money within thirty days, but that if such money was not so paid, the suit should stand dismissed. The appellant deposited the purchase-money on the 12th January, 1880. Thereupon the respondents objected in the execution department to the amount being received, on the ground that it had not been deposited within time. The Munsif disallowed this objection, and the respondents appealed from his order to the District Judge. They had already appealed to the District Judge from the Munsif's decree. On the 1st May, 1880, the District Judge heard both appeals together, and holding that the appellant had not deposited the purchase-money within time, reversed both the Munsif's decree and his order made in the execution department disallowing the objection of the respondents to the receipt of the purchase-money. On the 26th August, 1880, the appellant preferred a second appeal to the High Court from the District Judge's decree. On the same day he also preferred a second appeal to the High Court from the District Judge's order made in the execution department. This appeal being beyond time was rejected. The second appeal preferred by the appellant from the District Judge's decree came for hearing before Stuart, C. J. and Straight, J. On the 14th June, 1881, those learned Judges decided that the purchase-money had been deposited within time, and reversed the District Judge's decree, and remanded the case for trial on the merits.

The respondents applied for a review of this judgment on the ground, amongst others, that at the time the judgment

(1) This case (*Debi Din Rai v. Muhammad Ali*) is reported at page 850, 3 ALL. L. R.

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was passed, the order of the District Judge made in the execution department had become final, by reason that the appeal from it had been rejected.

Mr. *Conlan*, for the respondents.

Pandit *Bishambhar Nath*, for the appellant.

The Court (STUART, C. J., and STRAIGHT, J.) made the following order :

STRAIGHT, J.—The contention of the present applicants for review is that, when the learned Chief Justice and I subsequently disposed of the special appeal on the 14th June, 1881, the order of the Judge passed in execution had, by my refusal to admit the appeal from it, become final. I do not think this argument is a well-founded one. Putting aside any general question as to the power of Courts, by orders on their execution side, to prejudice or affect the rights of parties in a suit to appeal from the substantive decision in the case, the application now before us appears to me to proceed on an unsound basis. The question which was raised on the objection of the applicants in the execution department, as to whether the money ordered to be paid by the Munsif had been deposited in time, was not one arising between the parties in reference to the execution of the decree, to which s. 244 of the Code would have any application. On the contrary, it was a substantive question in the suit itself, in which it had been declared that, if the money was not paid upon a particular day, the decree for pre-emption would be extinguished. The words of s. 214 of the Code seem to me to preclude the idea that a matter of this kind in any way relates to the execution of the decree, “the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money the plaintiff shall obtain possession of the property, but that if such money be not so paid, *the suit shall stand dismissed.*” In the present instance I think that any proceedings on the execution side in reference to the decree of the Munsif were ill-founded, and that the question as to whether the money had been deposited in time, bearing directly as it did upon what the final result of the suit should be, was matter for decision in the suit itself, in respect of which pleas in appeal could be urged, and so the present applicants appear to have

thought, for they made it the ground of their 8th plea in the memorandum of appeal. I therefore do not think that the order passed on the execution side in appeal by the Judge had any effect to bar the learned Chief Justice and myself from hearing the special appeal, nor am I of opinion that our judgment thereon is open to the objections urged in the petition for review. I would dismiss the application with costs; and in this order the Chief Justice concurs.

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Application reisted

APPELLATE CIVIL.

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May 16.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

LEEWHELLIN (DEFENDANT) v. CHUNNI LAL AND ANOTHER (PLAINTIFFS)*

Contract for sale and delivery of goods at fixed price—Suit for price—Cause of action—Place of suing—Act X of 1877 (Civil Procedure Code), s. 17 (a)—Jurisdiction.

C and L entered into an agreement at a place in the Saran district, in which the latter resided and carried on business, whereby C promised to sell and deliver to L at a place in the Saran district certain goods, and L promised to pay for such goods on delivery "by approved draft on Calcutta or Cawnpore (where C carried on business) payable thirty days after the receipt of the goods or by Government currency notes." C delivered the goods according to his promise, but L did not pay for the same, and C therefore sued L for the price of the goods, suing him at Cawnpore.

Held that the "cause of action," within the meaning of s. 17 of the Civil Procedure Code, was L's breach of his promise to pay for the goods; that the parties intended that payment should be made at Cawnpore and the cause of action therefore arose there; and that therefore the suit had been properly instituted there.

THE plaintiffs in this suit, who carried on business at Cawnpore under the style of Bihari Lal, stated in their plaint that on the 22nd November, 1877, at Sonepur fair, they sold to the defendant 500 mannds of indigo-seed at the rate of Rs. 9 a maund, agreeing to deliver the same on the 15th February, 1878, and to pay commission at the rate of Rs. 5 per cent; that they delivered the indigo-seed to the defendant on the stipulated date; that the defendant promised to give them a bill of exchange for Rs. 4,275, the price of the seed, after deducting Rs. 225, his commission, on his Cawnpore or Calcutta firm, payable to the plaintiffs' firm at Cawnpore,

* First Appeal, No. 85 of 1881, from a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 11th May, 1881.