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RAM CHAND DUTT v. MOSAI SANTAL.

The plaint did not purport to be for damages, although the plaintiff did allege that the money had been obtained from him by force. Had that been so, possibly we might have held that the suit was for damages. But even if the Small Cause Court had jurisdiction to entertain the suit under the misapprehension that it was for damages, it had no jurisdiction to grant a decree when it had ascertained on trial what the facts really were. The facts found and set out in the judgment of the Court below are quite sufficient to show that that Court had no jurisdiction to grant a decree. The Court expressly found that the money paid to the defendant by way of rent by the plaintiff was not extorted by force or duress. It found also that it was not paid to the defendant under any mistake as to his being entitled to receive it. On the contrary it found that the payment was made voluntarily; that it was made with the full knowledge that the defendant had no right to the money; and that it was probably made in order to defraud intermediate holders who were entitled to the rents. That being so, if the plaintiff in this suit was entitled to recover the money at all, he could not recover it in the Court of Small Causes.

The rule must be made absolute with costs.

Rule absolute.

ORIGINAL CIVIL.

Before Mr. Justice Pigot.

1885
August 31.

BYJNATH AND OTHERS (PLAINTIFFS) *v.* GRAHAM AND OTHERS (DEFENDANTS.)*

Appeal to Privy Council—Amount under Rs. 10,000—*Civil Procedure Code (Act XIV of* 1882), *ss.* 595, 596, 600—*Appealable value.*

Leave to appeal to Her Majesty in Council granted in one of six suits directed to be heard together, although the amount involved in such suit was under the appealable value; there being an important question of law, which did not arise in the five other suits, the suit, however, involving other questions of law common to all the six suits; such suits having been, by agreement of counsel, heard upon the same evidence, and concluded by the same judgment; five of such suits being appealable as of right, and the aggregate amount in the six suits being considerably more than the appealable value.

* Application in Original Suit No. 552 of 1882, decided by Mr. Justice Cunningham and Mr. Justice Wilson, on the 2nd March 1885.

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RYJNATH v. GRAHAM.

THIS was an application for leave to appeal to Her Majesty in Council in one of six suits directed to be heard together, arising out of the bankruptcy of Carolambus Tambaci and Sons, merchants and agents, for the sale of piece goods, carrying on business in England, Calcutta, and elsewhere.

These suits all raised questions as to the title to goods in Tambaci's godown in Calcutta, at the date of the bankruptcy, as to the title to goods which had arrived at Calcutta by sea, but had not been actually delivered; and as to the right to call for an account in respect of other goods previously sold and accounted for.

The particular suit in which the application was made was brought by the plaintiffs who were the banians of the firm of Tambaci and Sons at Calcutta for a declaration that they were entitled to a lien upon 55 bales of piece goods marked P. T. & Co., which had been shipped by the steamer *Knight of St. Patrick*, and consigned for sale by Peacock, Mollison & Co., of Manchester, to Tambaci and Sons in Calcutta, and which had arrived in Calcutta, on the 14th September 1882, previously to the date on which Carolambus Tambaci had suspended payment, *viz.*, the 27th September 1882. The bills of lading of these goods had been endorsed over to the banians who claimed them as security for advances made by them to the firm of Tambaci and Sons, not specifically against the goods, but generally under the terms of their baniansship agreement, and prayed for the delivery to them of these bales, for an injunction and other incidental relief. The defendants claimed these 55 bales as agents for Peacock, Mollison and Co., stating that they had been consigned to them on the express terms that the proceeds of sale should be remitted to Manchester, and specially appropriated to meet their drafts against the shipment, and further that Tambaci and Sons had no power to pledge the goods, or deal with the bills of lading regarding them.

The other five suits were brought by Peacock, Mollison and Co. and other persons claiming as vendors or consignees against the banians for a declaration of their rights over certain other goods in the godowns of Tambaci and Sons at Calcutta, as above stated.

