1871

THE QUEEN v. HOSSAIN ALI.

Taking the Judge's own view of it, the sentence of 24 hour's imprisonment is quite inadequate. The accused made a statement which he asserts to be true,—he found it was disbelieved and he was in danger of being prosecuted, so to suit himself to the view taken by the Court, he, on being recalled, made a directly contrary statement knowing the same to be false, deliberately doing his best to mislead the Court and prejudice the party who was defendant in the Small Cause Court in order to shield himself. This is a very different case from that of a man who, having made a false statement, afterwards repents and reveals the truth.

But this is not the most serious defect in this case. The result of the proceedings is that there has really been no trial at all on the only charge which was preferred by the Small Cause Court Judge. He did not charge the accused with giving false evidence in making the statement embodied in the second charge, for which he has undergone a nominal punishment. On the contrary, he believed that statement to be true. The magistrate might have dismissed the charge, but he did otherwise,—he committed the accused for trial by the Court of Session on the charge preferred by the Judge of the Small Cause Court. The Sessions Judge was bound to hear the evidence tended in support of it before he recorded a judgment of acquittal. As matters stand, the prisoner has been allowed to elect to be punished on a charge of an offence which the Judge treated as scarcely an offence at all, and to escape trial on a charge which, if proved, would probably have brought on him a severe penalty. As pointed out in a letter dated 19th June 1867 (1) an accused person cannot be allowed to make such election. It is to be regretted that the Judge of the Small Cause Court did not exercise the powers vested in him by section 173 of the Criminal Procedure Code; the mistrial could not have occurred if he had done so.

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*Before Mr. Justice Loch and Mr. Justice Mookerjee*

PRASANNA KUMAR SANDYAL (PLAINTIFF) v. MATHURNATH BANERJEE (DEFENDANT.)*

1871
*May* 5.

*Declaratory Decree—Cause of Action—Civil Suit to contest Genuineness and Validity of Registered Document—Registration—Act XX* of 1866, *s.* 84.

Under section 84 of Act *XX* of 1866, the District Judge ordered, without taking evidence, the registration of a document, which had been opposed on the ground that the execution of it had been obtained fraudulently and by putting the executant under duress. The executant brought a civil suit against the party, in favor of whom the document had been drawn, for a declaration that the document was not genuine, and was invalid and inoperative.

*Special Appeal, No. 30 of 187', from a decree of the Judge of Moorshedabad, dated the 21st December 1870, affirming a decree of the Subordinate Judge of that district, dated the 3rd October 1870.

(1) 8 W. R., Cr. Letters, 6.

1871

PRASANNA KUMAR SANDYAL v. MATHURNATH BANERJEE.

*Held*, that the Civil Court had jurisdiction to try the genuineness of a registered document; that the registration of a document, the execution of which was obtained by improper means, affecting the property of the executant, is a good cause of action on which to ask for a declaratory decree.

Baboos *Mahendra Nath Shome* and *Tarak Nath Sein* for the appellant.

Baboos *Rashbehari Ghose* and *Abinashchandra Bannerjee* for the respondent.

THE facts and arguments in this case are fully noticed in the judgments of the Court.

LOCH, J.—In this case the plaintiff sued to have an istemrari potta, put forward by the defendant, declared a forgery; and he states that he never executed the deed.

The first Court which tried, the case held that the document was proved to be genuine, and dismissed the suit.

An appeal was preferred to the Judge, who held that, as the document had been duly registered under the provisions of Act XX of 1866, it was not open to a Civil Court to entertain a suit to question the fact of the execution of the deed.

A special appeal has been preferred; and the first ground taken before us was that, as no evidence had been taken when the Judge directed the document to be registered under the provisions of section 84, Act XX of 1866, the Court could enquire into the fact of execution: and it was urged that the Judge was wrong in considering that he could not take evidence under the provisions of that section.

