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The judgment of the Court (OLDFIELD, J., and STRAIGHT, J.,) was delivered by

LARI SINGH  
 v.  
 BALDEO  
 SINGH.

STRAIGHT, J.—The lower appellate Court has found that the *vazi-nama* was duly and properly executed; in other words, that the defendant agreed in writing to allow the plaintiffs "*haq-i-chaharum*." The suit was therefore for money due upon a contract and of a nature cognizable by a Small Cause Court. Accordingly no second appeal lay to this Court, and the preliminary objection taken by the respondents' pleader must prevail. Our attention was called at the hearing to the case of *Nanku v. The Board of Revenue* (1), but the view we are now taking is in no way inconsistent with, on the contrary is entirely in accordance to, the principle laid down in that case by the Court at large. The appeal is not entertainable and must be dismissed with costs.

*Appeal dismissed.*

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 May 31.

*Before Mr. Justice Pearson and Mr. Justice Straight.*

CHANDIKA SINGH AND ANOTHER (DEFENDANTS) v. POHKAR SINGH  
 (PLAINTIFFS)\*

*Joint Mortgage—Foreclosure.*

Where a mortgage of an estate is a joint one and there is no specification in it that any individual share or portion of a share of such estate is charged with the repayment of any defined proportion of the mortgage-money, but the whole estate is made responsible for the mortgage-money, it is not competent for the mortgagee to treat a sum paid by one of the mortgagors as made on such mortgagor's own account in respect of what might be calculated as his reasonable share of the joint debt and to release his share from further liability. Where, therefore, in the case of such a mortgage the mortgagee, in taking foreclosure proceedings, exempted the person and share of the mortgagor so paying and proceeded only against the other mortgagors, and, the mortgage having been foreclosed, sued the other mortgagors for the possession of their shares of such estate, held that, the foreclosure proceedings being irregular, the suit was not maintainable.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

\* Second Appeal, No. 179 of 1880, from a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 13th December, 1878, affirming a decree of Maulvi Sakhawat Ali, Munsif of Akbarpur, dated the 16th September, 1878.

(1) I. L. R., 1 All. 444.

Babu *Jogindro Nath Chaudhri* and *Maulvi Obeid-ul-Rahman*,  
for the appellants.

Munshi *Hanuman Prasad*, for the respondent.

The judgment of the Court (PEARSON, J., and STRAIGHT, J.,)  
was delivered by

STRAIGHT, J.—This is a suit for possession of a one pie share of mauza Rai, pargana Ghatanpur, upon the basis of a mortgage dated the 2nd July, 1869, and a foreclosure proceeding of the 23rd May, 1878. Both the lower Courts decreed the claim and the defendants now appeal. The short facts are that the appellants with one Shankar Singh executed a conditional sale-deed to the plaintiff-respondent on the 2nd July, 1869, for a period of four years, of their one and one-half pie share of mauza Rai for an advance of Rs. 125. Some time afterwards Shankar Singh paid Rs. 62 principal and interest to date, as representing one-third of, the mortgage amount due, and the mortgagee-respondent accepted it as such and endorsed the receipt on the deed. The appellants failed to pay the balance then remaining and foreclosure proceedings were taken against them alone, Shankar Singh and his half-pie share being exempted. The usual notice was given, and when the required twelve months' grace had elapsed, the proceeding was recorded on the 23rd May, 1878, upon which the present suit was instituted. The appellants contend that as the mortgage was joint and the share of Shaukar Singh was equally liable with their own for the joint debt, that the foreclosure proceedings were irregular in that he was not made a party, and that the present suit is not maintainable.

We are of opinion that this plea must prevail. The mortgage was clearly a joint one, and there is no specification in it that any individual share or portion of a share is identified to and charged with the repayment of any defined proportion of the money advanced. The liability of the mortgagors was mutual and indivisible in that their property, as a whole, was made responsible for the debt. We therefore do not think it was competent for the mortgagee to treat a sum paid by one of the mortgagors as made on such mortgagor's own account in respect of what might be

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calculated as his reasonable share of the joint indebtedness and to release his share from further liability. Such payment could only properly be treated as made for the whole of the mortgagors and ought to have been carried to the credit of all of them in reduction of the principal sum jointly due. Consequently the plaintiff-respondent was not justified in exempting the half-pie share of Shankar Singh from the foreclosure proceedings and in directing his claim against the property of the appellants alone. The present suit cannot under the circumstances be entertained. The appeal is decreed with costs.

*Appeal allowed.*

1880  
May 31.

*Before Mr. Justice Pearson and Mr. Justice Straight.*

AKBARI BEGAM AND OTHERS (DEFENDANTS) v. WILAYAT ALI (PLAINTIFF).\*

*Remand—Objection to Finding—Appellate Court, powers of—Act X of 1877 (Civil Procedure Code), ss. 566, 567, 578—Error or Irregularity.*

*Held* that an appellate Court is not bound to accept a finding returned to it by a Court of first instance under s. 566 of Act X of 1877 merely because no objections to such finding are preferred, but is competent to examine the evidence on which such finding is founded and to satisfy itself that it is correct and fit to be accepted. *Noorm v. Khoda Baksh* (1) dissented from: *Ratan Singh v. Wazir* (2) followed.

*Held* also that, assuming that an appellate Court, in deciding a case in a manner inconsistent with and opposed to the finding returned to it by the Court of first instance under that section, in the absence of objections, acted irregularly, its decree could not be reversed or the case remanded on account of such irregularity, such irregularity not affecting the merits of the case or the jurisdiction of the Court.

THIS suit, in which the plaintiff claimed a right of way over land belonging to the defendants, was dismissed by the Court of first instance on the 12th March, 1879. On appeal by the plaintiff the lower appellate Court, on the 29th August, 1879, remanded the case to the Court of first instance for the trial of certain issues, under the provisions of s. 566 of Act X of 1877, fixing a period of one week for objections to the finding of the Court of first instance. The

\* Second Appeal, No. 169 of 1880, from a decree of Manvi Nasir Ali Khan, Subordinate Judge of Saharanpur, dated the 18th November, 1879, reversing a decree of Munshi Baij Nath, Munsif of Muzaffarnagar, dated the 12th March, 1879.

(1) H. C. R., N.-W. P., 1866, p. 56. (2) I. L. R., 1 All., 165.