

occasions, for religious purposes and under certain restrictions, be permitted, as Muhammadans are, I believe, in many other places in British India permitted, to sacrifice kine on their own premises. If they are allowed to do so, a clear municipal rule should be framed so as to ensure that cattle killed under such circumstances should be slaughtered, and the carcasses disposed of, in such a way as to cause the least possible annoyance to Hindus and other persons.

** Convictions set aside.*

APPELLATE CIVIL.

1887

 QUEEN-
 EMPRESS
 v.
 ZAKI UDDIN.

1887
 August 5.

Before Mr. Justice Broadhurst and Mr. Justice Tyrrell.

GANESH SINGH (PLAINTIFF) v. SUJHARI KUAR (DEFENDANT).*

Mortgage—Mortgagee of non-transferable property—Right to sue for mortgage-money—Act IV of 1882 (Transfer of Property Act), s. 68 (b), (c).

Where a decree was obtained by a landholder for cancelment of a deed whereby an occupancy-holding was mortgaged with possession, and the mortgagee consequently failed to obtain possession, and brought a suit against the mortgagor to recover the mortgage money, —*held* that inasmuch as the mortgagor must have known that he was mortgaging an estate not legally transferable, while the mortgagee might have believed that the estate was transferable, the act of the former was a default depriving the latter of his security, within the meaning of s. 68 (b) of the Transfer of Property Act (IV of 1882), and the mortgagee was, therefore, entitled to succeed.

THE facts of this case were as follows:—On the 16th February, 1885, the defendant, Musammat Sujhari Kuar, executed in favour of the plaintiff, Ganesh Singh, a deed whereby she mortgaged a cultivatory holding of 26 bighas 19 biswas 4 dhurs in consideration of Rs. 599. Under this deed the plaintiff was entitled to possession of the mortgaged property. Shortly after execution of the deed, however, a suit was brought by Madho Prasad, one of the zamindars of the village, for cancelment of the deed, on the ground that the defendant was his occupancy tenant of the mortgaged property, and that the mortgage was, therefore, contrary to the provisions of s. 9 of the N.-W. P. Rent Act (XII of 1881). On the 8th June, 1885, the zamindar obtained a decree in that suit. Being unable,

* Second Appeal, No. 1101 of 1886, from a decree of J. M. C. Steinbelt, Esq., District Judge of Azamgarh, dated the 11th March, 1886, confirming a decree of Babu Nihal Chandra, Munsif of Azamgarh, dated the 9th November, 1885.

1887

GANESH
SINGH
v.
SUSHARI
KUMAR.

consequently, to obtain possession under the mortgage deed, the plaintiff brought the present suit to recover the money which he had advanced to the defendant, with interest. -

The Court of first instance (Munsif of Azamgarh) dismissed the suit upon grounds not material to this report. On appeal by the plaintiff, the lower appellate Court dismissed the appeal, on the ground that, "before bringing the suit, the plaintiff should have asked the defendant if she could mortgage other property or give him other security for his money : Act IV of 1882, s. 68, cl. (c). If the defendant should be unable to give the plaintiff other security, then the plaintiff might bring a suit to recover his money."

The plaintiff appealed to the High Court.

The Hon. *T. Conlan* and Mr. *W. M. Colvin*, for the appellant.

Mr. *C. Ross Alston*, Munshi *Hanuman Prasad*, and Munshi *Kashi Prasad*, for the respondent.

BRODHURST and TYRELL, JJ.—The respondent in this case gave the appellant a mortgage upon a cultivatory holding. It turned out that that cultivatory holding was of the non-transferable kind referred to in s. 9 of the N.-W. P. Rent Act. The respondent was in consequence unable to give possession to the appellant, and he has therefore brought this suit to recover his money. He has been defeated upon the ground that s. 68, cl. (c), of Act IV of 1882, made it obligatory upon him to require the respondent to give him another sufficient security for his debt, a step which admittedly he has not taken. The Courts below accordingly dismissed the appellant's claim.

In second appeal it is argued that clause (b) of the above section contains the law applicable to the circumstances of this case, because the mortgagee has been deprived of the whole of his security in consequence of the default of the mortgagor. This contention must prevail. It is unquestionable that the mortgagor is in default, and the only plea urged here against the appellant is that he knew the law and was aware that the security he was taking was not transferable to him. Even if this consideration was sufficient to defeat his present claim, it is to be observed that it is not proved, or even asserted, that the appellant had this knowledge. While it

is certain that the respondent must have known that she was mortgaging an estate which was by law not transferable, the appellant may well have believed that her tenure was of a transferable character. The appeal is decreed, and the appellant's claim is decreed with costs in all the Courts.

1887

GANESH
SINGH
v.
SUSHARI
KUAR.

Appeal allowed.

Before Mr. Justice Mahmood.

1887
August 6.

JIIWA RAM SINGH (PLAINTIFF) v. BHOLA AND ANOTHER (DEFENDANTS) *

Small Cause Court suit—Suit for damages—Personal injury—Actual pecuniary damage—Act XI of 1865 (Small Cause Courts Act), s. 6—Suit instituted before commencement of Act IX of 1887 (Small Cause Courts Act)—Act IX of 1887, s. 3 (a).

* The plaintiff in a suit for damages laid at Rs. 200 claimed Rs. 50 on account of medical expenses caused by an assault committed on him by the defendants, Rs. 50 as the costs of a criminal prosecution which he had brought against them, and Rs. 100 for injury to his reputation and feelings.

Held that inasmuch as part of the claim related to alleged actual pecuniary damage resulting from an alleged personal injury, the whole suit was, with reference to s. 6, proviso (3), of the Mufassil Small Cause Courts Act (XI. of 1865), of the nature cognizable by a Court of Small Causes, and that, under s. 596 of the Civil Procedure Code, no second appeal in such suit would lie. *Gunga Narain Meytro v. Gudadhar Chowdhry* (1) referred to.

THE plaintiff in this suit claimed Rs. 200 as damages upon the following statement. He alleged that he had been assaulted by the defendants, who were his tenants; that his injuries had involved him in expenditure on account of medical treatment in hospital to the extent of Rs. 50; that he had also been put to the expense of a criminal prosecution against the defendants which had cost him Rs. 50, and he claimed another Rs. 100 on account of injury to his reputation and his feelings.

The Court of first instance (Munsif of Bulandshahr) decreed the claim on the first head to the extent of Rs. 10; on the second head to the full extent of Rs. 50; on the third head to the extent of Re. 1. On appeal by the defendants, the lower appellate Court disallowed the claims under the first two heads and gave the plaintiff

* Second Appeal, No. 1244 of 1886, from a decree of H. G. Pearse, Esq., District Judge of Meerut, dated the 27th April, 1886, modifying a decree of Moulvi Syed Ahmad Ali, Munsif of Bulandshahr, dated the 27th February, 1886.