

FULL BENCH.

1881
August 26.

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

BIRCH (JUDGMENT-DEBTOR) v. RATI RAM (DECREE-HOLDER)*

Rules prescribed by the Local Government under s. 320 of Act X of 1877 (Civil Procedure Code)— Notification No. 671 of 1880 (Judicial Civil Department) dated the 30th August, 1880—Meaning of “decree for the recovery of money.”

Held that a decree for the sale of ancestral land, or of an interest in such land, in enforcement of an hypothecation on such land, is a “decree for money” within the meaning of the Rules prescribed by the Local Government under s. 320 of Act X of 1877 (1).

THIS was a reference to the Full Bench by Straight, J., and Tyrrell, J., of the question “whether a decree for the sale of ancestral land or interest in such land in enforcement of an hypothecation on such land is ‘a decree for the recovery of money,’ in the sense of the Notification of the Government of the North-Western-Provinces No. 671 of 1880, dated the 30th August, 1880” (1).

Hanuman Prasad and Nand Lal, for the appellant.

Pandits Ajudhia Nath and Bishambhar Nath, for the respondent.

The following judgment was delivered by the Full Bench :—

JUDGMENT.—On consideration of the terms of ss. 320 and 322 of the Code of Civil Procedure, and of the preamble and paragraphs 10 and 11 of the Rules issued by the Lieutenant-Governor, North-Western-Provinces, with the sanction of the Governor-General in Council, in pursuance of the powers conferred by s. 320 of the Civil Procedure Code, we have no doubt that a decree for the sale of ancestral land, or of an interest in such land, in enforcement of an hypothecation on such land, is a “decree for the recovery of money” in the terms of the preamble of the Notification of the Government of the North-Western-Provinces No. 671, dated the 30th August, 1880. The procedure to be followed by the Collector on the receipt of such a decree is set out in paragraph 10 of the Notification.

* First Appeal, No. 47 of 1881, from an order of Maulvi Nasir Ali Khan, Subordinate Judge of Mainpuri, dated the 10th March, 1881.

(1) Published at p. 990, *North-Western Provinces and Oudh Gazette*, 9th October, 1880.