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In the course of these suits certain commissions were issued to England for the purpose of obtaining evidence, and it was agreed by counsel on both sides that all this evidence taken under commission should be received as evidence in all the suits at the hearing before the High Court in Calcutta; and at the hearing in this Court it was further agreed by arrangement of Counsel, that the evidence taken in the suit of *Byjnath* v. *Graham* should be evidence in all the suits. Some evidence was however given separately in some of the suits, but the general result of the agreement of counsel was that almost all the evidence was common to all the suits, most of the questions to be decided affecting in a greater or less degree either all these suits or at least more than one of them.

These cases were heard together by a special bench consisting of Mr. Justice Cunningham and Mr. Justice Wilson sitting on the Original Side of the Court.

On the 2nd of March 1885, the Court delivered one judgment in all the cases, which dealt firstly with the cases generally, and secondly with the cases separately as far as it was necessary to do so where the issues differed.

As regards the 55 bales claimed by Byjnath and others as banians under the circumstances before set out, the Court, on an issue raised as to whether the bills of lading of the 55 bales had been endorsed to Byjnath under such circumstance as to defeat the right to stoppage *in transitu*, held that the legal effect of the transaction was governed by s. 103 of the Contract Act, and that the words of s. 103 "an advance made upon it" plainly required that the pledge of a bill of lading, in order to defeat the right of stoppage *in transitu*, should be as security for a new advance, and not as security for a pre-existing debt; that the section further required the advance for which the bills of lading were pledged to be "made *specifically* upon it," and after stating that "the construction of this section was by no means free from doubt," decided that "the requirements of the section would be complied with where it is shown that any sum is advanced on the terms that it is to be secured by the particular bill of lading or the goods represented by it, though it may be secured by other bills or goods also, and although the bill of lading may have been intended to

be security not only for the particular sum or sums advanced upon it, but also for some antecedent liability.

Reading the section in that sense the Court decided that Byjnath was entitled to hold the 55 bales as security for all the sums advanced by him after the arrival of the particulars of shipment by the steamer *Knight of St. Patrick*.

The gross value of the 55 bales was Rs. 9,406-4. Against this judgment, as far as it regarded their particular case, Graham & Co., the defendants, being desirous of appealing to the Privy Council, applied to the Court for that purpose on, amongst others, the following grounds—

(1) That the case accepted by the Court as the case of the plaintiffs was not disclosed in their pleadings, nor in their answer to written interrogatories administered by the defendants for the purpose of eliciting in detail the facts which were alleged to constitute the lien claimed.

(2) That the Court had overlooked, in weighing the evidence, several facts pressed at the hearing, and had made no mention of them in its judgment; that the finding of the question of lien was against the weight of evidence.

(3) That the Court, whilst admitting the construction put upon s. 103 of the Contract Act to be that based on *Roger* v. *The Comptoir d'Escompte* (1), had adopted a construction of that section not only at variance with that decision, but with the plain meaning of the words of the section, and the illustration thereto with reference to antecedent debt.

(4) That the Court held that there was no specific advance against the 53 bales, and that section 178 of the Contract Act did not protect the banians' transaction.

Mr. *Hill* for the applicants.—Although the value of the subject matter of the particular suit is under Rs. 10,000, yet the decree involves indirectly a claim or question to, or respecting, property of that amount; inasmuch as this is one of several suits involving the same important questions of law, ordered to be heard together upon the same evidence, and concluded by one judgment, the aggregate amounts involved in such suits being far more than

(1) L. R. 2 P. C., 393.

