

a Magistrate in certain specified cases. The orders issued by Mr. Hewett were not, as I have already observed, warranted by either section; nor were the petitioners legally bound to attend upon the police for the purpose of carrying out that order.

Application allowed

FULL BENCH.

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

IN THE MATTER OF THE PETITION OF MAULVI MUHAMMAD (JUDGMENT-DEBTOR) v. SYED HUSAIN (DECREE-HOLDER).*

Powers of Revision of the High Court under Act X of 1877 (Civil Procedure Code), s. 622.

Per PEARSON, J., OLDFIELD, J., and STRAIGHT, J.—When, under s. 622 of Act X. of 1877, the High Court has called for the record of a case in which no appeal lies to it, it may, under that section, pass any order in such case which it might pass if it dealt with the case as a second appeal under chapter XLII. of that Act.

Per STUART, C. J.—The High Court may, under that section, pass in such case any order, whether in regard to fact or law, as it thinks proper.

Where in a case of the execution of a decree in which no second appeal lay to the High Court, the appellate Court held, on the construction of the decree, that it awarded interest on the principal amount of the decree, the High Court, under s. 622 of Act X. of 1877, holding that the appellate Court has misconstrued the decree, and that the decree did not award such interest, modified the order of the appellate Court accordingly.

THE decree of which execution was sought in this case was one for Rs. 408, and directed, amongst other things, that the decree-holder should, in the first instance, recover that sum from the judgment-debtor Badri Nath, and that, if he could not do so, he should then recover it from the judgment-debtor Maulvi Muhammad. In the present application for the execution of the decree, the decree-holder sought to recover that sum, and the costs of the suit, and interest from Maulvi Muhammad. That judgment-debtor objected that the decree-holder had taken no proper steps to execute the decree

* Application No. 31B of 1880, for revision under s. 622 of Act X. of 1877 of an order of H. A. Harrison, Esq., Judge of Mirzapur, dated the 24th January, 1880.

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against Badri Nath, and that, until he had done so, the decree could not be executed against him. The Court executing the decree disallowed this objection. On appeal by the judgment-debtor the appellate Court held that, as the decree-holder had not seriously attempted to execute the decree against Badri Nath, he could not recover the principal amount of the decree from Maulvi Muhammad until he had done so and failed, but that he could recover the costs and interest claimed, holding that the decree allowed interest on the principal amount of the decree. Maulvi Muhammad thereupon preferred an application to the High Court for the exercise of its powers of revision under s. 622 of Act X of 1877, contending that the appellate Court had acted illegally in the exercise of its jurisdiction in ordering him to pay the decree-holder interest on the principal amount of the decree, contrary to the terms of the decree. The Division Bench before which the application came for hearing (OLDFIELD, J., and STRAIGHT, J.) referred to the Full Bench the question whether, under the provisions of that section, the Court might pass any order on the application which it might pass if it dealt with the case as a second appeal, the order of reference being as follows :—

OLDFIELD, J.—We refer for the decision of the Full Bench the question which arises in this case, whether the Court, having called for the record of a case under s. 622 of the Civil Procedure Code, in which no appeal lies to the High Court, may, under the provisions of that section, pass any order thereon which it might pass if it dealt with the case as a second appeal, under chapter XLII. of the Code of Civil Procedure.

Pandit *Ajudhia Nath* and Munshi *Ram Prasad*, for the petitioner.

Munshi *Kashi Prasad*, for the respondent.

The following judgments were delivered by the Full Bench :—

STUART, C. J.—My answer to this reference is that under s. 622 this Court has the power to pass all orders it could pass in second appeals, to say the least, for I incline to the opinion that s. 622 gives us still larger powers of revision in civil cases than

we have in second appeals, where we are limited to questions of law Under this s. 622, I consider, we can make any order, whether in regard to fact or law, we may think proper for the purposes of the justice of the case. In fact, it appears to me that the power given to the High Court under s. 622 in civil cases very much resembles, if it is not the same as, the jurisdiction given to the High Court in criminal cases under s. 297 of the Criminal Procedure Code, by which the High Court is empowered to "pass such judgment, sentence, or order as it thinks fit." In my opinion, we have under s. 622 the same power as this in civil cases.

PEARSON, J.—I would answer the question in the affirmative, because the terms of s. 622 seem to include all the grounds on which by the provisions of s. 584 of the Code a second appeal may lie, and to confer powers as extensive as those exercised by the High Court in disposing of second appeals.

STRAIGHT, J. (OLDFIELD, J., concurring).—I would answer this reference by saying that, in my opinion, the terms of s. 622, Act X. of 1877, as amended by Act XII. of 1879, are so wide and comprehensive as to invest the High Court with the power to call for the records of cases not open to second appeal, and to pass any order on them which might properly be made in second appeal. The words added by Act XII. of 1879 were apparently introduced for the purpose of relaxing the somewhat contracted limits within which it had been competent for the High Court to exercise revision over the proceedings of subordinate tribunals in which no second appeal lay, and to give them a narrow interpretation would, I think, be to defeat the object the Legislature had in view. Placing the most reasonable construction I can upon the terms "acting in the exercise of its jurisdiction illegally or with material irregularity," I should read them to mean, deciding erroneously in point of law, or irregularly in a material particular in respect of procedure, and if this view be correct, the High Courts must necessarily possess in revision all the powers they have in second appeal. It is argued that this practically provides a second appeal in all cases that are in the strict sense of the term unappealable, and it is further urged that, if so serious an alteration of the law had been contemplated, words might readily have been found to express such

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an intention. I confess I feel the force of this contention, but I cannot give effect to it in face of the, what appear to me to be, plain directions of s. 622 in its present shape. I would accordingly answer the question put by this reference in the affirmative.

The Division Bench (OLDFIELD, J., and STRAIGHT, J.), on the case again coming before it for disposal, made the following order:—

OLDFIELD, J.—We are of opinion that the Judge has wrongly construed the decree and that it does not allow interest on the principal debt but only on the costs. So far the order of the Judge is modified. The applicant will have his costs of this application.

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

DIWAN SINGH AND ANOTHER (PLAINTIFFS) v BHARAT SINGH AND OTHERS (DEFENDANTS).*

Sale in Execution of decree— Suit to set aside order setting aside Sale—Act VIII of 1859 (Civil Procedure Code), ss. 256, 257.

The Court executing a decree having made an order setting aside a sale under Act VIII of 1859 of immoveable property in the execution of the decree, the purchaser at such sale sued the decree-holder and the judgment-debtor to have such order set aside and to have such sale confirmed in his favour. *Held* (OLDFIELD, J., dissenting) that the suit was maintainable, the provisions of s. 257 precluding an appeal from an order setting aside a sale, and not a suit to contest the validity of such an order, and that, the order setting aside the sale in this case being *ultra vires*, the auction-purchaser was entitled to the relief he claimed.

THE plaintiffs in this suit claimed to have the order setting aside a sale of immoveable property in the execution of a decree set aside and to have such sale maintained. The property had been proclaimed for sale on the 20th September, 1877, under an order of the Subordinate Judge of Meerut. On the 14th September, 1877, the judgment-debtors applied to the Subordinate Judge to postpone the sale. On that date the Subordinate Judge made an order on the application directing the postponement of the sale, on condition that the judgment-debtors deposited the fees for issuing fresh notifications of sale, and directing the issue of fresh notifica-

* Appeal under cl. 10, Letters Patent, No. 1 of 1880.