1878

KANHAIYA LAL v. DOMINGO.

co-plaintiff, excepting always the case of Gur Prasad being unwilling."

The Court delivered the following

JUDGMENT.—The promissory note is not made payable to any other person than the payee. It is not made payable to "order," nor to "bearer." It is therefore not a "negociable instrument." Nevertheless by the law of India a chose in action is assignable. Courts of Equity allow an assignee of a chose in action to sue in his own name, and, inasmuch as our Courts are Courts of Equity as well as of Law, in our judgment an assignee of a chose in action is entitled to sue in his own name. It is, however, requisite for the Courts to bear in mind that whatever defences might be set up against the assignor may also be set up against the assignee, or at least such defences as might have been set up to the time when notice of the assignment was given to the defendant. The Judge of the Small Cause Court may be informed accordingly.

1878
July 3.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

RUDR NARAIN SINGH (PLAINTIFF) *v* RUP KUAR AND ANOTHER (DEFENDANTS).*

Hindu Law—Gift of Separate Property to Hindu Widow—Stridhan—Widow's Power of Alienation—Reversioner—Mitakshara—Res judicata.

C, a Hindu subject to the Mitakshara law, died leaving a widow *R*, but no issue. In his lifetime he had transferred to *R* by gift mauza *R*, a portion of his real estate. After his death *J* and *P*, his brothers, sued *R* for the possession of *C's* real estate on the ground that it was ancestral property. Their suit was dismissed, it being held by the Sudder Court that *C's* real estate was separate property, to which his widow would be entitled to succeed by inheritance. The Sudder Court determined that *R* had acquired mauza *R* by gift from *C*, and that *R* took under the gift a life-interest in the property only. *J* and *P* having died, *R* made a gift of mauza *R* to her agent as a reward for his faithful services. *N*, the son of *J*, sued, as the heir of his uncle *C*, to set aside this gift to the agent as illegal.

Held that the decision in the former suit did not make the question as to the interest *R* took under the gift from her husband *res judicata*, inasmuch as *N* did not claim through his father when suing as heir to his uncle.

* First Appeal, No. 6 of 1878, from a decree of Maulvi Sultan Hasan Khan, Subordinate Judge of Gorakhpur, dated the 30th November, 1877.

1878

RUDR NARAIN SINGH. v. RUP KUAR.

Held also, on the finding that *R* had acquired the property from her husband by gift, that she did not take an absolute interest in the property under the gift, and her husband's heirs could question the validity of the gift to the agent.

Held also that the gift to the agent, being made only out of motives of generosity, was invalid.

ONE Raja Chait Singh died in the year 1849, leaving two widows, Rani Rup Kuar and Gulab Kuar, but no issue. At his death his name stood recorded in the revenue registers as the sole proprietor of certain mauzas, and as co-proprietor with his two brothers, Jagan Nath Singh and Partab Singh, of certain other mauzas. Shortly before his death he had transferred to Rup Kuar by sale and by gift certain of the mauzas of which he was recorded the sole proprietor. His widows having taken possession of his estate and alienated portions of it, Jagan Nath Singh and Partab Singh sued them and the persons to whom these alienations had been made for possession of the estate and to set aside the alienations. The plaintiffs in this suit based their claim on the allegation that Chait Singh's estate was ancestral property to which they were entitled to succeed as his heirs to the exclusion of the widows, and that the widows were only entitled to maintenance. The defendants Rup Kuar and Gulab Kuar set up as a defence to the suit, among other things, that the mauzas of which Chait Singh was recorded as the sole proprietor were not ancestral property, but his separate property, certain of them having been acquired by Chait Singh in 1804 under a gift from one Jain Kuar, and the others being self-acquired property; and that there had been a partition of the mauzas in respect of which Chait Singh's name stood recorded as a co-proprietor, and Chait Singh held his shares in those mauzas as his separate property. The Principal Sudder Amin who tried the suit held that the gift by Jain Kuar to Chait Singh was invalid, and that the mauzas included in that gift, as also the mauzas which were alleged by the widows to be Chait Singh's self-acquired property, were ancestral property. The Judge further held that the transfers to Rup Kuar by sale and by gift by Chait Singh should be maintained to the extent of his interest, *viz.*, one-third, and that the mauzas in respect of which Chait Singh's name stood recorded as a co-proprietor had been divided, and Chait Singh's shares therein were his separate property. A decree was

1878

RUDR NARAIN SINGH v. RUP KUAR.

given to the plaintiffs in accordance with the above rulings in respect of the mauzas of which Chait Singh was recorded as the sole proprietor, and the rest of their claim was dismissed.

