

1882

UKHA
v.
DAGA.

two suits are distinguishable, and section 43 of Act X of 1877 do not bar the second suit.

MELVILL, J.—We are of opinion that the present suit is barred by section 43 of Act X of 1877. In 1861 the present plaintiffs sued the present defendants for a partition of certain debts due to the family. In their plaint they alleged that all the family property, with the exception of the debts, had already been divided. The suit was compromised and withdrawn, but without the permission of the Court. The present suit is brought for a partition of certain lands which are alleged to have been left for subsequent division at the time of the former partition. If this allegation be true, the plaintiffs were bound in their former suit to demand a partition of the whole property which remained undivided,—that is, of the lands as well as the debts; and having intentionally omitted to do this, they are barred from bringing the present suit by the provisions of section 7 of Act VIII of 1859, equally with those of section 43 of Act X of 1877.

For these reasons we reverse the decrees of the Courts below and reject the claim with costs on the plaintiffs throughout.

Decree reversed.

APPELLATE CRIMINAL.

Before Mr. Justice West and Mr. Justice Pinhey.

EMPRESS v. ARJUN.*

1882
November 2.

Indian Penal Code, XLV of 1860, Secs. 211, 182—False charge—False information.

Where a person specifically complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under section 211 of the Indian Penal Code, and not under section 182.

In this case the accused was convicted of having falsely informed the chief constable of Chopda, in the district of Khandesh, that he had been robbed of Rs. 150 by one Ganpat valad Gan-garam, intending to cause the chief constable to use his lawful power to the injury of Ganpat. The trying Magistrate (Mr. L. G.

* Criminal Review, No. 201 of 1882.

Deshmukh) was of opinion that this act of the accused might be regarded as coming either within section 211 or section 182, Indian Penal Code, and he convicted the accused under the latter section, and sentenced him to a fine of Rs. 10, or, in default, to suffer simple imprisonment for a week. For adopting this course he quoted the authority of the Calcutta High Court in the case of *Bhokteram v. Hira Kolita* (1).

On an examination of the criminal calendar the record and proceedings were called for by the High Court.

At the hearing of the case no one appeared on behalf of the accused or the Crown.

PINHEY, J.—We must reverse the conviction and sentence, and direct the trial of the accused for an offence punishable under section 211 of the Indian Penal Code. The accused did not merely falsely inform the chief constable that he had been robbed, but he complained that Ganpat had robbed him.

NOTE.—The following ruling, under section 182, in the case of *Reg. v. Gopala Bhikaji*, dated 24th April, 1873, was made by Melvill and West, JJ. :—

“A petition made by a person to the police, falsely stating that the petitioner suspects another person of having committed an offence and praying for inquiry, does not amount to an institution of criminal proceedings against that person within the meaning of section 211, Indian Penal Code. The petitioner should be charged, under section 182 of the Code, with having given false information with intent to cause a public servant to use his lawful power to the injury of another person.”

(1) I. L. R., 5 Calc., 184.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

JANOJI (ORIGINAL DEFENDANT), APPELLANT, v. JANOJI (ORIGINAL PLAINTIFF), RESPONDENT.*

1882
December 19.

Mortgage—Suit for account and redemption—Mortgagee overpaid—Decree—The Deccan Agriculturists' Relief Act (XVII of 1879), Secs. 12 and 13.

In a suit for account and redemption, if the mortgagee, on taking the accounts, is found to have been overpaid, the general practice is to order the payment, by him, of the balance due to the mortgagor, with interest from the date of the institution of the suit.

* Second Appeal, No. 76 of 1882.