

1869

App. 23*Before Mr. Justice Bayley and Mr. Justice Hobhouse.*

RAJ CHANDRA PODDAR (PLAINTIFF) v. SRIMATI MANORAMA  
(DEFENDANT) AND ANOTHER (PLAINTIFF)\*

*Mortgage—Foreclosure—Purchaser of Share of Mortgaged Property.*

A mortgagee sold part of the mortgaged property and then foreclosed, his purchaser being no party to the foreclosure proceedings. The mortgagee and purchaser afterwards sued for recovery of possession of the mortgaged property after foreclosure.

*Held*, the purchaser could maintain his suit, although he had not been a party to the foreclosure proceedings for the recovery of the mortgaged property which had been purchased by him. The foreclosure conferred absolute title to the whole property mortgaged on the mortgagee, and anybody claiming under him.

BAYLEY, J.—In this case 8 annas of certain property was mortgaged to one Sarju Mani, who disposed of 3 annas 10 gandas of that 8-anna share to one Raj Chandra, the special appellant before us. These two parties sue in this suit to recover possession of the lands, after foreclosure of the mortgage.

The defendant pleaded non-service of notice, limitation, and payment of the mortgage debt. The first Court gave the plaintiff a decree. The lower Appellate Court has reversed that decision. The lower Appellate Court has found that the notice was duly served on the mortgagor, but it has held that inasmuch as the purchaser of the 3 annas 10 gandas share was not a party in the foreclosure proceeding, the foreclosure was not completed so far as regarded his share. The lower Appellate Court has accordingly dismissed that part of the plaintiff's suit which had regard to the 3 annas 10 gandas belonging to the purchaser Raj Chandra.

The plaintiff, Raj Chandra appeals to this Court, and urges that the lower Appellate Court was wrong in dismissing his suit as to the 3 annas 10 gandas, inasmuch as the foreclosure of the mortgage by the original mortgagee was valid in law to confer an absolute title in the whole property mortgaged, upon herself, and anybody holding from or under her.

We think this contention good. The law on this point is to be found in section 8, Regulation XVII. of 1806. That section says: "Whenever the receiver or holder of a deed of mortgage and conditional sale may be desirous of foreclosing the mortgage, and rendering the sale conclusive, on the expiration of the stipulated period, or at any time subsequent before the sum lent is repaid, he shall apply by a written petition, &c., &c." The whole question therefore in the foreclosure proceeding is confined between the mortgagor on one side, "the receiver or holder" of the deed of mortgage on the other. It is found in this case, by the lower Appellate Court, that the foreclosure was

\* Special Appeal, No. 1508 of 1869, from a decree of the additional Subordinate Judge of Dacca, dated the 5th April 1869, reversing the decree of the Sudder Moonsiff of that district, dated the 5th March 1868.

duly carried out by at least the "receiver" of the deed of mortgage, that is the original mortgagee; and so far therefore as these proceedings were concerned, the foreclosure was good as regards the whole property covered by the mortgage deed.

We think therefore that the lower Appellate Court was wrong in dismissing the plaintiff Raj Chandra's suit as regards the 3 annas 10 gaudas, on the ground that he was not a party to the foreclosure proceedings; and in this view we reverse the judgment of the lower Appellate Court, and restore and affirm that of the first Court, with costs of this Court and of the lower Appellate Court.

Before Mr. Justice Markby and Mr. Justice Glover.

THE QUEEN v. NANDKUMAR BOSE AND OTHERS.\*

Act XXXI. of 1860, s. 26—Act XLV. of 1860, s. 188—Act XXV. of 1861, ss. 250, 251—Carrying Fire-arms without License—Disobedience to an Order promulgated by a Public Servant.

A Magistrate issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so, under section 26 of Act XXXI. of 1860; and certain persons were, in consequence of his notification, arrested and brought before him, charged in a Police report with carrying arms without license. No summons or warrant had been applied for, or any complaint lodged before the Magistrate previous to the arrest of the prisoners. No charge in writing was framed as required under sections 250, 251 of the Criminal Procedure Code. No evidence was taken; but the prisoners admitted carrying the fire-arms. The Magistrate convicted them, under section 188 of the Indian Penal Code, of disobedience to an order duly promulgated by a public servant. There was no evidence that the disobedience would cause or tend to cause annoyance, obstruction, or injury to human life, health, or safety. *Held*, the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on.

THIS was a reference from the Officiating Sessions Judge of Backergunge, dated the 29th July 1869. The circumstances are set out in the order of Reference as follows :

2. "In the cases noted in the margin, it appears that the Police, under general orders from the Magistrate arrested and sent in certain persons as having possession of guns without licenses. The Magistrate took

- 1 Queen v. Nandkumar Bose and others  
2 Queen v. Moni Gomez and another.  
3 Queen v. Ram Chand Christian.

their statements and convicted them under section 188 of the Penal Code. No complaint or deposition proceeded the conviction.

3. In the case noted in the margin,\* the accused appears to have attended, of his own accord, after a warrant had issued; he was similarly convicted; and in the next case,† the

- \* Queen v. Rohandi Naya.  
† Queen v. Lashkar Mahomed.

accused was arrested on warrant, and convicted in the same manner.

\* Reference, under section 434 of the Code of Criminal Procedure, from the Officiating Sessions Judge of Backergunge, dated the 29th July 1869.

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