Both parties appealed to the Sudder Court. Gulab Kuar having died, an appeal was preferred by Rup Kuar alone. The Sudder Court held, on the 7th July, 1852, that the gift by Jain Kuar was valid, and that the mauzas therein mentioned and the remaining mauzas recorded as the sole property of Chait Singh were his separate property, and the suit was wholly dismissed. The Sudder Court did not determine whether the transfers by sale and gift by Chait Singh to Rup Kuar were valid or not, nor did it take any particular notice of the alienations made by the widows (1).

The plaintiffs applied on the 7th May, 1864, for a review of the Sudder Court's judgment (2). Rup Kuar did not appear to oppose the application, but the other defendants appeared and objected, among other things, that the proprietary rights of the plaintiffs had been confiscated by the Government in consequence of their misconduct in the disturbances of 1857 and 1858, and they were consequently not competent to impugn alienations made by the widow, and that, as one or more of the mauzas alienated by the widow had been given to her by her husband in his lifetime, and did not descend to her by inheritance from him, she was free to dispose of them as she pleased. The Sudder Court admitted the review, observing, with reference to its omission to determine whether the sale and gift made by Chait Singh in Rup Kuar's favour were valid or not, and to notice the alienations made by Rup Kuar, as follows:

"The Court's decision certainly assumes, without distinctly ruling, that a widow who succeeds her husband in a separate estate has an absolute unfettered right therein; and a review of it is sought mainly on the ground that such a doctrine has been declared to be erroneous by the Full Bench decision of the 6th July, 1863, in the case of *Myna Baie* v. *Bhugwan Deen*, No. 114 of 1859, which rules that she only possesses a life-interest and a restricted right in such an estate, and is incompetent to alienate any part of it except for specific purposes of a pious or necessary kind (3). Considering the ground above-men-

(1) The Sudder Court's judgment will be found fully reported in S. D. A. Rep., N.-W. P., 1852, p. 290.

(2) The proceedings taken in review of judgment and the Sudder Court's judgment passed on the 30th August, 1865, in review of its former judgment will be found fully reported in S. D. A. Rep., N.-W. P., 1865, p. 111.

(3) This case is reported in S. D. A. Rep., N.-W. P., 1863, vol. ii, p. 15.

tioned to be a good and sufficient ground for a review, we, on the 5th December last, directed the notices required by s. 378 of the Procedure Code to be served on the opposite parties. It appeared to us that, according to the Hindu law, as expounded in the decision of the 6th July, 1863, the plaintiffs may be entitled to be regarded as the reversioners of their brother's estate after his widow, and as competent to impugn transfers made by her, and that an adjudication on the question of the validity of the deeds of gift and sale executed in her favour might be necessary."

With reference to the objections of the defendants it observed as follows :

"We disallow the second objection, because it is a doubtful question whether the confiscation included the contingent and reversionary rights of the plaintiffs, and one to be settled between them and the Government, but with which the objectors have no great concern.

"We disallow the fourth objection, because without now discussing the subject of the validity of the alleged deed of gift we note that, according to Hindu law, property given by a husband to his wife is termed her *stridhan*, and if immoveable cannot be alienated by her."

At the rehearing of the appeal, the Sudder Court laid down the following points for consideration :

(1) "Whether the alienations of property made by the female in favour of the male defendants are valid or not.

(2) "Whether the plaintiffs are entitled to be regarded as reversioners of their brother's estate after his widow's death, and as competent to impugn transfers thereof made by her.

(3) "Whether an adjudication on the validity of the deeds of gift and sale executed in her favour by him is necessary."

