

1883 not relevant to the question before us. In this view of the strict  
 limitation to be applied to the word "cultivator" of the Stamp Act,  
 STAMP we hold that a farmer or lessee would not ordinarily be entitled to  
 REFERENCE. the benefit of the exemption provided in sch. ii, art. 13, (b) and (c):  
 and that, in respect of the particular kabuliyat before us, it is  
 obvious that the land, the subject of the deed, is for a large part  
 not cultivable or susceptible of being treated as a "cultivator's"  
 holding in any legitimate sense of that word. Our answer to this  
 reference would therefore be, that we concur in the opinion of His  
 Honor the Chief Commissioner of Oudh as expressed in the 4th  
 paragraph of his Secretary's letter No.  $\frac{2271}{1882}$ , dated the 21st  
 January, 1882.

### FULL BENCH.

1883.  
 February 18.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight,  
 Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

RAGHUBAR DAYAL (PLAINTIFF) v. THE BANK OF UPPER INDIA,  
 LIMITED, (DEFENDANT).\*

*Sale in execution set aside—Suit by purchaser for interest and purchase-  
 money—Act VIII of 1859 (Civil Procedure Code)—Act X of 1877 (Civil  
 Procedure Code), s. 315.*

A judgment-debtor, whose property had been sold in execution of the  
 decree, under Act VIII of 1859, appealed from the order disallowing his  
 application to set aside the sale, after Act X of 1877 (Civil Procedure Code)  
 came into force. The appellate Court set aside the sale. The purchaser  
 sued the decree-holder for interest on the purchase-money and the expenses  
 of the sale, the purchase-money having been returned to him, under the order  
 of the Court executing the decree, without interest and less such expenses.

*Held* by the Full Bench that the provisions of Act X. of 1877, and not  
 of Act VIII of 1859, were applicable to the determination of the matter in  
 dispute in the suit.

*Held* by the Divisional Bench (STRAIGHT and TYRRELL, JJ.) that, with  
 reference to the ruling of the Full Bench, the suit was maintainable.

*Held* also by the Divisional Bench that, under the circumstances of the  
 case, the plaintiff ought not to be granted the relief sought.

THE plaintiff in this suit was the purchaser of certain immove-  
 able property put up for sale in execution of a decree held by the

\* Second Appeal No. 1810 of 1881, from a decree of Babu Kachhi Narh Biswas,  
 Additional Subordinate Judge of Cawnpore, dated the 15th August 1881, revers-  
 ing a decree of Maulvi Ahmad-ullah, Munsif of Panchpur, dated the 20th June 1881.

defendant, the bank of Upper India, on the 20th June, 1877, while Act VIII of 1859 (Civil Procedure Code) was in force. The judgment-debtor applied to have the sale set aside, but his application was rejected, and the sale was confirmed on the 2nd October, 1877. He appealed to the High Court, and on the 19th July, 1878, (Act X of 1877 having come into force), the High Court set aside the sale. On the 9th August, 1878, the defendant in the present suit, the decree-holder, repaid into Court the sale-proceeds which it had realized on the 11th October, 1877. The money was refunded to the plaintiff in this suit, the auction-purchaser, less the expenses of the sale, and an application by the plaintiff for interest on the money was rejected. He therefore brought the present suit against the defendant, the decree-holder, for interest on the purchase-money and the expenses of the sale. The Court of first instance gave the plaintiff a decree. The Lower Appellate Court held that the suit would not lie, as under s. 315 of Act X of 1877, which was in force when the sale was made, and was applicable, the claim was one which should be determined by the Court executing the decree, and not by a suit.

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In second appeal to the High Court the plaintiff contended that the suit was maintainable. The appeal raised the question whether Act VIII of 1859, the Code of Civil Procedure, in force when the sale took place, or Act X of 1877, the Code in force when the appeal which resulted in the sale being set aside was made, should be applied to the determination of the matter in dispute in this suit. This question the Divisional Bench before which the appeal came (TYRRELL and MAHMOOD, JJ.) referred to the Full Bench.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji and Pandit Ajudhia Nath, for the appellant.

Mr. Howard, for the respondent.

The following opinions were delivered by the Full Bench:—

STUART, C. J., and STRAIGHT, BRODHURST, and TYRRELL, JJ.—  
 We think that the provisions of Act X. of 1877 are applicable.

OLDFIELD, J.—I concur so far as being without prejudice to any rights accrued under Act VIII of 1859.

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On the case being returned to the Divisional Bench (STRAIGHT and TYRRELL, JJ.), the following judgment was delivered by the Bench:—

STRAIGHT, J.—Having regard to the Full Bench ruling we are not prepared to say that the suit to which this appeal relates was unmaintainable. At the same time the claim of the plaintiff for mere interest, which he never put in Court until more than two years and-a-half after he had received back his purchase-money, is of a kind we feel no disposition to favour or encourage, more particularly when we remember that it was unsuccessfully preferred in the execution department, as far back as September, 1878. It was through no fault of the defendant Bank that the sale, at which the plaintiff purchased, was set aside; on the contrary it was owing to the irregularity of the mode in which the Court executing the decree made the publication of sale. It is obvious that while the order confirming the sale of the 20th June, 1879, to the plaintiff was under appeal to this Court, the defendant Bank was not in a position to make any use of the purchase-money it had taken out of Court in October, 1877, for it might be called on to refund it at any moment, and, as a matter of fact, it voluntarily repaid the amount immediately after the sale was set aside. From the remarks of Person and Turner, JJ., in their order of the 19th July, 1878, it would seem that the plaintiff bought the property very cheap, and the fact that he was afterwards made to pay the judgment-debtor the mesne profits received by him during the time he was in possession, which was money that obviously belonged to the latter, does not appear to us to lend weight or force to his claim for interest against the defendant Bank. As the Court executing the decree did not allow him that interest, and as in ordinary course that would be the fittest tribunal to determine the question, we, in the absence of any very strong case being established to the contrary, do not feel called upon to accord it him. For the reasons above given we affirm the order of the Lower Court dismissing the plaintiff's suit, and we dismiss the appeal. The plaintiff will pay the costs in all the Courts.

*Appeal dismissed.*