

LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
LeRossignol.*

THE LAHORE BANK, LIMITED, IN LIQUIDA-
TION—Appellant,

1923

Nov. 27.

versus

GHULAM JILANI—Respondent.

Letters Patent Appeal No. 53 of 1923.

*Minor—Execution of a decree against—Whether executing
Court can go behind the decree and refuse to execute it.*

The Liquidation Judge, Lahore, made an order for payment of Rs. 1,165-5-0 against the minor respondent. That order was enforceable as a decree, but the lower Courts refused execution on the ground that the minor had not been represented before the Liquidation Court and therefore no decree existed.

Held, that an executing Court has no jurisdiction to criticise or go behind the decree, all that concerns it is the execution of it. If the decree should be annulled, that is not the function of the executing Court.

Kalipada Sarkar v. Hari Mohan Dalal (1), and *Rashid-un-Nissa v. Mohammad Ismail Khan* (2), followed.

Jungli Lal v. Laddu Ram (3), dissented from.

Chuck v. Cremer (4), referred to.

*Appeal under clause 10 of the Letters Patent from
the judgment of Mr. Justice Harrison, dated the 6th
January 1923.*

SOHAN LAL, for Appellant.

ABDUL GHANI, for Respondent.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—This Letters Patent Appeal
arises out of the following facts :—

The Liquidation Judge, Lahore, made an order for
payment of 1,165-5-0 against “ Ghulam Jilani, minor

(1) (1916) I. L. R. 44, Cal. 627.

(3) (1919) 50 I. C. 529 (F. B.).

(2) (1909) I. L. R. 31 All. 572 (P. C.).

(4) (1896) 16 L. J. Ch. 92.

son of Muhammad Zaman.² That order is enforceable as a decree, but the executing Court refused execution on the ground that the minor had not been represented before the Liquidation Court and therefore no decree existed.

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The Hon'ble Judge of this Court concurred on the ground that the decree was *ex facie* invalid and considered that *Jungli Lal v. Laddu Ram* (1) was an analogous case. We are unable to accept either of the reasons adopted by the Courts below. The decree is certainly in existence ; it is on the record for all who have eyes to see ; a decree is not void merely because it is issued against a minor.

A reference is made in *Jungli Lal v. Laddu Ram* (1) to a principle laid down in *Chuck v. Cremer* (2) that there must be " a valid decree in existence, which has not ceased to be operative and is capable of execution," but this clearly means that the decree must exist and that it has not been satisfied and the relief granted is of such a nature that it is capable of execution. It has no reference to the procedure of the Court which issued the decree.

With all respect, *Jungli Lal v. Laddu Ram* (1) appears to us to miss the real point, which is not whether a decree has no force, but how, and by what Court the decree is to be rendered of no force. However, that may be, the matter is concluded by the decision in *Kalipada Sarkar v. Hari Mohan Dalal* (3) and *Rashid-un-Nissa v. Muhammad Ismail Khan* (4), and there is no difference in principle between those cases and this.

The broad and clear rule is that an executing Court has no jurisdiction to criticise or go behind the decree ;

(1) (1919) 50 I. C. 529 (F. B.).

(3) (1916) I. L. R. 44 Cal. 527.

(2) (1896) 16 L. J. Ch. 92.

(4) (1909) I. L. R. 31 All. 572 (P. C.).

all that concerns it is the execution of it. If the decree should be annulled, that is not the function of an executing Court. We accept the appeal with costs throughout, set aside the orders of the Courts below and direct that execution be allowed.

A. R.

Appeal accepted.

REVISIONAL CRIMINAL.

Before Mr. Justice Moti Sagar.

HARNAM SINGH—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 1405 of 1923.

Indian Penal Code, 1860, section 381—theft—removal of property in the assertion of a bonâ fide claim of right.

Held, that the removal of property in the assertion of a bonâ fide claim of right, though unfounded in law and fact, does not constitute theft, but that a mere colourable pretence to obtain or keep possession of property does not avail as a defence.

Harendra Narayan Das v. Ramjan Khan (1), and Arfan Ali v. Emperor (2), referred to.

Application for revision of the order of Rai Sahib Lala Shibbu Mal, Sessions Judge, Jullundur, dated the 21st April 1923, affirming that of Sheikhi Faiz Bakhsh, Honorary Magistrate, 1st Class, Jullundur, dated the 21st March 1923, convicting the petitioner.

AMOLAK RAM, for Petitioner.

DALIP SINGH, Assistant Legal Remembrancer, for Respondent.

(1) (1912) I. L. R. 41 Cal. 433.

(2) (1916) I. L. R. 44 Cal. 66.