The judgment of the Sudder Court on these points was as follows :

"It appears that mauzas Gundha and Saondha are two out of ten mauzas which the Raja, shortly before his decease, transferred to Rup Kuar by a deed of sale; and that she on the 15th September, 1849, mortgaged one-half of the latter mauza to Surbu Prasad, and on the 12th March, 1850, sold the former for Rs. 8,000 to Ram Partab. The fourth objection made to the plaintiffs' application by the male defendants on the 19th ultimo was inaccurate, besides being, for the reason then noted by us, untenable under Hindu law; but they now argue more plausibly that the mauzas transferred to the female defendant by sale had, in consequence of that sale, ceased to belong to the Raja before his death, and therefore form no part of his estate to which the plaintiffs can claim to succeed as next heirs after his widow's death. The plaintiffs alleged in their plaint that the aforesaid sale was purely nominal

1878

RUDR NARAIN SINGH v. RUP KUAR.

and fictitious, having been made without consideration, and not having been followed by any real delivery. The question raised by that allegation was one on which the Courts did not enter, holding, as they apparently did, that a Hindu widow succeeding her husband in a separate estate was competent to alienate it at pleasure. Under the recent construction of Hindu law propounded in the Full Bench decision of the 6th July, 1863 (1), that question would call for decision, but the defendants contend that such question is precluded in this case by the principle of the ruling of the Full Bench of the 24th January last in the case No. 1244 of 1864, *Solujna* v. *Ram Soochit Tewaree* (2), inasmuch as the sale in question and the receipt of the sale-consideration were admitted by the Raja in a suit instituted by Rup Kuar on the basis of the sale-deed, and decided in her favour accordingly. The ruling in the precedent above quoted is 'that a Hindu, who is absolute owner of a divided share of real property, is competent to create a charge upon it in the shape of a mortgage, though no sum, by way of binding the lien, has been received by him, if he have deliberately admitted the incumbrance, and that his reversioners are incompetent to have the conveyance charging the estate set aside, except on grounds which he might himself allege in an action to avoid the same.'

"The plaintiffs plead that the precedent is inapplicable, because they do not seek to avoid wholly the transfer, but only insist that it should be viewed as a gift. But we observe that in so insisting they are taking ground which the Raja himself could not have taken. He was competent to sell the mauzas to his wife, but he could not, after having acknowledged the sale and the receipt of the sale-price, allege, in an action to avoid the sale that the transaction had been not a sale but a gift. Consequently the Rani is entitled to any advantage which may accrue from the transaction being regarded as a sale rather than as a gift. That advantage is that she has the power of alienating the property so acquired by her, a power which under Hindu law she does not possess in respect of property received by gift or inherited from her husband. It is quite possible that, in making over to her some mauzas by deed of sale, and others by deed of gift, he intended her to have absolute control over the first to the exclusion of all other heirs, and a limited control over the second without detriment to those heirs. As in the precedent above quoted, the mortgage-lien was held to be binding under the circumstances, even though the mortgage-consideration should not have been received, so in the present case the sale cannot be disputed, even though the sale-price should have been remitted. The conveyance might, indeed, it would seem, have been made in another form, which would have had the same effect as a sale-deed without being obnoxious to discussion as to consideration. Possibly an instrument not only giving her the mauzas, but authorising her to give away or sell the same, would have been sanctioned by the ruling in the precedent case No. 31,

(1) S. D. A. Rep. N.-W. P., 1863, vol. ii, p. 15.
(2) S. D. A. Rep. N.-W. P., 1865, p. 52.

in ch. viii, p. 238, vol ii, Macnaughten on Hindu Law, the mauzas in question being self-acquired property, some of those, namely, which he had purchased when sold for arrears of revenue in 1817. We come therefore to the conclusion that the ten mauzas sold to the female defendant by her husband are not any part of his estate, but her absolute property, and that the sale by her to Ram Partab of mauza Gundha, and the mortgage of one-half of mauza Saondha to Surbu Prasad, are not liable to be impeached by the plaintiffs, who have title, however, to be regarded as the reversioners after her death of other mauzas received by gift or inherited by her from the deceased Raja, and are competent as such to impeach any transfer thereof to other parties.

"We have thus disposed of the two first questions which we proposed to consider, and as regards the third have decided that the validity of the sale-deed in question cannot under the circumstances be questioned. Nor need the validity of the deed of gift be discussed, as it is immaterial to the plaintiffs whether it be valid or not, seeing that the mauzas conveyed by it would devolve on the widow by the Hindu law of succession, by reason of their having belonged exclusively to her husband."

"With these remarks, which obviate any risk of injury to the plaintiffs' reversionary rights from the Court's former decision, we affirm that decision as regards the dismissal of their claim, and order the parties to pay each the costs which they may respectively have incurred in connection with this review of judgment."

