

The Court (STRAIGHT, J., and BRODHURST, J.) delivered the following judgment :—

STRAIGHT, J.—We think that this petition for revision is a well founded one and should prevail. The suit is not for the possession of personal property, pure and simple, as mentioned in s. 6, Act XI of 1865, but the further relief is prayed that the order in execution disallowing the plaintiff's objection in respect of the property now claimed may be set aside. We do not think the suit was cognizable by the Small Cause Court, and allowing this application with costs, we quash the proceedings therein and direct that the plaint be returned to the plaintiff for presentation to the proper Court.

Order accordingly.

CRIMINAL JURISDICTION.

Before Mr. Justice Straight.

EMPRESS OF INDIA *v.* NATHU KHAN.

Forest-offence—Confiscation—High Court, powers of revision under s. 297 of Act X of 1872 (Criminal Procedure Code)—Act VII of 1878 (Forests Act), ss. 54, 56, 58.

No order confiscating forest-produce which is the property of Government in respect of which a forest-offence has been committed is necessary or can be made. All that need be done is to direct a forest-officer to take charge of such forest-produce.

An order directing the confiscation of forest-produce not belonging to Government, in respect of which a forest-offence has been committed, can only be made at the time the offender is convicted.

The High Court is competent under s. 297 of Act X of 1872 to revise an order made by a District Judge under s. 58 of the Forests Act, 1878, on appeal from the order of a Magistrate made under s. 54 of that Act, the jurisdiction of the High Court under s. 297 of Act X of 1872 not being expressly taken away by s. 58 of the Forests Act, 1878.

THIS was an application for revision under s. 297 of the Criminal Procedure Code of an order of Mr. F. Giles, Assistant Superintendent of Dehra Dún, and Magistrate of the first class, dated the 15th July, 1881, and of the order of Mr. R. M. King, Sessions Judge of Saháranpur, confirming the Magistrate's order. The applicant, it appeared, was entitled under a contract with Government to take the dry timber in certain forests situate in the Dún. Having taken green timber, he was on the 14th May, 1881, convicted by the Assistant Superintendent under s. 25 of the Forests

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Act, 1878, of a forest-offence, and fined Rs. 100. The question as to the confiscation of six stacks of wood found in the applicant's possession was ordered to stand over until certain inquiries should be made. These stacks consisted of wood which the applicant had lawfully taken under his contract, and of wood which he had unlawfully taken and the taking of which had led to his conviction under s. 25 of the Forests Act. On the 15th July, 1881, the Assistant Superintendent made an order ostensibly under s. 54 of that Act confiscating the stacks. The applicant appealed from this order to the Sessions Judge of Saháranpur, who confirmed it by an order dated the 26th August, 1881.

The grounds on which revision of these orders was sought are fully stated in the order of the High Court. On behalf of Government it was objected that under s. 58 of the Forests Act the order of the Sessions Judge was final, and the High Court was not competent to revise the case.

Mr. *Dillon* and Pandit *Nand Lal*, for the petitioner.

The *Junior Government Pleader* (*Babu Dwarka Nath Banarji*), for the Crown.

STRAIGHT, J—This is an application for revision of an order purporting to have been passed by the Magistrate of Dehra under s. 54 of the Forests Act, 1878, on the 15th July, 1881, and subsequently confirmed in appeal by the Judge of Saháranpur on the 26th August following. It appears that on the 14th May preceding the applicant was convicted by the same Magistrate under s. 25 of the Act for a forest-offence, and was ordered to pay a fine of Rs. 100, or in lieu thereof to undergo simple imprisonment for three months. On that occasion the question of compensation to Government for the loss it had sustained, and as to the confiscation of certain stacks of wood found in possession of the applicant, was ordered to stand over for further inquiries to be made and information to be obtained.

When the present case came on for hearing before me, the *Junior Government Pleader*, by way of preliminary objection, urged that under s. 58 of the Forests Act the order passed by the Judge in appeal from the decision of the Magistrate was final and not

open to revision under s. 297 of the Criminal Procedure Code. I then intimated, as I now repeat, that I did not think the terms of the section referred to excluded the ordinary revisional powers of this Court over a subordinate tribunal in the exercise of its criminal jurisdiction, where there had been material error in a judicial proceeding. In the absence of any express words to that effect, I must hold that the application now before me has been properly preferred and can be entertained.

Two grounds are taken on behalf of the applicant why the order complained against, which directed the confiscation of certain wood stacks belonging to him, should be quashed. First, that it was not passed at the time of the conviction and fine, but on a subsequent date, when the Magistrate was discharged of the case; secondly, that there is no provision in the Forests Act which authorized the Magistrate to direct the confiscation of the timber, to which the applicant was lawfully entitled, and in respect of which no forest-offence had been committed.

I am of opinion that both these contentions are well-founded and must prevail. With regard to the former of them, it is clear from the second paragraph of s. 54 of the Forests Act that confiscation is to be regarded as matter of punishment, which may be added by way of *additional penalty to the imprisonment or fine* prescribed for offences. In the present case the offender being known, and before the Court, the Magistrate should either have postponed passing his final order, until the inquiries had been made and the information obtained that he required, or at once have directed confiscation in his judgment of the 14th May. The subsequent proceeding of the 30th May was, I consider, irregular and not authorized by law, and should not have been held. But apart from this, I think that under the Forests Act no confiscation order is necessary, or can be made, in respect of forest-produce which is the property of Government. Ss. 54 and 55 appear to me to place the matter beyond doubt, for in the former the words are "all timber or forest-produce which is not the property of Government, &c.," and in the latter "any forest-produce, if it is the property of Government or has been confiscated." Looking at this language, I can come to no other conclusion than that the Magistrate's order, in so far as it dealt

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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.

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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.