1869

IN THE MATTER OF MANI CHANDRA DAS.

such as is described in those sections of the Penal Code, is committed before any Civil Court, such Court has clearly jurisdiction to punish for that offence. But the offence committed in this instance is not an offence under any of those sections; it is an offence under section 186 of the Indian Penal Code, and in regard to such offence there is a special procedure, in order to punishment, provided by sections 168 and 171 of the Code of Criminal Procedure. Section 171 lays down that when any Civil Court is of opinion that there is sufficient ground for investigating any charge mentioned in the last three preceding sections, that is to say the sections under Chapter X. of the Indian Penal Code, (not being sections 175, &c., above mentioned), the Court, after making such preliminary enquiry as may be necessary, may send the case for investigation before any Magistrate, in order that such Magistrate may try or commit for trial according to law.

It seems to me quite clear, therefore, that when the law lays down certain provisions giving the Civil Courts jurisdiction to try and punish certain offences, being contempts of those Courts, and directing the same Civil Courts not to try and punish certain other cognate offences but send them to the Magistrate for such trial, then it is only in case of the first kind of offence that the Civil Courts have any jurisdiction to try and punish, and this particular offence being, as I said before, an offence not provided for by section 163, but in sections 168 and 171 of the Code of Criminal Procedure, the Judge of the Court of Small Causes had no jurisdiction over such offence.

The order of the Judge of the Small Cause Court is, therefore, set aside, and the fines, if collected, must be refunded.

1869
Jan. 20.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

KALI CHARAN *v.* SRIRAM AND OTHERS.*

Principal Deceased—Surety—Execution.

A decree was obtained against a surety only, the principal debtor being dead, and his property having been attached as of an intestate and proclamation made. *Held*, that the property could not be taken in execution of the decree against the surety.

* Reference from the Small Cause Court of Darjeeling.

THE Judge of the Small Cause Court at Darjeeling made the following reference to the High Court for its decision :

" Plaintiff sued on a bond entered into by deceased Parsu Chowdhry, as principal, and Sriram, as surety.

" The representatives of Parsu Chowdhry were not amenable to the jurisdiction of this Court, under the provisions of section 8 of Act XI. of 1865.

" The claim was enquired into as against Sriram, only, who confessed liability under the bond.

" It appeared, in the course of the enquiry, that Parsu Chowdhry had left some property in this jurisdiction, and it was not pretended by either plaintiff or Sriram, that the representatives of the deceased had obtained possession of any other property belonging to the deceased.

" The amount claimed was decree against Sriram, it being ordered that execution should be stayed pending the receipt by Sriram of an attested authority on the part of the representatives of Parsu to satisfy the decree by sale of the property left by deceased.

" Sriram, in due course, informed the Court that the representatives of Parsu would have nothing to say to his property for fear of being made liable for his debts.

" Sriram then petitioned that the execution of the decree should be taken out in the first instance against the property left by Parsu Chowdhry. His petition was thrown out pending this reference. The point of reference is, can execution of the decree against Sriram be taken out against the property left by Parsu deceased ?

" No one having come forward to claim the property, it has been attached as of an intestate, and proclamation made."

The judgment of the High Court was delivered by

PEACOCK, C. J.—We are of opinion that the property of Parsu, deceased, cannot be taken in execution of a decree against Sriram, the surety.