On the 15th October, 1876, Jagan Nath Singh and Partab Singh having meantime died, Rup Kuar transferred by deed of gift to Chandi Prasad mauza Ranipur, one of the mauzas which Chait Singh had transferred to her by gift.

The present suit was instituted in the Court of the Subordinate Judge of Gorakhpur, on the 28th August, 1877, by Narain Singh, one of the two sons of Jagan Nath Singh, against Rup Kuar and Chandi Prasad, to set aside this gift, on the ground that the property was the ancestral property of Chait Singh, Jagan Nath Singh, and Partab Singh, and the gift was made without consideration and without legal necessity.

From the plaintiff's written statement it appeared that he based his right to maintain the suit on the judgment of the Sudder Court in the suit brought against Rup Kuar and Gulab Kuar by Jagan Nath Singh and Partab Singh. He alleged in his written statement as follows:

"She (the defendant Rup Kuar) is trying to waste the property through enmity, so that no property might remain for the plaintiff after her death.

1878

RUDR NARAIN SINGH v. RUP KUAR.

She has, with that intention, without any consideration and without any lawful necessity, made a gift of mauza Ranipur, yielding a profit of Rs. 800, in favour of the second defendant, her karinda. This gift is calculated to cause serious injury to the plaintiff. A transfer like this is illegal, both according to the shastras and legal enactments. The plaintiff, who is the heir of the defendant's husband, has the right of instituting a suit for the cancelment of the transfer made by her."

In his written statement filed on the 28th September, 1877, Chandi Prasad, defendant, alleged that mauza Ranipur was the separate property of Chait Singh, and that in virtue of the gift of the mauza to Rup Kuar by her husband Chait Singh, she had full power over it and was competent to alienate it; that the plaintiff could not rely on the Sudder Court's judgment, as the defendant was no party to the suit in which it was passed, and that the gift had been made to him for his faithful services, and was not improper.

Rup Kuar, in her written statement, in addition to the grounds of defence taken by Chandi Prasad, pleaded that, as the property of the plaintiff's father and of Partab Singh, his uncle, had been confiscated by Government, no rights passed to the plaintiff on the death of his father or his uncle, and that the judgment of the Sudder Court was not binding on her.

The first, second, and fourth issues fixed for trial by the Subordinate Judge were as follows:

(1)—"Whether the village in question is the ancestral property of Rup Kuar's husband, and the gift is invalid, or it was acquired by her husband, by virtue of gift made in his favour by Jain Kuar, and he has been in exclusive possession thereof, and has transferred it by gift to his wife, Rup Kuar, and the gift in question is, at all events, valid?

(2)—"Whether the decree relied on by the plaintiff can be used by him as evidence or not? Has the plaintiff any right of action or not?

(4)—"Every right of the plaintiff's father, whether in his name or not, having been confiscated on account of his rebellion, can the plaintiff bring the present suit or not?

The Subordinate Judge first decided the fourth issue in favour of the plaintiff on the ground that the plaintiff had brought the suit in his own right under Hindu law. He then decided the first

1878

RUDR NARAIN SINGH v. RUP KUAR.

issue against the plaintiff, dismissing the suit on that issue. His decision on that issue was as follows:

"The plaintiff has brought this action recognising the gift made in her favour by her husband as valid and in force; and considering that, as the said gift merely conveyed a limited interest (life-interest) to her, she was not entitled to made the present transfer. The most important question which is now to be determined is 'whether, under the gift made to the lady by her husband, she acquired a limited proprietary right, giving her no title to make the present alienation, or she is the absolute proprietress entitled to make this as well as every sort of alienation.' On perusing the record, it appears to me that the husband of the woman has made the gift in her favour without any condition or restriction. There is no condition whatever either for or against an alienation. As far as I can see, I consider a gift or alienation of this kind to be permanent and without any restriction, I do not think myself justified in considering a gift and alienation of this kind to be made only for the life-time of the Musammat. If the property be supposed to have been actually acquired and to have been exclusively possessed by the husband, and to have been transferred to the wife only for her life, than the gift and the expenses relating to it can be looked upon in no other light than that of a farce. If we were to limit without any good reason any such absolute transfer, these restrictions could be placed in every instance. It would then follow that, if the husband would alienate his self-acquired property to a stranger by gift or sale, the alienation would be invalid. But this is clearly wrong. The precedent noted in the margin (1) supports the view taken by me, *viz.*, that such alienation will be considered perpetual, and a daughter-in-law and widow are entitled to alienate (property). I therefore do not consider the plaintiff entitled to bring the present claim."

