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objections were not taken until after the scheme of partition had been approved by the Assistant Collector and confirmed by the Collector of the District, consequently they can only be regarded in the light of objections to the mode in which it was proposed to make the partition. And if these objections were to the *form* of partition, an appeal would undoubtedly have lain to the Commissioner. As I have already said, and desire to emphasize, at the stage of the proceedings when objections were taken, it was too late to determine questions of title. Accordingly the Assistant Collector cannot be said to have done so; and if the proprietary rights of the appellants have been interfered with, the Civil Court is open to them. The result of these observations is, that there was no appeal from the order of the Assistant Collector to the District Judge; and it necessarily follows, therefore, that no appeal lies to me from the order of the District Judge. The appeal is dismissed with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Brodhurst.

1887
March 3.

HAR NARAIN SINGH (PLAINTIFF) *v.* KHARAG SINGH AND ANOTHER (DEFENDANTS).*

Appeal—Death of plaintiff-respondent during pendency of appeal—Application by defendant-appellant for substitution of deceased's legal representative—Application by third person claiming to be such representative and to be substituted as respondent—Civil Procedure Code, s. 32—"Questions involved in the suit"—Civil Procedure Code, ss. 365, 367, 368, 582—Unappealed miscellaneous order set aside on appeal from decree—Civil Procedure Code, s. 591.

The "questions involved in the suit" referred to in the second paragraph of s. 32 of the Civil Procedure Code, are questions between the plaintiff and the defendant, and not questions which may arise between co-defendants or co-plaintiffs *inter se*. The section does not apply to questions which are not involved in the suit but crop up incidentally during the pendency of an appeal, such as the question whether one person or another is the legal representative of a deceased plaintiff-respondent.

S. 591 of the Code enables the Court, when dealing with an appeal from a decree, to deal with any question which may arise as to any error, defect, or irregularity in any order affecting the decision of the case, though an appeal from such order might have been and has not been preferred. *Gooylee Sahoo* v. *Premlall Sahoo* (1) referred to.

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* Second Appeal No. 1331, of 1885, from a decree of W. T. Martin, Esquire, District Judge of Aligarh, dated the 29th May, 1885, confirming a decree of Babu Narain Singh, Assistant Collector of Koel, dated the 23rd June, 1881.

(1) I. L. R., 7 Calc. 148.

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During the pendency of an appeal, the plaintiff-respondent died, and, on the application of the appellant, the name of *H* was entered on the record as respondent in place of the deceased. Subsequently *K* applied to be substituted as respondent, alleging that he and not *H* was the legal representative of the plaintiff. The Court passed an order making *K* a joint respondent with *H*. To this *H* objected, but he did not appeal from the order. Ultimately the Court dismissed the appeal, and passed a decree that the money claimed in the suit was payable to the two respondents.

Held that s. 32 of the Civil Procedure Code did not apply to the case so as to authorize the Court below to add *K* as a respondent; that the only other section under which he might possibly have been brought in was s. 365; that even assuming s. 365 to apply to such a case, the Court had no power to make *K* a respondent jointly with *H*, but should have taken one or the other of the courses specified in s. 367, so as to determine who was the legal representative of the deceased plaintiff; and that the course adopted by the Court was an exceedingly inconvenient one which ought not to have been taken even if the Court had power under the Code to take it.

Held also that, on appeal from the decree of the Court below, *H* was entitled to object to the order adding *K* as a respondent, though he had not appealed from the order itself.

This was a suit to recover Rs. 168-6-9 as lambardari dues and arrears of Government revenue, under s. 93 (*g*) of the N.-W. P. Rent Act (XII of 1881). The facts of the case are stated in the judgment of Edge, C. J. Besides the authorities referred to in the judgment, the cases of *Lakshmibai* v. *Balkrishna* (1) and *Narain Kuar* v. *Durjan Kuar* (2) were cited during the argument.

Pandit *Sundar Lal*, for the appellant.

Munshi *Ram Prasad*, for the respondents.

