1870

GURU PRASAD ROY v. RAI BABOO DHANPAT SING.

The plaintiff, it is alleged, lent a sum of money to the defendants on a bond, in which bond it was stipulated that certain immoveable property belonging to the defendants was pledged as security for the repayment of the loan, with interest. It was alleged that the defendants also agreed, verbally, to have this document registered; and the evidence shows that the document was, in fact, taken to the Registry Office; but that as the defendants did not appear, and their mooktear did not consent to registration, the document was returned to the plaintiff although there was no formal note by the Registrar refusing to register endorsed upon it. Upon this, the plaintiff considers that, the defendants having broken the contract, he is entitled to put an end to it, and he sues to recover the money lent, although the due date, which is in the month of Sraban 1277 (July and August 1870) has not arrived.

Both the lower Courts consider that the refusal of the defendants to register gave the plaintiff a cause of action, which entitles him to recover the money lent. It appears to me that it did not, and that the conduct of the defendants (of which the account given is somewhat obscure) was such as would entitle the plaintiff to come before the Zilla Court, on the Registrar refusing to register, and, under section 84 of the Registration Act, apply by petition to establish his right to have such document registered.

It cannot be said that the refusal of one of the parties to the contract, to carry out a verbal agreement not contained in the contract, enables the other party at his option to set aside the contract *in toto*.

It may be contended that the period allowed by law, for registration of the document, having expired, the plaintiff has now lost his security. That, it appears to me, will not enable the Courts to grant the plaintiff the relief which he asks for in this suit. I think he has lost, by his own negligence, the security which the bond originally provided; and that if he is now reduced to a bare suit for his money when it becomes due, he has only himself to blame.

The judgment of the Courts below must be reversed with costs.

E. JACKSON, J.—I also think that the judgment of the Court below must be reversed. I think the plaintiff's proper course was to have enforced registration of the bond.

Before Mr. Justice L. S. Jackson and Mr. Justice Glover.

1870
July, 25.

THE QUEEN *v*, HIRALAL SING AND OTHERS (PRISONERS).*

Code of Criminal Procedure (Act VIII of 1869), s. 435—Power of a Magistrate in dealing with a case when dismissed without full and sufficient enquiry.

Semble.—When a charge is dismissed by a Subordinate Magistrate without enquiry a Magistrate has no power, under section 435 of Act VIII of 1869, to order a trial before another Magistrate, but can only order a commitment to the Court of Session.

* Criminal Miscellaneous Appeal, No. 69 of 1870, against the order of the Sessions Judge of Moorshedabad, dated the 7th March 1870, affirming an order of the Deputy Magistrate of that district, dated the 12th February 1870.

1870

QUEEN v. HIRALAL SING.

Mr. Hyde (with him Baboo *Jadab Chandra Seal*) for the prisoners.

JACKSON, J.—The petitioners were charged with an offence under section 148, Indian Penal Code, which is an offence triable before the Court of Session, or the Magistrate of a district. The charge in the first instance was preferred before Mr. Fisher, who seems to be a Subordinate Magistrate. This officer, after examining certain witnesses, discharged the accused. The case however, being brought to the notice of the Magistrate of the district, Mr. Hankey, he was of opinion that the proceedings of the Subordinate Magistrate had been hurriedly and carelessly taken, and observed that the complainant was entitled to have his witnesses examined; and he, therefore, acting under the powers conferred by section 435, Act VIII of 1869, ordered a further enquiry into the complaint, and directed that the case be made over for trial to another Magistrate, who, as I understand, exercises the full powers of a Magistrate. That Magistrate convicted the accused, and sentenced them to imprisonment and fine. The accused appealed to the Court of Session, objecting, amongst other things, to the proceedings, on the ground that they were not warranted by section 435 of the Code of Criminal Procedure. The Sessions Judge, however, overruled this objection; and, going into the merits of the case, confirmed the conviction and sentence. The case is now brought before this Court, under section 404 of the Code of Criminal Procedure, and we are asked to set aside the proceedings of the Magistrate, on the ground of their being contrary to law. It is contended that the Magistrate of the district was not warranted in dealing with this case as one which had been dismissed without enquiry. It is further contended, that, supposing the Magistrate to have been authorized to deal with the case, the only order that he could make was an order of commitment to the Court of Session.

