

There are, no doubt, very special and exceptional circumstances in which leave to appeal is granted in criminal cases, but it would be contrary to the practice of this Board, and very mischievous, if any countenance were given to the view that an appeal would be allowed in every case in which it could be shown that the learned Judge had misdirected the jury.

Petition rejected.

Solicitors for the petitioner:—Messrs. *Ranken Ford, Ford, and Chester.*

1893
IN THE MAT-
TER OF
MACCREA.

APPELLATE CIVIL.

1893
April 27.

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

UDIT NARAIN SINGH AND ANOTHER (DEFENDANTS) v. JHANDA (PLAINTIFF);*

*Civil Procedure Code, ss. 566, 567—Reference of issues for determination—
Transfer.*

Where an appellate Court has made an order of reference under s. 566 of the Code of Civil Procedure, the return to such order must be made to the same Court, and such Court is not competent to transfer the appeal for disposal elsewhere.

The plaintiff in this case sued in the Court of the Munsif of Mahaban to recover possession of certain immovable property from the defendants by redemption of a mortgage given by the plaintiff's predecessor in title. The defendants pleaded that the amount alleged by the plaintiff to be due on the mortgage was not correct; that they had been in adverse possession for more than 12 years; that the share to which the plaintiff was entitled was much less than that claimed, and that under the terms of the mortgage the suit was premature. The Munsif gave the plaintiff a decree for redemption of a $\frac{1}{4}$ th share of the property claimed on payment of a sum of Rs. 200-10-4 with interest. The defendants having appealed, the District Judge referred to the Court of first instance an issue as to whether it was a condition of the mortgage that profits were to be taken in lieu of interest, and directed the Court to take an

* Second Appeal No. 1290 of 1890, from a decree of Babu Ganga Saran, Subordinate Judge of Agra, dated the 20th September 1890, modifying a decree of Babu Raj Nath Prasad, Munsif of Mahaban, dated the 22nd January 1890.

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account of how much was in fact due by the mortgagor, plaintiff. While this reference was still pending in the Court of the Munsif, the District Judge transferred the appeal to the Court of the Subordinate Judge, and he, on return being made by the Munsif to the District Judge's order of reference, decreed the appeal and the plaintiff's suit as against the two principal defendants with costs.

From this decree the defendants appealed to the High Court.

Munshi *Madho Prasad*, for the appellants.

Mr. *D. Banerji*, for the respondent.

EDGE, C. J. and AIKMAN, J.—The District Judge acting under s. 566 of the Code of Civil Procedure referred to the Court of first instance certain issues for trial. Before the return to the order was made, the District Judge transferred the appeal to the Court of the Subordinate Judge. The only question which we need determine is whether the District Judge had under such circumstances power to make that order of transfer. We are of opinion that he had not. The last paragraph of s. 566 shows that the return is to be made to the appellate Court, that is, to the appellate Court which referred the issues for trial. By the first paragraph of s. 567 a memorandum of objections may be presented to the appellate Court and the last paragraph of s. 567 enacts that "after the expiration of the period fixed for presenting such memorandum the appellate Court shall proceed to determine the appeal." There again the appellate Court is the Court referred to in s. 566. It is a very wholesome principle that the Court which considered it necessary to refer issues for trial under s. 566 should be the Court to dispose of the case on the return. We set aside the order of transfer to the Subordinate Judge and the decree of the Subordinate Judge on appeal, and we direct the District Judge to restore the appeal to the file of pending appeals in his Court and to dispose of it according to law. Costs here and in the Court of the Subordinate Judge will abide the result.

Appeal decreed.