

obtained an order for registration, he could proceed to establish his right and title under the deed of sale propounded by him. Supposing, however, that he had not got that order, I am far from holding that still the plaintiff might not have a remedy in a Civil Court if he sued for specific performance of an agreement to sell and to execute a conveyance and to register the same.

As to the plea that no man can take advantage of his own fraud, I do not think that the decisions of Her Majesty's Judicial Committee of the Privy Council, *Srinath Bhattacharji v. Ramkamal Gangopadhya* (1), and *Nawab Sidhi Nazar Ali Khan v. Ajodhyaram Khan* (2), apply. Those were general cases of the recognition of the above ordinary rule of equity. But this is a special case of the construction of the Registration Act XX. of 1866, sections 81 to 84, and the procedure open to plaintiff under it.

I concur with Mr. Justice Kemp in holding that in this suit parol evidence to prove the deed of sale of 20th Sraban 1273 (4th August 1866) is inadmissible.

*Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice Bayley, Mr. Justice L. S. Jackson, Mr. Justice Macpherson, and Mr. Justice Mitter.*

J. G. BAGRAM v. J. P. WISE.\*

*Execution of Decree—Act VIII. of 1859, s. 284.*

Where a decree of one Court has been transmitted to another, for execution under s. 84 of Act VIII. of 1859, the latter Court has jurisdiction to entertain an application to cancel its own order for striking off the case, whatever "striking off" amounts to.

In this case the plaintiff, Wise, had obtained a decree in the Moonsiff's Court of Mymensing. A copy of the decree was transmitted for execution to the Court of the Moonsiff of Chowki Dowlut Khan, in the district of Backergunge, under the provisions of section 284 and seq. of Act VIII. of 1859. The Moonsiff "struck off" the case for default of proceeding

(1) 10 Moore, I. A., 220.

(2) 10 Moore, I. A. 540.

\* Miscellaneous Appeal, No. 24 of 1868, from a decree of the Officiating Judge of Backergunge.

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on the part of the execution-creditor. Subsequently, application was made in the same Court to revive execution of the decree. The application was granted; the lower appellate Court confirmed the Moonsiff's order. On special appeal it was argued, upon the authority of *Sridhar Saraswati v. Maharaj Bhup Sing* (1) and *Raja Bhup Sing v. Sankar Dutt* (2), that the petition for reversal of the decree ought to have been made in the Court of Mymensing, which passed the decree; and that, therefore, the orders of the Court below were without jurisdiction, and void. The case was heard by MITTER and HOBHOUSE, JJ., who dissented from the rulings in the cases relied on, and were of opinion that the Court of Backergunge had jurisdiction. They referred the following question for the opinion of a Full Bench:

“When a decree of one Court has been transmitted, under section 284 and *seq.* of Act VIII. of 1859, to another Court, for execution, and when that other Court has, what is technically called “struck off” the first proceedings in execution of the judgment-creditor in default, has that other Court jurisdiction to allow the proceedings to be revived, or does such jurisdiction rest solely with the Court which originally passed the decree?”

Mr. C. Gregory for appellant.—The proper Court to apply to for a fresh issue of execution is the Court of Mymensing, which originally passed the decree, and not the Court of Backergunge, to which the case was transmitted by the other Court for execution. This latter Court had only a limited jurisdiction in the matter. The powers vested in the Court of Backergunge, by virtue of the provisions of sections 284 and 285, ceased to exist on the execution case being struck off for default, which virtually had the effect of sending the case back to the Court which passed the decree.—*Sridhar Saraswati v. Maharaj Bhup Sing* (1); *Raja Bhup Sing Bahadur v. Sankar Dutt* (2).

Baboo Anukul Chandra Mookerjee and Ramesh Chandra Mitter, for respondent, were not called upon.

(1) 3 W. R. (M. R.) 5.

(2) 6 W. R. (M. R.) 48.

The opinion of the learned Judges upon the question proposed to them was delivered, as follows, by

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PEACOCK, C. J.—It is quite clear that the Court to which the decree was sent had jurisdiction over its own order striking off the case, whatever the striking off amounts to. As soon as a copy of the decree which is sent for execution to another Court is filed in the Court to which it is transmitted, it has the same effect as a decree of that Court; and by section 288 that Court is to proceed to execute it according to its own rules in the like cases. The order for striking off the application for execution of the decree did not strike the copy of the decree off the records of the Court to which it was sent for execution; and as long as it remains there, the Court to which it was sent may deal with it, and any application for execution of it as if it was a judgment of that Court. If in the present case, the decree had been a decree of the Backergunge Court, that Court would have had power to entertain the application.

*Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice Bayley,  
Mr. Justice L. S. Jackson, and Mr. Justice Mitter.\**

RAJA NILMANI SING v ANNADAPRASAD MOOKERJEE.†

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*Suit for Abatement of Rent Act X of 1859, s. 23—Jurisdiction of Civil Court.*

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A. obtained from B. a putni lease, whereby it was agreed that A. should prepare a hastabud (rent-roll); that, if it should appear that there was any deficiency in the jumma stated in the potta, the correct jumma should be ascertained as therein provided; and that the rent should be made up to A. by B., and B. should return a proportionate amount of the consideration-money. A. sued B. for an abatement of rent, for a refund of rent paid in excess, and for a proportionate refund of the consideration-money. *Held*, the suit was not a suit for abatement of rent within section 23 of Act X of 1859, and the Civil Court had jurisdiction to try the different questions together in the same suit,

THREE analogous suits were brought by the plaintiff and others against the Raja of Pachet, for an abatement of the rent of their putni-holdings, for a refund of the rent paid in excess, and

\* Mr. Justice Mitter declined to express an opinion as he had been professionally engaged in these cases.

† Regular Appeals, Nos. 148 and 149, from a decision of the Principal Sudder Ameen of Magbhoom.