EDGE, C. J.—In this case Rani Sahib Kuar, the widow of one Rajah Gobind Singh, brought an action against Badri Prasad to recover money alleged to be due by the defendant. Rani Sahib Kuar succeeded in the suit in the Collector's Court, her suit having been dismissed in the second class Assistant Collector's Court. From the decree in the Collector's Court, the defendant appealed to the District Judge, and, pending that appeal, Rani Sahib Kuar died some time prior to the 11th September, 1883. On the 11th September, 1883, Rajah Har Narain, the appellant here, was added to the record as respondent in that appeal in the place of the Rani Sahib Kuar, on the application of the defendant, who alleged that Rajah Har Narain was the adopted son of Rajah Gobind Singh, the

(1) I. L. R., 4 Bom. 654. (2) I. L. R., 2 All. 738.

husband of Rani Sahib Kuar, and the legal representative of the deceased plaintiff.

On the 6th of December following, Kharag Singh, one of the respondents here, made an application to the Judge, alleging that he was the heir of Rajah Gobind Singh, and that the adoption of Rajah Har Narain was informal, and asked to be substituted for Rajah Har Narain. On the 15th January, 1884, the Judge passed an order by which he made Kharag Singh a joint respondent with Rajah Har Narain. Rajah Har Narain objected to Kharag Singh being made a joint respondent with him, but, however, he preferred no appeal from that order of the Judge, dated the 15th January, 1884.

The appeal proceeded, with the result that the District Judge dismissed the appeal, and passed a decree that the money claimed in the suit was payable to the then two respondents on the record, Rajah Har Narain and Kharag Singh. From that decision one of those respondents, Rajah Har Narain, has brought this appeal, making the other respondent Kharag Singh and Badri Prasad respondents in this appeal. He alleges that the Judge had no authority to make Kharag Singh a respondent in this case.

The first thing to be observed is that Rajah Har Narain was a respondent, who, if s. 368 of the Civil Procedure Code applies to this case, had been properly made a respondent. It is said that s. 368 was the section under which he was appointed, because by s. 582 of the Civil Procedure Code, the procedure laid down in s. 368 is made applicable to cases in appeal. It is contended on behalf of Kharag Singh, who is the only one of the respondents represented here by counsel, that there was power to appoint him under s. 32 of the Civil Procedure Code.

Now, when we look to s. 32, we find that the second paragraph of that section only applies, so far as the adding of a plaintiff or defendant is concerned, to cases where the adding of the person will enable "the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." I do not think there can be any doubt that all the questions above referred to must be questions between the plaintiff and the defendant, and not questions which may arise between co-defendants or between

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co-plaintiffs *inter se*. What then was the question that was involved here between the plaintiff and the defendant? The only question was whether, at the time of the institution of the suit, Rani Sahib Kuar was in a position to maintain this action. It so happened that she died pending the appeal, but still the cause of action was not whether one person or another was the legal representative of Rajah Gobind Singh, but whether she had established a good cause of action against Badri Prasad, so that the dispute between these two parties, Rajah Har Narain and Kharag Singh, is not, in my opinion, a question which is involved in this suit. It is a question which has cropped up incidentally during the pendency of the appeal. For that reason I think that s. 32 does not apply to this case. Kharag Singh was not brought in under s. 368 of the Civil Procedure Code, nor, under s. 32 of the Code, in my opinion, was there any power to add him as a respondent. The only section under which he might possibly have been brought in is s. 365 of the Code. It is contended by Mr. *Sundar Lal* on behalf of the appellant that s. 365 does not apply, as it is not incorporated by reference in s. 582. That is, that s. 365 only applies to an actual plaintiff as plaintiff, and not to an appellant or respondent. That is a point which I do not want to decide. It appears to me that if s. 365 does apply to a case like this, still the Judge below had no power to do what he has done in this case. If that section applies, it was necessary for the Judge in that event, there being a dispute as to who was the legal representative of the deceased, to adopt one or other of the courses specified in s. 367. He ought either to have stayed the appeal until the fact as to who was the legal representative of Rani Sahib Kuar had been determined in another suit, or he ought to have decided at or before the hearing of the appeal as to who should be admitted to be such legal representative for the purpose of prosecuting the suit. The Judge adopted neither of these courses. He did not decide who was the legal representative. Moreover, Kharag Singh, if he made his application under s. 365 of the Code, was clearly beyond time by twenty-six days, as Rani Sahib Kuar died prior to the 11th September, 1883, and Kharag Singh did not make his application till the 6th December, when the sixty days required by art. 171 of the second schedule of the Limitation Act had already expired.