The plaintiff appealed to the High Court, contending that the decision of the Sudder Court dated the 30th August, 1875, had finally determined that Rup Kuar was not competent to alienate the mauzas which Chait Singh had transferred to her by gift, and the Subordinate Judge should not have re-opened the question; that Rup Kuar acquired mauza Ranipur by inheritance and not by gift; and that even if she acquired it by gift, she was not competent to alienate it, and the appellant was entitled to a decree setting the gift aside.

The *Senior Government Pleader* (Lala *Juala Prasad*), Munshi *Hanuman Prasad*, and Lala *Lalta Prasad*, for the appellant.

(1) *Chattar Lal Singh* v. *Shewakram*, 5 B. L. R. 123, S. C., 13 W. R. 285.

1878

RUDR NARAIN SINGH v. RUP KUAR.

Mr. *Conlan*, the *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), Maulvi *Mehdi Hasan*, Pandit *Bishambhar Nath*, and Babu *Jogindro Nath Chaudhri*, for the respondents.

The Court (PEARSON, J., and OLDFIELD, J.) delivered the following

JUDGMENT.—The plaintiff has brought this suit on the allegation that the estate belonged to Chait Singh as a separate estate, and his widow, the female defendant, succeeded to it at his death, and took a life-interest, and plaintiff, as the next heir to her husband at her death, sues to cancel a deed of gift made by her in favour of defendant No. 2, on the ground that there was no necessity for the alienation, and further that it was ruled, in a suit brought by plaintiff's father against the widow, on the 30th August, 1865, by the Sudder Dewani Adalat, that the lady had only a life-interest, and plaintiff was heir at her death, and the above decision is binding.

The defendants pleaded that the above decision does not bind the parties to this suit; that Chait Singh made a gift of the property to the defendant his wife in his life-time, by which she obtained it absolutely, and her transfer cannot be questioned; that the plaintiff is barred by limitation; and further that, in consequence of the confiscation of his father's property for rebellion, he has no *locus standi*, and the gift was a fitting reward to defendant No. 2 for services rendered as manager of the lady's property, and had been allowed by the brother of the plaintiff.

The lower Court has decided that there was a gift by Chait Singh in favour of his wife as defendants plead, and that it gave her absolute power over the estate, and on this ground he dismissed the suit.

It appears that on the 30th August, 1865, there was a review by the Sudder Dewani Adalat of a former judgment in a suit brought by plaintiff's father and uncle against the defendant No. 1, the object of which was to be declared heirs of Chait Singh in respect of his property, among which is that now in suit, and to avoid certain alienations made by the widow. It appears to have been pleaded by the defendant that the estate was held separately by Chait Singh, and that some of the property had been sold, and some, including the mauza in suit, had been given to the lady by

Chait Singh, and some inherited, and the Court held that the estate was the separate estate of Chait Singh, and that the mauzas sold did not form part of his estate at his death, but were the absolute property of the wife, but that the plaintiffs were entitled to be regarded as the reversioners after her death of the mauzas received by gift or inherited by her from the deceased, and competent as such to impeach any transfer thereof to other parties. The Court did not consider it necessary to decide the validity of the deed of gift on the part of Chait Singh to his wife, as they held it was immaterial to the plaintiffs whether it be valid or not, seeing that the mauzas conveyed by it would devolve on the widow by the Hindu law of succession by reason of their having belonged exclusively to her husband.

With reference to the pleas in appeal, we observe that it may be that the above decision has not the effect of *res judicata*, as the plaintiff contends, since the plaintiff does not come in through or under his father when he is suing as next heir to his uncle. Nor can there be any doubt that the defendant's husband, Chait Singh, did convey the property in suit to the defendant in his lifetime by deed of gift, for the evidence adduced on this point by the defendant is convincing. So much therefore of the case of the plaintiff which rests the claim on the allegation that the defendant succeeded as heir to her husband fails, but notwithstanding we consider that the plaintiff is entitled to succeed in this case on the view we take of the case.