The Magistrate, under the amended section 435, has, like the Court of Session, power of dealing with cases in which an accused has been discharged by any Magistrate, and also cases in which a complaint has been dismissed without enquiry, always under the condition that the Magistrate, whose proceedings are the subject of notice, is a Subordinate Magistrate. The Magistrate of the district has dealt with the case as if the complaint had been dismissed without enquiry; and the Sessions Judge takes the same view of the case.

There is authority in a ruling (1) (which, though, perhaps, not a judicial ruling of this Court, is contained in a letter written by way of direction to a sessions Judge) dated August 15th, 1865, for saying that a complaint, dismissed without sufficient and full enquiry, may be considered as dismissed without enquiry. I am inclined to think that this authority warranted the Magistrate of the district in dealing with the case as he did. If not, however, it is clear that he would still have authority to order a commitment, or do

(1) 3 W. R., Criminal Letters, 21.

1870

QUEEN v. HIRALAL SING.

whatever is implied in the term "like powers," and a questoin may arise what precisely is contemplated by those words, namely, whether it is intended expressly to limit the Magistrate of the district to order a commitment to the Court of Session, or to enable him, by analogy, to take order for the trial of the case before some competent Court of Criminal Jurisdiction. I incline, upon the whole, to the construction that a Magistrate is bound to order a commitment, and is not authorized to order a trial before another Magistrate.

But whatever view may be taken of the previous part of the section, I think we are precluded from disturbing the proceedings of the Court below, by reference to sections 426 and 439 of the same Act. Section 462 says :—"No "finding or sentence passed by a Court of competent jurisdiction shall be "reversed or altered on appeal or revision on account of any error or "defect, either in the charge or in the proceedings on trial, unless the ac- "cused person shall have been sentenced to a larger amount of punishment "than could be awarded for the offence of which, in the judgment of the "Appellate Court, the accused person ought, upon the evidence, to have been "found guilty, or unless, in the judgment of the Appellate Court, the accused "person shall have been prejudiced by such error or defect;" and section 439 provides :—"No trial in any Criminal Court shall be set aside, and no judg- "ment passed by any Criminal Court shall be reversed, either on appeal or "otherwise, for any irregularity in the proceedings of the trial, unless such "irregularity have occasioned a failure of justice."

In this case, the parties appear to have been tried and convicted by a Court of competent jurisdiction. It seems to me that, unless we are of opinion that the irregularity, supposing an irregularity to have occurred, has been productive of failure of justice. we ought not to set aside the trial, or to reverse the sentence by way of revision.

It is not shown that anything of the sort has occurred, and I think, therefore, that this application must be disallowed.

Before Mr. Justice Loch and Justice Sir C. P. Hobhouse Bart.

1870
May 25.

H. PRICE (CHAIRMAN OF THE HOWRAH MUNICIPALITY) (DEFENDANT) *v.* KHILAT CHANDRA GHOSE (PLAINTIFF)*

Act III of 1864 (B. C.), *s.* 87—*Act VIII of* 1859, *s.* 2—*Res-judicata—Limitation—Suit against Municipal Commissioners for Possession of Land.*

Previous to the institution of the present suit, one of the shareholders of a piece of land brohght a suit against the Chairman of the Municipality for recovery of possession of his share. The other shareholders were made *pro forma* defendants in the suit. This suit was dismissed as barred by the Law of Limitation. After the dismissal of the suit, the plaintiff brought the present suit for recovery of his share of the land, on the allegation that his

* Special Appeal, No. 2930, from a decree of the Subordinate Judge of Hooghly, dated 4th October 1869, reversing a decree of the Moonsiff of Salkhia, dated the 31st March 1869.