We think that this contention is of no consequence in the present case. It is very true that, under the provisions of section 84 of Act XX of 1866, the Judge, as held by the High Court in *In the matter of the petition of Sankar Dobay* (1), was competent to take evidence when the execution of the deed was denied. But it is not necessary, in all cases, for a Judge to take evidence, if he be satisfied, either from examination of the parties, or from anything else that is before him, that the document was really executed.

Now, when this application under the provisions of section 84, Act XX of 1866, came before the Judge, he found that though the plaintiff objected to the registration, he did not deny that he had executed the document. He said that he had been compelled to execute it, but the Judge, thinking this objection insufficient, directed that the deed should be registered. Such being the case, we think it was not necessary for the Judge to take evidence before directing the registration of the deed (2).

Then it is urged that the Judge was wrong in considering that he had no authority to enquire into the execution of the deed. We think that this

(1) 4 B. L. R., A. C., 65.

(2) See Act XX of 1866, s. 84, and Act VIII of 1871, s. 73.

1871

PRASANNA KUMAR SANDYAL v. MATHURNATH BANERJEE.

contention is good. The case of *Ram Chandra Paul* v. *Becharam Dey* (1) has been cited to us as if what is said there, laid down that the execution of a deed, once registered under the provisions of section 84 of Act XX of 1866, could not be enquired into by a Civil Court; when all that that judgment says is that, as the deed of sale in that case had been registered after enquiry by a competent Court under the provisions of section 84 of Act XX of 1866, and as the deed had been ordered to be registered, the plaintiff had no ground for asking to have that kabala declared fictitious and void, until by some wrongful act by which the plaintiff was injured, he found it necessary to come into Court and ask for relief. And therefore in that case, the Court declined to give him a declaration with regared to the deed, holding that he had not up to that time been injured. But it is clear, from the judgment *In the matter of the petition of Sankar Dobay* (2), that the order for registration does not determine the rights of the parties. The Chief Justice in that case says:—"But the object being that the Judge should merely decide whether the document should be put on the registry or not, and not to determine the rights of the parties the section directs that the Court may, if it thinks proper, order the Registrar or Registrar-General to register the document." And again:—The mere registration of a document does not affect the title of the parties." It is still only a document which has been registered; and if the party wishes to enforce the document by suit, the mere fact of registration does not preclude the Civil Court from trying whether the document was executed or not.

(1) *Before Mr. Justice Phear and Mr. Justice Hobhouse.*

*The 28th August* 1868.

RAM CHANDRA PAUL ONE OF THE DEFENDANTS) v. BECHARAM DEY (PLAINTIFF).*

Baboo *Rama Chandra Banerjee* for the appellants.

Baboo *Srinath Banerjee* for the respondent.

The judgment of the Court was delivered by

PHEAR, J.—We think that the plaint, as we have had it explained to us, does not disclose a good cause of action against the defendant. The plaintiff simply complains that the defendant had fabricated a certain kabala as if executed by the plaintiff, and has obtained registration of it, and on that ground he seeks to have the kabala declared fictitious and void as against him. But there has been already a decision of a competent Courtas between the plaintiff and the defendant, namely on a petition preferred, according to the provisions of section 84, Act XX of 1866; and by this decision it has been declared that the defendant was entitled to obtain registration of this deed. So that as to the wrongful act upon which the plaintiff in this suit relies, it has been already declared to be right and proper as between these parties by a competent Court. The whole foundation of the plaintiff's suit seems to us to fail him. It will be time enough for him to bring an action against the defendant or to resist an action brought by the defendant whenever he is really hurt by this document. He cannot now complain that what the defendant has done is wrongful against him. We decree the appeal, and reverse the decision of the lower Appellate Court with costs of both Courts.

* Special Appeal, No. 863 of 1863, from a decree of the Principal Sudder Ameen of Chittagong, dated the 9th January 1868, modifying a decree of the Moonsiff of that District, dated the 27th June 1867

(2) 4 B. L. R., A. C., 65.