

We have also to deal with a case in which the property in dispute, which is in the possession of the offspring of those parents was, according to the finding of the lower appellate Court, which we must accept, the self-acquired property of Khuman, after he had been outcasted, after he had left his family and his village and had started in another village to make a livelihood for himself, the woman who lived with him and their children. If we were trying this case as a Court of first instance, or as a Court of first appeal, we should come to the conclusion that Khuman, having lost his caste, had started a separate family altogether; separate, that is, in the sense of total and absolute separation from the family of his birth and his caste-fellows. We cannot find amongst the authorities and texts cited to us any sure principle to guide us in this case. Under these circumstances we must act on the principles of equity and good conscience, and decline to oust from the possession of the property acquired by Khuman his sons and their mother and the widow of the deceased son for the benefit of the vendee of brothers who were no parties to the acquisition of any portion of this property, and which was not acquired by any ancestor of theirs. This is a very peculiar case and the view we take of it might be absolutely inapplicable in other cases; but, holding the opinion which we do as to what good conscience dictates, in the present case we allow the appeal with costs, and dismiss the suit with costs.

Appeal allowed.

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

JWALA PRASAD (PLAINIFF) v. SALIG RAM (DEPENDANT).*

Jurisdiction—Civil and Revenue Courts—Appeal—Erroneous exercise of Jurisdiction by subordinate Court capable of being made a ground of appeal to the High Court.

Where the High Court is the Court of appeal from any particular subordinate Court, and that Court acts without jurisdiction in the trial of a suit or an appeal before it, the High Court has power as an appellate Court to set right the proceedings of such subordinate Court. *Kishna Ram v. Hingu Lal* (1) and *Tota Ram v. Ishur Das* (2) overruled.

* Appeal No. 1 of 1891 under Section 10 of the Letters Patent.

(1) I. L. R., 4, All, 237. (2) Weekly Notes, 1887, p. 76.

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RADHA
KISHEN
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RAJ KUMAR.

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JWALA
PRASAD
v.
SALIG RAM.

This was a suit to recover the sum of Rs. 81-3-0 as arrears of rent, brought by the plaintiff-respondent, against the defendant-appellant in the Court of the Deputy Collector of Etawah. No question of the rate of rent due was in issue. The Deputy Collector found that the defendant was the plaintiff's tenant and decreed his claim in full. The defendant then appealed to the District Judge, who entertained the appeal, and, reversing the decree of the Court of first instance, dismissed the plaintiff's suit. The plaintiff then appealed to the High Court. The case came before Young, J., who reversed the decree of the District Judge and restored that of the first Court. From this decree the defendant appealed under s. 10 of the Letters Patent.

Mr. J. Simeon, for the appellant.

Munshi Madho Prasad, for the respondent.

STRAIGHT, J.—This appeal relates to a suit for rent brought in the Court of the Deputy Collector of Etawah for a sum below the value of one hundred rupees. The first Court decreed the plaintiff's claim, on which the defendant preferred an appeal to the Court of the District Judge, who reversed the decision of the first Court and dismissed the plaintiff's suit. From that decree a second appeal was preferred to this Court, and, relating to a sum of less than one hundred rupees, it came before Mr. Justice Young. A preliminary objection was taken to the hearing of the appeal on the ground that as no appeal lay to the District Judge, *à fortiori* no appeal lay to this Court. That proposition had authority in cases to be found in *L. L. R.*, 4, All., 237 and *Weekly Notes* 1887 p. 76, to both of which I was a party, and there are other rulings of mine to a like effect. I have for some time past, after consultation with the rest of the Court, come to the conclusion that those rulings were erroneous, and that when this Court is the Court of appeal from a particular subordinate tribunal, and that subordinate tribunal acts without jurisdiction in the trial of a suit or an appeal, this Court has power in the form of an appeal to set right the proceedings of such subordinate tribunal.

This was the view Mr. Justice Young took of the preliminary objection in the present case, and, rejecting it, he allowed the appeal, reversed the judgment, and restored the decree of the first Court. The only point taken here is that Mr Justice Young was wrong on the question of jurisdiction. I think he was right and dismiss the appeal with costs.

EDGE, C. J.—I agree.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Straight.

QUEEN-EMPRESS *v.* BISHAMBAR LAL.

Criminal Procedure Code, ss. 133, 136, 140—Act XLV of 1860, s. 188—Disobedience to order duly promulgated by public servant.

A person against whom an order under s. 133 of the Code of Criminal Procedure is passed, who neglects to take any steps whatever in respect of such order within the time therein specified, either by way of compliance therewith or by way of objection thereto in the manner prescribed by law, renders himself liable to be proceeded against under s. 188 of the Indian Penal Code without its being necessary to wait until the order has been made absolute. If such order is made absolute under s. 140 of the Code of Criminal Procedure, further proceedings can then be had, under s. 188 of the Indian Penal Code, against the person disobeying the order absolute. When an order under s. 133 of the Code of Criminal Procedure has been made absolute under s. 140 *ib.* its validity cannot subsequently be questioned. *Queen-Empress v. Narayana* (1). approved.

THE facts of this case sufficiently appear from the judgment of Straight, J.

Mr. *Ross-Alston*, for the applicant.

The Government Pleader (*Munshi Ram Prasad*), for the Crown.

STRAIGHT, J.—The District Magistrate of Mirzapur made an order under s. 133 of the Criminal Procedure Code requiring the applicant, Bishambar Lal, to remove from a public thoroughfare certain stones that he had placed thereon in such a way as to cause an obstruction within a period named in such order, or to appear and show cause against the order, or apply for a jury to try whether the same was reasonable and proper. The petitioner did neither one

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JWALA
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SALIG RAM.

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