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Rs. 10,000. See *Ko-khine* v *Snadden* (1), which is a very similar case to this, in which special leave was given to appeal. Moreover, the special bench constituted to hear these cases was formed with a view to an appeal direct to the Privy Council; the parties, would not have consented to the cases being heard in this way, had they thought they would have been precluded from an appeal by reason of any particular suit being decided against them in an amount under Rs. 10,000. The case is a proper one for appeal, important questions of law arise as to one of which the Judges state thatit is "*not free from considerable doubt.*" Section 600 of the Code states that the petition must pray for a certificate, either that as regards amount or value and nature, the case fulfils the requirements of s. 596, *or that it is otherwise a fit one for appeal to Her Majesty in Council.*

[PIGOT, J.—Ought not the words used by the learned Judges expressive of doubt as to the law on that one point, to be sufficient under the last part of the 1st paragraph of s. 600.]

Mr. *Hill* further cited the cases of *Khajah Ashanulla* v. *Karoonamoyi Chowdhry* (2) and *Jugolkishore* v. *Jotendro Mohun Tagore* (3), which were however distinguished from the present case by the Court.

Mr. *Stokoe* (with the *Advocate-General* (Mr. *Paul*) for the plaintiffs.—The fact that there is a mere question of law is not of itself sufficient under s. 596. The result of the decree as regards the defendants is that they have lost a sum less than Rs. 10,000, and whatever might be the result of an appeal, they can get no more than the subject of the lower Court's decree. There is therefore no ground for saying that the decree, directly, or indirectly, involves a question to property of the value of Rs. 10,000. There is only one point of law involved in this suit which will not be involved in the other cases, all of which can be appealed as of right, the decrees being for amounts over Rs. 10,000. The grounds put forward are nearly all questions of fact, and the Court would hardly certify that the questions of fact have not been thoroughly sifted by the special bench, and thus certify that the case is one out of the run of the general cases, and as such fit to go to the Privy Council.

(1) L. R. 2 P. C., 50.

(2) 4 C. L. R., 125. (3) I. L. R., 8 Calc. 210.

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PIGOT, J.—In this case there is a point of law determined which did not arise in the other cases heard with it, and on that point, at least, the Judges express their opinion that their construction of s. 103 of the Contract Act is not free from doubt. The case of *Ko-khine* v. *Snadden* (1) is not without some bearing on the question arising in this application. The several cases heard by the special bench are closely connected in subject matter, and as the Judges in the case alluded to thought the matter fit for appeal, so I think here that the applicants, although not interested to the extent of Rs. 10,000 in the amount of the decree passed against them, still are interested, to a substantial amount, in the question, which must be in issue in the appeals which are allowed as of right. I think, therefore, that I ought to grant a certificate under s 295 that the case is one fit for appeal to Her Majesty in Council.

Application allowed.

Solicitors for plaintiffs: Messrs. *Sanderson & Co.*

Solicitors for defendants: Messrs. *Roberts, Morgan & Co.*

APPELLATE CIVIL.

Before Mr. Justice Cunningham and Mr. Justice O'Kinealy.

PEARI MOHUN MUKERJI (PLAINTIFF) *v.* DROBOMOYI DABIA AND OTHERS (DEFENDANTS.)*

1885

July 16.

Evidence—Judgments, not inter partes—Admissibility of evidence.

In a suit for possession of land the defendant, in order to show the character of his possession, offered in evidence a judgment obtained by him in a suit to which the plaintiff or his predecessors in title were not parties.

Held that the judgment was admissible in evidence.

THIS was a suit for *khas* possession of certain lands held by the defendants with mesne profits. The facts of the case are sufficiently set forth in the judgment of the High Court.

Baboo *Guru Dass Bonnerjee*, Baboo *Bipro Dass Mukerji* and Baboo *Pran Nath Pandit*, for the appellant.

The *Advocate-General* (*the Hon. G. C. Paul*), Baboo *Srinath Dass*, and Baboo *Ram Lukhee Ghose*, for the respondents.

* Appeal from Original Decree No. 105 of 1884, against the decree of Baboo Bhuban Chunder Mukherji, Second Subordinate Judge of Hooghly, dated the 20th of December 1883.

(1) L. R., 2 P. C., 50.