

tion 408 of the Act, proceed against the occupiers of the premises. We offer these observations because, as it seems to us, ample machinery exists, even in the present complication, for the carrying out of the improvement of *bustees*. In this case, the owner did nothing except plead his inability. That is not enough.

Let a copy of our order be transmitted to the Municipal Magistrate who will now proceed to dispose of the case conformably thereto.

E. H. M.

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CORPORATION  
OF CALCUTTA  
v.  
HAJI  
KASSIM  
ARIEFF  
BHAM.

## PRIVY COUNCIL.

KO THA HNYIN

v.

MA HNIN I.

P.C.\*  
June 13.

[On appeal from the Chief Court of Lower Burma, at Rangoon.]

*Appeal—Order in execution of decree—Order refusing decree-holder permission to bid at sale in execution of decree—Civil Procedure Code (Act XIV of 1882), ss. 2, 244 cl. (c), 294 cl. (16), 540, 588 and 617—Act VII of 1888, s. 75—Revision where no appeal lies.*

No appeal lies from an order refusing an application by a decree-holder for permission to bid at a sale in execution of a decree.

*Jodoonath Mundul v. Brojo Mohun Ghose* (1) approved.

APPEAL from two orders (8th and 20th September, 1909) of the Chief Court of Lower Burma, made in proceedings in execution of a decree, the former of which orders rejected an appeal from an order (25th August, 1909) of the District Judge of Amherst, and the second refused an application for revision of the same order of the District Judge.

The decree-holder was the appellant to His Majesty in Council.

\* Present: LORD MACNAGHTEN, LORD SHAW, LORD MERSEY AND MR. AMEER ALI.

(1) (1886) I. L. R. 13 Calc. 174.

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The decree in execution of which the above-mentioned orders were made was one in a suit brought by the appellant as plaintiff, against the respondent as administratrix of the estate of one Maung Shu Hman deceased, claiming Rs. 103,252-8 for money lent to the deceased, and a declaration of lien for the said amount on 33 promissory notes, which had been deposited with the appellant by the deceased as security. The defence to the suit is not now material. The Judge of the District Court of Amherst gave judgment in favour of the appellant for the amount claimed with costs, and ordered the sale of the promissory notes in satisfaction of the decree.

On 17th July, 1908, the appellant applied to the District Court of Amherst for the sale of the promissory notes. The respondent claimed that as the notes were all made and payable in the Kareuni District (not in the jurisdiction of the Amherst Court) the sale should take place at Loikaw, the chief town of the District of Kareuni, and that the appellant should not be allowed to bid at the sale either directly or indirectly. The appellant stated that as the notes were the only securities he had for the payment of the debt to him, he would lose part of it if they were sold below their face values, and that he ought to be permitted to bid at the sale.

On 25th August, the Court ordered that the sale should be held in the jurisdiction of the Amherst Court after six months had expired but with notice to be published in the District of Kareuni, and that the appellant should be prohibited from bidding. This last part of the order purported to be made under section 294 of the Civil Procedure Code, 1882.

On September 5th, 1908, the appellant filed a petition for revision of the order of 25th August to the Chief Court of Lower Burma, but that Court held that his proper remedy was an appeal, and the position was amended by making it one for an appeal the main ground being that in forbidding the appellant to bid at the sale the Court acted with material irregularity and contrary to the practice of the Courts. The Chief Court, however, held that an appeal did not lie from

the order of the District Court, referring as an authority to the case of *Jodoonath Mundul v. Brojo Mohan Ghose* (1), where it was decided that section 588, clause (16) of the Civil Procedure Code allowed an appeal only against an order under section 294 confirming, or setting aside or refusing to set aside, a sale, but not against an order refusing a decree-holder permission to bid at a sale.

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On 6th September, 1909, the appellant applied to the Chief Court for review and revision of the order of the District Judge of Amherst, dated 25th August, 1908, on substantially the same grounds as those on which the appeal had been based, but on 20th September the Court rejected the application holding that there was "no case for the exercise of revisional powers."

The Chief Court on 18th July, 1910, granted a certificate that the case fulfilled the requirements of section 596 of the Civil Procedure Code of 1882 (which and not the Code of 1908, it held was applicable) and was a fit case for appeal to His Majesty in Council.

On this appeal, which was heard *ex parte*,

*J. W. McCarthy*, for the appellant, contended that the order refusing the appellant permission to bid at the sale was a "decree" within the meaning of section 2 of the Civil Procedure Code, 1882, and an order made in execution of decree under section 244, sub-section (c), and was therefore appealable as of right under section 540. But even if it was not a "decree," it was an order made under section 294, clause (16), and by section 588 all orders made under section 294 were appealable orders; and were not limited as held by the Chief Court in the authority of *Jodoonath Mundul v. Brojo Mohan Ghose* (1), which, it was submitted, was wrongly decided. Reference was made to section 75 of Act VII of 1888, which amended the Code of 1882. The Court, it was contended, had no jurisdiction to make the order refusing the appellant permission to bid, and in so refusing it had acted with material

(1) (1886) I. L. R. 13 Calc. 174.

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irregularity, inasmuch as according to the practice of the Courts such leave was granted to the decree-holder, as a matter of course, in a case where the conduct of the sale was in the hands of the Court, and not under the control of the decree-holder. There was, too, no reason for refusing permission to bid, and the circumstances that the notes were being sold far away from the usual residences of the makers of the notes, and amongst persons who did not know the said makers, should rather have induced the Court, in order that reasonable value for the said notes might be obtained, to have allowed the appellant to bid at the sale. Even, therefore, if no appeal lay, the Chief Court should have exercised its powers of revision over the order refusing permission to bid, and should have set it aside. Civil Procedure Code, 1882, section 617 was referred to.

The judgment of their Lordships was delivered by  
 June 15. LORD MACNAGHTEN. Their Lordships are of opinion that the judgment under appeal is right. If the appellant had applied for leave to appeal, and his application had been refused, there could not have been any appeal. It is a matter of administration.

The point was expressly decided at Calcutta in the year 1886,\* and there is no authority impugning that decision. The point was raised there, and it was decided by the High Court that no appeal lies "from an order refusing to give a decree-holder permission to purchase at a sale held in execution of a decree."

Their Lordships will therefore humbly advise His Majesty that this appeal ought to be dismissed. There is no appearance by the respondent so that there will be no order as to costs.

Solicitors for the appellant: *Bramall & White.*  
 J. V. W. *Appeal dismissed.*

\* (1886) I. L. R. 13 Calc. 174.