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KALI PERSHAD DUTT v. RAJAH MAHOMED JOWAHUR JUMMA KHAN.

would be sufficient to satisfy his decree, and it is represented to us that they are nothing like sufficient; and if he was to proceed to sell the property which has already passed by sale to a third party, the sale could not be disturbed. We think therefore that the judgment-creditor was perfectly justified in proceeding against any other property of his judgment-debtor and we do not see how the judgment-debtar is in any way prejudiced by his doing so. It is said that the sudder jumma of the property attached is Rs. 16,000; if that be the case, the judgment-debtor is clearly in a position to pay his just debts, and if he wants to avoid the sale, he must satisfy the decree.

The appeal is decreed with costs, and the decision of the Lower Court reversed.

Before Mr. Justice Phear and Mr. Justice Ainslie.

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January 21.

THE QUEEN *v.* BHEEKOO KALWAR, *alias* BHEK SHA.

Criminal Procedure Code (Act X of 1872), s. 425—Trial of Fact of Unsoundness of Mind.

THE facts of this case appear sufficiently in the judgment of

PHEAR, J.—In this case the prisoner has been convicted of murder and sentenced to death, and the record has come before us in due course for the confirmation of that sentence. The Judge reports that, under s. 271 of the Criminal Procedure Code, he enquired of the accused whether he wished to appeal, and he signified his intention of not doing so.

On referring to the record we find at the outset a statement written by the Judge to this effect:—"The demeanour of the accused when called on to plead to the charges was so peculiar that I entertained doubts as to his sanity. I therefore thought it necessary to try the question of the accused's unsoundness of mind." The Judge then states that he took the evidence of the Civil Surgeon, and concludes in these words:—"On the evidence of the Civil Surgeon, I cannot hesitate to pronounce that the accused is of sound mind and capable of making his defence." Thereupon the trial proceeded before the jury.

S. 425 of the Criminal Procedure Code enacts that, "if any person committed for trial before a Court of Session shall, at his trial, appear to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial

* Criminal Referred Case, No. 48 of 1873, from an order of the Additional Session Judge of Howrah, dated the 8th January 1873.

shall be postponed." It appears to us from the use of the words "in the first instance" clear that the Legislature intended the trial of this issue of insanity to be considered as part of the trial of the accused person before the Court; and then we find upon referring back to s. 232 that "all trials before the Court of Session shall be either by jury, or conducted with the aid of two or more assessors." Here the trial was to be by jury; and reading the two sections together, we think that the preliminary issue which the Sessions Judge tried ought to have been tried by the jury, and not by himself personally,

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On that ground we think that the whole of the trial has been vitiated, and that the conviction and sentence must be set aside and a new trial directed.

Before Mr. Justice Macpherson.

1873
January 18.

J. F. WATKINS *v.* RAJAH ROHEENEE BULLUB.

Act VIII of 1859, *ss.* 280 & 281—*Execution*—*Schedule*.

THE defendant, who had been arrested in execution of a decree, applied to the High Court, under Act VIII of 1859, ss. 280 and 281, for his discharge on surrender of the whole of his property. The property mentioned in the schedule consisted altogether of moveables.

Mr. *Stokoe*, for the judgment-creditor, objected to the matter being heard, as the petition did not state the place or places where the property mentioned in the schedule was to be found.

Mr. *Bonnerjee*, for the judgment-debtor, contended that the words in s. 280, "the places respectively where such property is to be found," related to immoveable property, and not to personal chattels. The property in this case is all chattel property, and must be presumed to be at the place where the defendant was arrested. The objection is a technical one, and the defect, if defect there be, is not fatal, because the petitioner, who is present in Court, may be examined, and the locality of the property ascertained, without sending him back to gaol.

MACPHERSON, J.—Persons applying for the benefit of ss. 280 and 281 must strictly comply with the requirements of those sections. S. 280 says, that the application for discharge shall contain a full account of all property belonging to the applicant, "and of the places respectively where such property is to be found." In the present instance, the applicant has not stated where the property which he declares belongs to him is to be found. This is a most substantial defect in the application: for the judgment-creditor is entitled to the earliest information as to where the property is to be found, so that he may attach it at once if he wishes to do so. The objection taken is a fatal one, and the application for discharge must be refused.