

In second appeal by the plaintiff it was contended that the fact that the defendant held a certificate under Act XXVII of 1860 did not preclude her from attacking his title to represent the decree-holder, more particularly as she had not been a party to the proceedings in which such certificate had been granted.

Munshi *Sukh Ram* and Babu *Jogindro Nath Chaudhri*, for the appellant.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) and Babu *Ram Das Chakarbati*, for the respondent.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.,) was delivered by

STRAIGHT, J.—It is sufficient for us to say that the plaintiff-appellant had no cause of action. S 4 of Act XXVII of 1860 makes the certificate of the Judge to the defendant conclusive of his representative character, and was and is a full indemnity to all persons paying their debts to him. The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.*

GHULAM JILANI (DEFENDANT) v. IMDAD HUSAIN (PLAINTIFF).\*

*Vendor and purchaser—Covenant for good title to convey—Pre-emption—Construction of covenant.*

1882  
March 25.

An instrument of sale contained the following condition:—"Should any person claim as a co-sharer or proprietor of the property, and assert his claim against the purchaser or raise any dispute of any kind, or if from any unforeseen cause the purchaser be deprived of the possession of the property or any portion thereof, or his possession thereof is disturbed in any way, then I (vendor), my heirs and assigns, shall be liable for the purchase-money, the profits of the property, and the costs of litigation." The purchaser having lost the property, by reason of a person having a right of pre-emption having sued him to enforce such right and obtained a decree, sued the vendor to recover the costs incurred by him in defending such suit, basing his claim upon the condition set forth above. *Held* that the suit was not maintainable, as such condition referred to flaws or defects in the vendor's title, and was not applicable to a loss accruing to the purchaser from his disqualification to buy.

\* Second Appeal, No. 1041 of 1881, from a decree of J. Alone, Esq., Subordinate Judge of Agra, dated the 14th May, 1881, reversing a decree of Pandit Kashi Narain, Munsif of Agra, dated the 14th February, 1881.

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GHULAM  
JILANI  
v.  
IMDAD  
RUSAIN.

THIS was a suit in which the plaintiff claimed to recover Rs. 794, being the costs incurred by him in defending a certain suit. On the 15th May, 1877, the defendant sold his share in a certain village to the plaintiff for Rs. 1,500. One of the conditions in the instrument of sale was as follows:—"Should any person claim as a co-sharer or proprietor of the property, and assert his claim against the purchaser, or raise any dispute of any kind, or if from any unforeseen cause the purchaser be deprived of the possession of the property or any portion thereof, or his possession thereof is disturbed in any way, then I, my heirs and assigns, shall be liable for the purchase-money, the profits of the property, and the costs of litigation." In July, 1877, after the sale, one Dabi Ram, a co-sharer in the village in which the property was situate, sued the plaintiff and defendant to enforce his right of pre-emption in respect of the property. They defended this suit, but Dabi Ram succeeded in obtaining a decree against them for possession of the property by virtue of his right of pre-emption. In the present suit the plaintiff claimed to recover from the defendant the costs incurred by him in the pre-emption suit, basing his claim on the condition in his sale-deed set forth above. The Court of first instance dismissed the suit, holding that the plaintiff was not entitled under the condition to recover the costs of the pre-emption suit. On appeal by the plaintiff the lower appellate Court held that the terms of the condition were wide enough to take in the plaintiff's claim, and gave him a decree.

On second appeal by the defendant it was contended on his behalf that the lower appellate Court had misconstrued the deed of sale, and under its terms the plaintiff was not entitled to recover the costs of the pre-emption suit.

Mr. *Colvin* and Pandit *Ajudhia Nath*, for the appellant.

Pandit *Bishambhar Nath*, for the respondent.

The judgment of the Court (BRODHEURST, J., and TYRRELL, J.) was delivered by

TYRRELL, J.—We do not concur in the lower appellate Court's reading of the guarantee clause in the sale-deed. It refers in our opinion to flaws or defects in the title conveyed by the vendor, and is

not applicable to a loss accruing to the vendee by reason of his disqualification to buy. In this view of the case we must annul the decree of the lower appellate Court, restore that of the Munsif, and decree this appeal with costs.

*Appeal allowed.*

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GHULAM  
JILANI  
v.  
IMDAD  
HUSAIN.

## CIVIL JURISDICTION.

1882

March 53.

*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

IN THE MATTER OF THE PETITION OF BADRI PRASAD v. SARAN LAL  
AND ANOTHER.\*

*Execution of decree—Attachment of property in execution of decrees of two Courts—Postponement of sale by Court of higher grade—Sale of property under order of Court of lower grade—Invalidity of sale—Act X. of 1877 (Civil Procedure Code), ss. 285, 311.*

When several decrees of different Courts are out against a judgment-debtor, and his immoveable property has been attached in pursuance of them, the Court of the highest grade, where such Courts are of different grades, or the Court which first effectuated the attachment, where such Courts are of the same grade, is, under s. 235 of the Civil Procedure Code, the Court which has the power of deciding objections to the attachment, of determining claims made to the property, of ordering the sale thereof and receiving the sale-proceeds, and of providing for their distribution under s. 295.

*Held*, therefore, where the immoveable property of a judgment-debtor was attached in execution of several decrees, one a Munsif's decree, and the rest a Subordinate Judge's decrees, and the Subordinate Judge postponed the sale of such property, but the Munsif refused to do so, and such property was sold in execution of the Munsif's decree, that the sale was void as having been been made in pursuance of the order of a Court which had no jurisdiction to direct it.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Pandit *Ajudhia Nath* and *Lala Harkishan Das*, for the petitioner.

The *Senior Government Pleader* (*Lala Juala Prasad*), *Pandit Bishambhar Nath*, and *Munshi Sukh Ram*, for the opposite parties.

The judgment of the Court (*STRAIGHT, J.*, and *OLDFIELD, J.*) was delivered by

*STRAIGHT, J.*—This is an application for revision under s. 622 of the Civil Procedure Code. It appears that three persons, *Badri Prasad*, *Gulab Chand*, and *Ajudhia Prasad*, severally held decrees

\* Application, No. 189 of 1881, for revision under s. 622 of Act X of 1877 of an order of *Maulvi Zahur Husain*, Munsif of *Aligarh*, dated the 3rd June, 1881.