It appears to me that in this particular case the Judge has adopted a procedure which is not contemplated or provided for by any section of the Code to which my attention has been drawn. If, however, the Judge had any such power under the Code, the course which he took was an exceedingly inconvenient course, and one which he ought not to have taken; because it will leave this case in this position, that, if on appeal the decision of the Court below was affirmed, Kharag Singh would practically be in a position to make useless any decree which might be passed on appeal. The decree being a joint one in favour of Raja Har Narain and Kharag Singh, neither of them could under s. 231 of the Code take out execution separately, unless he applied for the execution of the whole decree for the benefit of both. It may be assumed from the position taken up by Kharag Singh that he will not be a consenting party to Raja Har Narain's obtaining execution in his own favour; and Raja Har Narain, to be consistent with his position, will not apply for execution on behalf of himself and Kharag Singh. I think, therefore, that even if the Judge had authority to make the order of the 15th January, 1884, he ought not to have made any such order.

It is contended that this is a matter which we cannot deal with in this appeal; that there ought to have been an appeal against the order of the 15th January. I think that point is made quite plain by s. 591 of the Code of Civil Procedure, which enables this Court when dealing with an appeal from a decree to deal with any question which may arise as to any error, defect, or irregularity in any order affecting the decision of the case. The Court must have such power, because s. 591 provides that an objection to such order may be made a ground of objection in the memorandum of appeal. I think that this point has also been decided by the case of *Googlee Sahoo* v. *Premlall Sahoo* (1).

Under these circumstances I am of opinion that this order of the 15th January ought not to have been made, and I fail to see what power the District Judge had to make the order; and I think it is one which, if allowed to stand, will create great inconvenience and possibly make any decree obtained by the representative of Rani Sahib Kuar inoperative. Therefore this appeal, so far as

(1) I. L. R., 7 Calc. 143.

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that point is concerned, should be allowed, and the decree of the Court below will be put right by setting aside the order of the 15th January, 1884, and dismissing Kharag Singh from this appeal. I think this appeal ought to be allowed with costs against Kharag Singh. As Badri Prasad has not appeared to contest this appeal, so far as he is concerned, each party will bear his own costs. This decision does not affect the rights of the parties in the other cases.

BRODHURST, J.—I concur in the opinion expressed by the learned Chief Justice, and in decreeing the appeal with costs against Kharag Singh.

Appeal allowed.

1886
July 15.

CRIMINAL REVISIONAL.

Before Mr. Justice Mahmood.

QUEEN EMPRESS *v.* ABDUL KADIR AND ANOTHER.

Security for keeping the peace—Criminal Procedure Code, ss. 107, 112, 117, 118, 239—"Show cause"—Burden of proof—Joint inquiry—Opposing factions dealt with in one proceeding—Nature and quantum of evidence necessary before passing order for security.

Upon general principles, every person is entitled, in the absence of exceptional authority conferred by the law to the contrary effect, when required by the judiciary either to forfeit his liberty or to have his liberty qualified, to insist that his case shall be tried separately from the cases of other persons similarly circumstanced.

Where an order has been passed under s. 107 of the Criminal Procedure Code requiring more persons than one to show cause why they should not severally furnish security for keeping the peace, the provisions of s. 239 read with s. 117 are applicable, subject to such modifications as the latter section indicates, and to such procedure as the exigencies of each individual case may render advisable in the interests of justice. A joint inquiry in the case of such persons is therefore not *ipso facto* illegal; and even in cases where one and the same proceeding taken by the Magistrate under ss. 107, 112, 117 and 118 improperly deals with more persons than one, the matter must be considered upon the individual merits of the particular case, and would at most amount to an irregularity which, according to the particular circumstances, might or might not be covered by the provisions of s. 537. *Queen-Empress* v. *Nathu* (1) and *Empress* v. *Batuk* (2) referred to.

An order passed by a Magistrate under ss. 107 and 112 of the Criminal Procedure Code, requiring any person to "show cause" why he should not be

(1) I. L. R., 6 All, 214. (2) Weekly Notes, 1884, p. 54.