

BRODHURST, J.—I entirely concur in dismissing the appeal with costs, and in the reasons given by my brother Oldfield for so doing.

Appeal dismissed.

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CIVIL REVISIONAL.

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 July 22.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

MAKTAB BEG AND OTHERS (DEFENDANTS) v. HASAN ALI (PLAINTIFF).*

Civil Procedure Code, s. 561—Objections by respondent—Withdrawal of appeal.

Where an appeal was dismissed upon the application of the appellant himself made before the hearing,—held that the respondents, who had filed objections to the decree of the Court of first instance under s. 561 of the Civil Procedure Code, had no claim to have their objections heard, notwithstanding the dismissal of the appeal. *Coomar Puresh Narain Roy v. Watson and Co. (1)* and *Dhondi Jagannath v. The Collector of Salt Revenue (2)* referred to.

The facts of this case are stated in the judgment of Oldfield, J.

Mr. *Niblett*, for the applicants (defendants).

Munshi *Kashi Prasad*, for the plaintiff.

OLDFIELD, J.—This is an application, under s. 622 of the Civil Procedure Code, to revise an order of the lower appellate Court passed in an appeal from a decree of the Munsif of Muhammadabad. The plaintiff brought a suit against the applicants before us for damages for breach of contract. The Munsif decreed a portion of the claim and dismissed the remainder. The plaintiff preferred an appeal, and the applicants before us, who were respondents, filed objections under s. 561 of the Code. Before the hearing began the plaintiff-appellant applied to withdraw his appeal, and it was dismissed, and the applicants' objections were at the same time dismissed, without the lower appellate Court going into them. It is this order of the Judge we are asked to revise. I am of opinion that the applicants had no claim, under the circumstances, to have their objections heard when the appeal itself was not heard. The terms of s. 561 are, that a respondent may, upon the hearing, support the decree on any grounds decided against him in the Court

* Application No 217 of 1885 for revision under s. 622 of the Civil Procedure Code of an order of J. M. C. Steinbelt, Esq, District Judge of Azamgarh, dated the 21st July, 1885.

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below, or take any objection to the decree which he could have taken by way of appeal, but he can only do so upon the hearing that is, if the appeal comes to be heard. This view is supported by *Coomar Puresh Narain Roy v. Watson & Co.* (1) and *Dhondë Jagannath v. The Collector of Salt Revenue* (2), the latter decision proceeding upon the same *ratio decidendi*. This application must therefore be dismissed.

MAHMOOD, J.—I am entirely of the same opinion, and would add that the principle of this decision is in accord with that which the Procedure Code and the law recognizes as applicable in cases where the action of one party to a suit is dependent on that of the other. It proceeds upon the hypothesis that had the applicants really desired to object to the lower Court's decision, they would themselves have preferred a separate appeal. The right of a respondent to have his objections heard as if he had appealed must, I think, depend on the appellant's appeal, and should only be allowed when the appellant proceeds with his appeal to a hearing. In my experience these objections are generally filed long after the time allowed for appealing has expired, and the hearing of them is subject to the condition of the appellant proceeding with his appeal to a hearing. The right to have these objections heard vanishes when the condition upon which they depend vanishes, and this upon general principles. In this case the appeal itself was never heard.

Application dismissed.

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 July 22.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

WARIS ALI (DEFENDANT) v. MUHAMMAD ISMAIL AND OTHERS
 (PLAINTIFFS). *

"Rent-free grant"—"Rent"—Services—Jurisdiction—Civil and Revenue Courts—
 Act XII. of 1881 (*N.-W. P. Rent Act*), ss. 3 (2), 30, 95 (c)—Act XIX. of 1873
 (*N.-W. P. Land Revenue Act*), ss. 3 (4), 79-89, 241 (h).

A suit was brought for the ejection of the defendant from certain land, on the allegations that it was rent-paying land which had been granted to the defendant's vendor by the plaintiff's father free from payment of any rent, on

* Second Appeal No. 1749 of 1885, from a decree of W. R. Barry, Esq., Additional Judge of Aligarh, dated the 20th August, 1885, confirming a decree of Babu Gunga Prasad, Munsif of Koil, dated the 5th January, 1885.

(1) 23 W. R. 229. (2) I. L. R., 9 Bom. 28.