

1873
 BISHONATH
 SURMA
 v.
 SREEMUTTY
 SHOSHI MOO-
 KHEE.

seems to me from the very nature of the suit that it is one which ought to be allowed to be taken, and which therefore we have allowed to be taken. It appears that the plaintiff, the daughter, was not only in the same position in reversioner which she now holds, but she was actually a party to the legal proceedings ending in a decree, in part satisfaction of which the alienation complained of was made. It has been held in many cases by this Court that a party, desirous as a reversioner to obtain a declaration of his rights affected by a sale or gift made by a Hindu widow, must bring his suit within 12 years of the alienation, and that it is a remedy of a different description which is open to him after the death of the widow. Under these circumstances we have no choice but to reverse the decisions of the Courts below, and dismiss the plaintiff's suit with all costs.

Before Mr. Justice Macpherson.

1873
 May 22 & 29.

GEORGE v. GEORGE.

Alimony, Non-payment of—Attachment of respondent—Insolvency Act (11 & 12th Vict., c. 21), s. 49—Petition in Insolvency.

Mr. Lowe, on behalf of Mrs. G. P. George, applied *ex parte* for the attachment of her husband, J. George, under the following circumstances as set forth in an affidavit by Mrs. George:—That by two orders made in a suit brought by her for the dissolution of her marriage with the respondent, the latter was directed to pay her Rs. 120 a month by way of alimony, and to pay into Court the probable amount of her costs, to be certified by the taxing officer; that the probable costs were subsequently certified at Rs. 2,000; but the respondent having failed to deposit this sum was directed by a further order of the 31st March 1873 to pay into Court to the credit of the suit Rs. 300 monthly, out of which sum Rs. 120 was to be applied in payment of her alimony and the balance in payment of her costs; that the respondent, who continued in receipt of his usual income, wilfully neglected to obey this order, that since February 1873, she had received nothing in respect of alimony, and that, on the 3rd April 1873, the respondent filed his petition of insolvency. In his schedule the respondent entered the Accountant General¹ as a creditor for Rs. 2,000, but made no mention of his liability for alimony, and he had not filed any accounts.

Mr. Lowe contended, on the authority of *Gonsalves v. Gonsalves* (1), that the filing of the petition did not discharge the respondent's liability to pay alimony. In *In re Rawlins* (2) and *Dicknes v. Dickens* (3), it was held that a discharge in bankruptcy operated as a discharge of an order for alimony—see also *The King v. Edwards* (4) and *Lees v. Newton* (5). But here the

(1) Ful. Rep., 392.

(2) 12 L. T., N. S., 57.

(3) 31 L. J. Prob., 183.

(4) 9 B. & C., 652.

(5) L. R., 1 C. P., 568.

respondent had not obtained his discharge, nor had he obtained *ad interim* protection. The debt was not entered in his schedule, and could not be proved—Insolvent Act, s. 49.

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MACPHERSON, J., made an order for attachment.

Attorney for Mrs. George: Mr. Fink.

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

THE QUEEN v. GOOJREE PANDAY AND ANOTHER.*

1873

May 12.

Criminal Procedure Code (Act X of 1872), s. 280—Enhancement of Sentence.

THE facts are fully stated in the judgment of the Court.

The Junior Government Pleader (Baboo Juggdamund Mookerjee) for the prosecution,

The prisoners were undefended.

JACKSON, J.—The prisoners in this case, named Goojree Panday and Jadu Sein, were convicted, by the Court of Session at Midnapore, of a dacoity, and were sentenced, Goojree Panday to rigorous imprisonment for three years, and Jadu Sein to similar imprisonment for six months.

Upon the hearing of the appeal, the Junior Government Pleader appeared and applied to us to exercise the powers vested in the Court of Appeal by s. 280 of the Code of Criminal Procedure by enhancing the punishment which has been awarded against the prisoners. He represented that considering the gravity of the offence and the circumstances under which it was committed, and the place, and also the class of persons to which the complainant belonged, being a traveller to the shrine of Juggernath, and the necessity of protecting such persons, the Court ought to see that an adequate sentence was passed. This Court is empowered, both as a Court of Appeal and also as a Court of Revision, to enquire into the sufficiency of sentences passed by the inferior Courts. One contingency in which that power may be exercised is when the Judge, recognizing the heinous nature of the offence committed, yet considers that there are circumstances which go to mitigate punishment, or make the prisoner an object of leniency. In such a case no doubt the High Court may enquire into those circumstances, and although it is generally reluctant to do so, may take a different view of the discretion which ought to have been exercised, and may enhance the punishment. But there is another view of the case in which the duty of the High Court will arise, and that is,

* Criminal Appeal, No. 287 of 1873, from an order of the Sessions Judge of Midnapore, dated the 18th February 1873.