In the matter of GURA'PPA' bin RACHA'PPA'.

1863. Nov. 6.

Appeal—Order declining to put Purchaser at Court's Sale in Possession —Act XXIII. of 1861, *Sec.* 11.

The order of a Munsif declining to put the purchaser at a judicial sale of immoveable property in possession thereof, is open to appeal, under Sec. 11 of Act XXIII. of 1861.

THIS case came before the High Court on a reference from the District Judge of Dhárwár. The facts are as follows:—

Gurápá bin Racháppá, on 26th May 1863, purchased at a Názar's sale, a house sold in execution of a decree obtained by Dod Chimáppá against Shivanná. The sale was made by order of the Munsif of Savandatti, in the Dhárwár District, and was confirmed on the 25th of June following, a certificate, under Sec. 259 of the Code of Civil Procedure, being granted to the auction purchaser, Gurápá, on the 6th of July. Failing to obtain possession by virtue of his purchase, Gurápá applied to the Munsif to be put in possession, whereupon the following order was passed on his petition:—

"All the proceedings on the *darkhást** having been completed on the 1st of July 1863, you cannot now be placed in possession on a simple petition, but you may, if you like, file a regular suit."

From this order Gurápá appealed to the Judge of the Dhárwár district, who, though of opinion that the order complained of was wrong, considered he had no power to interfere, under the provisions of Act VIII. of 1859, and rejected the petition; he, however, at the same time wrote to the Munsif informing him that in his, the Judge's, opinion, the Munsif's order was not warranted by law.

It appearing, however, that the Munsif had no power to cancel his own order, and the consequence being that Gurápá would be subjected to all the delay and expense of a regular suit in a matter where, in the opinion of the Judge, the property in question ought to have been made over to him at once on a summary application, the Judge brought all the circumstances to the notice of the High Court, with the view that, if the High Court agreed with the District Judge in his in-

* Motion for enforcement of a decree.

1863.

In re GUBA'PPA' RACHA'PPA.

terpretation of the law, some remedy might be sought whereby hardships of the kind in question might be avoided.

On subsequent inquiry by the High Court, it appeared that Fakiráppá, the father of the judgment debtor, in execution of the decree against whom the house in question had been sold, objected to the delivery of the same to the purchaser, on the ground that the house was ancestral property, and that the debt contracted by his son was not for the benefit of the family.

On consideration, the Judges of the High Court (FORBES and WESTROPP, JJ.) made the following minute, to be communicated to the District Judge:—

The question which constitutes the subject of your letter is one which may be treated as falling within Sec. 11 of Act XXIII. of 1861, and the order passed by the Munsif of Savandatti is, therefore, open to appeal.

Crown Cases.

Nov. 13.

REG. v. BYHA' valad SURJIM and others.

Practice—Security for Good Behaviour—Course to be pursued by Session Judge—Crim. Proc. Code, Sec. 195.

If a Session Judge be of opinion that a person acquitted by him ought to give security for future good behaviour, he should discharge him, and inform the Magistrate of his opinion, that security should be taken, leaving the Magistrate to take the necessary steps for that purpose, and the Session Judge should not send the party in custody to the Magistrate.

A separate note of each witness's deposition is required to be taken by Sec. 195 of the Code of Criminal Procedure, which is not satisfied by a statement that a witness "deposes as last witness."

THE accused were charged before C. Walter, Session Judge of Khándesh, with the murder of a Hindú woman named Bani. Prisoner Byhá admitted his guilt, and stated that he had been hired to take a part in the murder for a reward of Rupees twenty, but with regard to his accomplices he varied his statement from time to time. The Judge came to the conclusion that he murdered deceased for her jewels, and that there were no extenuating circumstances that could be pleaded in his favour.

With reference to the case against the second prisoner, Pushiá, the Session Judge remarked that, although there was no doubt he also took part in the murder, there was no legal