

1891  
 MUHAMMAD  
 NEWAZ  
 KHAN  
 v.  
 ALAM  
 KHAN.

of the circumstances of the family. Their Lordships see no ground for imputing misconduct to him. They will humbly advise Her Majesty to affirm the judgment of the Chief Court of the Punjab.

*Appeal dismissed.*

Solicitors for the appellants : Messrs. *T. L. Wilson & Co.*

C. B.

### FULL BENCH REFERENCE.

*Before Sir W. Comer Petheram, Kt., C. J., Mr. Justice Pigot, Mr. Justice O'Kinealy, Mr. Justice Macpherson, and Mr. Justice Ghose.*

1891  
 March 18.

PREM SUKH CHUNDER AND OTHERS (DEFENDANTS) v. INDRO NATH BANERJEE (PLAINTIFF).\*

*Interrogatories—Civil Procedure Code (Act XIV of 1882), ss. 121, 127, 136—  
 Interrogatories, omission to answer, effect of.*

Omission to answer interrogatories, delivered after leave granted under section 121 of the Civil Procedure Code, does not render the party so omitting to answer liable to have his defence struck out under section 136 of the Code.

*Lalla Dabee Pershad v. Santo Pershad* (1), overruled.

REFERENCE to a Full Bench by PRINSEP and BEVERLEY, JJ. The referring order was as follows :—“ In this case certain interrogatories were, by leave of the Court, served on the defendant. On the day fixed for trial, the defendant asked for further time to answer, which was refused. The Munsif, therefore, under section 136 of the Code of Civil Procedure, struck out the defence. The District Judge on appeal affirmed this order, following the case of *Lalla Dabee Pershad v. Santo Pershad* (1). His attention was drawn to the decision in *Neeeram Dobay v. The Bank of Bengal* (2), in which a contrary opinion was expressed, but he preferred to follow the first-mentioned case, because it was more directly in

\* Full Bench reference in appeal from appellate decree No. 283 of 1890 from the decision of the District Judge of Burdwan, dated the 19th December 1889, affirming the decree of the Munsif of Cutwa, dated the 17th June 1889.

(1) I. L. R., 10 Calc., 505.

(2) I. L. R., 14 Calc., 703.

point. These two decisions appear to us to be in conflict, and as we doubt the correctness of the decision in *Lalla Dabee Pershad v. Santo Pershad* (1) we refer this case to a Full Bench. The point we desire to refer is, whether a Court is competent to act under section 136 of the Code of Civil Procedure, merely because it may have given leave to have interrogatories served." 1891  
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*Baboo Jogesh Chunder Roy* for the appellants :—The order made by the Court was "Let the interrogatories be served;" there was no order to answer. In the case of *Lalla Dabee Pershad v. Santo Pershad* (1), there was an order to answer within 10 days. The case of *Sham Kishore Mundle v. Shoshi Bhoosan Biswas* (2) shows what is the effect of an order under section 121.

(The Court here called on the respondent.)

*Baboo Rash Behari Ghose* (with him *Baboo Golap Chunder Sirkar*) for the respondent :—An order giving leave to interrogate contains an implied order on the other side to answer. If the party served with the order declines to answer some of the interrogatories, then an order may be made requiring him to answer, but if he objects generally, then no order is required. The Judicature Act, order XXXI, rules 6, 7, and the case of *Sammons v. Bailey* (3) were referred to.

The opinion of the Court (PETHERAM, C.J., PIGOT, O'KINEALY, MACPHERSON, and GHOSE, JJ.) was as follows :—

We think that when the Court, under the provisions of section 121 of the Civil Procedure Code, gives leave to one of the parties to deliver interrogatories, it does not thereby make "an order to answer interrogatories" under Chapter X, within the meaning of section 136. The grant of leave to one party to deliver interrogatories to another does not amount to an order requiring the other party to answer them; that party may perhaps have good ground for refusing to answer them or some of them (s. 125). The order to answer interrogatories contemplated by section 136, upon failure to comply with which the party in default is liable to have his defence struck out, is an order made under section 127 upon application made by the party interrogating.

(1) I. L. R., 10 Calc., 505.

(2) I. L. R., 5 Calc., 707.

(3) L. R., 24, Q. B. D., 727.

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We think the case of *Lalla Dabee Pershad v. Santo Pershad* (1) was wrongly decided, and that the omission to answer interrogatories delivered after leave granted under section 121 does not render the party so omitting to answer liable to have his defence struck out under section 136.

*Before Sir W. Comer Petheram, Kt., C.J., Mr. Justice Pigot, Mr. Justice O'Kinealy, Mr. Justice Macpherson and Mr. Justice Ghose.*

1891  
 March 24.

NANA KUMAR ROY (JUDGMENT-DEBTOR) v. GOLAM CHUNDER DEY (DECREE-HOLDER).\*

*Sale in execution of decree—Proclamation—Civil Procedure Code, Act XIV of 1882, ss. 289, 311, 312—Substantial injury—Irregularity.*

A sale of revenue-paying land is not *ipso facto* void by reason of a copy of the sale proclamation not having been fixed up in the Collector's office as required by section 289 of the Code of Civil Procedure.

An omission so to fix up such notice is an irregularity the remedy for which can only be by an application under section 311.

An order of an Appellate Court under section 312 confirming a sale cannot be the subject of a second appeal.

CASE referred to a Full Bench by PRINSEP and BANERJEE, JJ.  
 The referring order was as follows :—

“This is an appeal by the judgment-debtor against an order of the Judge of Bankura, upholding an order of the Munsiff of Bishenpur, confirming a sale in execution of decree. The Lower Appellate Court has held that as the judgment-debtor has failed to show that the slight damage that he has sustained was brought about by reason of the irregularity complained of, the sale cannot be set aside.

“It is contended for the appellant that as the sale was held without fixing a copy of the sale proclamation in the Collector's office as required by section 289 of the Code of Civil Procedure (the property sold being land paying revenue to Government) it

\* Full Bench reference on appeal from Order No. 27 of 1890 from the order of the District Judge of Bankura, dated the 16th November 1889, affirming an order of the Munsiff of Bishenpur, dated the 27th June 1889.