

trate, and it was only right and for the good of the public service that he should complete his work. The accused cannot be said to have been prejudiced, and indeed in the memorandum of appeal the objection as to the want of jurisdiction was not taken. It is quite according to the spirit of the Act that each Magistrate should pass sentence on proceedings recorded by himself, as appears from the proviso to s. 328 of the Code.

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INDIA
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 APPELLATE CIVIL.

 1881
March

Before Mr. Justice Pearson and Mr. Justice Oldfield.

AJUDHIA NATH AND OTHERS (DEFENDANTS) v. SITAL (PLAINTIFF).*

Landholder and Tenant—Hypothecation of trees.

A tenant with a right of occupancy can only make a valid hypothecation of the trees on the land he holds for the term of his tenancy; with his ejection from such land and the cessation of his tenancy such an hypothecation ceases to be enforceable (1).

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

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

Babu Sital Prasad Chattarji, for the respondent.

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

OLDFIELD, J.—The plaintiff holds a bond dated the 15th October, 1874, executed by Alopi, defendant, by which he hypothecated to him certain trees growing in a garden in his occupancy as a right-of-occupancy tenant and a dwelling-house. The appellants before us represent Alopi's landlord, who held Revenue Court decrees against Alopi for rent and ejected him from his holding; and, putting up to sale his rights in the holding, became its purchaser. The object of this suit is to enforce against the appel-

* Second Appeal, No. 1031 of 1880, from a decree of Rai Mukhan Lal, Subordinate Judge of Allahabad, dated the 3rd July, 1880, affirming a decree of Babu Pramoda Charan Banarji, Munsif of Allahabad, dated the 8th March, 1880.

(1) See also *Ram Baran Ram v. Salig Ram Singh*, I. L. R., 2 All. 896.

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lants the charge under the bond. The Courts below have decreed the claim. The third plea in the memorandum of appeal in respect of the enforcement of the charge against the house has been withdrawn; but the first plea in respect of its enforcement against the trees in Alopi's former holding is in our opinion valid. Looking to the tenure of a right-of-occupancy tenant, Alopi could only make a valid hypothecation of the trees on the land he held for the term of his tenancy. With his ejection from the land and cessation of his tenancy, the hypothecation ceased to be enforceable. We modify the decree of the lower Courts, and decree the claim against Alopi and for enforcement of the charge against the house. Each party will pay their own costs.

Decree modified.

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March 18.

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

RAGHU NATH DAS AND ANOTHER (DEFENDANTS) v. KAKKAN MAL AND ANOTHER (PLAINTIFFS).*

Suit for money secured by the mortgage of immoveable property situate partly in the Family Domains of the Maharaja of Benares—Act VIII of 1859 (Civil Procedure Code), s. 13—Sale in execution—Fraudulent representation by decree-holder—Suit to set aside sale—Sale of decree enforcing hypothecation of immoveable property.

A suit was instituted in the Court of the Subordinate Judge of Benares for money secured by the mortgage of immoveable property situate within the limits of the District of Benares and of immoveable property situate within the limits of the Family Domains of the Maharaja of Benares. The Subordinate Judge had not jurisdiction to proceed with this suit in so far as it related to the latter property; and he was authorized to proceed with it, under the provisions of s. 13 of Act VIII of 1859, by the High Court in concurrence with the Board of Revenue. He accordingly proceeded with the suit and on the 18th November, 1874, gave the plaintiffs a decree for the recovery of the money claimed by the sale of the mortgaged property. With a view to bring the mortgaged property situate within the limits of the Family Domains of the Maharaja of Benares to sale, this decree was sent for execution to the Subordinate Judge at Kondh, within whose jurisdiction such property was situate; and such property was sold in the execution of this decree on the 29th August and the 4th September, 1877. Subsequently the defendants in the present suit, who held decrees for money against H, one of the plaintiffs in the suit above-mentioned, applied to the Subordinate Judge of Benares for the attachment and sale of H's interest in the decree above-mentioned, falsely representing that the sales in execution of that decree of the 29th August and 4th September, 1877, had been set aside. Such interest was accordingly put up for sale on the 29th

* First Appeal, No. 35 of 1880, from a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Benares, dated the 6th December, 1879.