Admitting that the defendant obtained the estate by gift, there can be little doubt that by Hindu law she will have no absolute power over immoveables given by her husband. "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or give it away, excepting immoveables. The meaning is that, as regards immoveable property given by the husband, the wife is allowed to use it only by dwelling in it, but not to alienate it by gift, or sale, or in any other manner," Narada, Digest of Hindu Law by West and Bühler, Bk. ii, p. 74, and Mr. Colebrooke's remarks found in Strange, vol. ii, pp. 402,407, which are as follows:—"No doubt the widow may give away her own property, excepting land given to her by her husband or

1878

RUDR NARAIN SINGH v. RUP KUAR.

inherited from him, which she cannot dispose of without consent of the next heirs." There are other texts of the same purport, and this view of the effect of the gift was taken by the Sudder Dewani Adalat in the decision already referred to, in which the learned Judges cited a case in Macnaughten's Precedents (1), and their ruling in that case has been followed by this Court in *Gunput Singh* v. *Gunga Pershad* (2). A ruling to the opposite effect by the Calcutta Court (3) has been cited to us but it is not in accordance with the rulings of this Court.

Immoveable property given to a wife by a husband would appear therefore to be held on terms similar to those on which property inherited from her husband is held, and her acts in respect of it liable to question in a similar manner by the next heirs. And there seems no doubt plaintiff is in a position to question the alienation made by the widow as next heir, whether the property be held to be the lady's *stridhan* governed by the law of succession applicable to *stridhan*, or it be held subject to the ordinary succession of property inherited from her husband. In the latter case he is next heir to the husband, and if it be subject to the succession as *stridhan*, the lady being a childless widow, he will succeed failing the husband.

The defendants' pleas of limitation fail since the right of suit to cancel the gift cannot be said to have accrued to plaintiff before the date of the alienation, and there has been no possession on the part of the widow which can be said to be adverse to the title. Nor is there any thing in the confiscation of the father's property which can affect the plaintiff's reversionary rights as heir to his uncle. There remains the question of the validity of the alienation to defendant No. 2. The ground stated for the gift is that it was a reward for good and faithful services as the lady's manager. We do not think it is shown that the defendant has not always received his regular remuneration for services performed; on the contrary it would appear that he has; and the gift in question can only be considered to be an act of generosity, and not one strictly called for by the circumstances, and which should be met from the lady's private

(1) See case xxxi, 3d ed., p. 238.
(2) H. C. R., N.-W. P., 1867, p. 230.
(3) See *Chattar Lal Singh* v. *Sheokuram*, 5 B.L.R., 128; S.C. 13 W.R. 285.

1878

RUDR NARAIN SINGH v. RUP KUAR

resources if at all, but is not one which can justify a permanent alienation of part of the landed estate which belonged to her husband.

The plaintiff will have a decree declaring that the gift to the defendant is invalid so far as it affects plaintiff's reversionary right as next heir. The appeal is decreed with costs.

Appeal allowed.

FULL BENCH.

1878
July 16.

Before Mr. Justice Turner, Officiating Chief Justice, Mr Justice Pearson, and Mr. Justice Oldfield.

COLLIS (PLAINTIFF) *v.* MANOHAR DAS (DEFENDANT).*

Application for leave to sue as a Pauper—Appeal—Act X of 1877 (Civil Procedure Code), ss. 2, 54, 407, 314, 450, 588—Act VIII of 1859 (Civil Procedure Code), s. 311.

No appeal lies under Act X of 1877 from an order made under that Act rejecting an application for permission to sue as a pauper.

ONE Edwin Collis applied to the Judge of the Small Cause Court at Allahabad, exercising the powers of a Subordinate Judge, for permission to bring a suit as a pauper. The Judge, under s. 407 of Act X of 1877, rejected the application on the ground that the petitioner was possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit.

The petitioner preferred an appeal to the High Court against the Judge's order rejecting his application.

The Court (Turner, O.C.J.), on the 12th June, 1878, ordered the petition of appeal to be laid before a Division Bench of the Court. The Division Bench (Turner, O.C.J., and Pearson, J.), on the 14th June, 1878, admitted the appeal in order that the question whether an appeal would lie or not might be argued. This question was argued before the Division Bench, which directed that the case should be laid before the Full Bench.

The petitioner appeared in person and contended that the order of the Small Cause Court Judge was a "decree" within the meaning

* Miscellaneous Application, No. 15 B, against an order of G. E. Knox, Esq., Judge of the Small Cause Court, Allahabad, dated the 30th April, 1878.