1885
January 14.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

SURTA AND OTHERS (PLAINTIFFS) *v.* GANGA AND OTHERS (DEFENDANTS)*

Civil Procedure Code, ss. 206, 622—*Order amending decree—High Court's powers of revision.*

A District Judge, by an order passed under s. 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say that he accepted the appeal, and that the decree as it stood failed to give effect to the judgment.

Per OLDFIELD, J.—That the order passed by the Judge under s. 206 could not be made the subject of revision by the High Court under s. 622 of the Civil Procedure Code, because there was an appeal from the amended decree, which became the decree in the suit, and superseded the original decree.

Per MAHMOOD, J.—That an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under s. 588. Also that, in saying that by "dismissed," his predecessor meant "decreed," the Judge had altered the decree in a manner not waranted by the terms of s. 206, that he had therefore exercised his jurisdiction "illegally and with material irregularity," within the meaning of s. 622 of the Code, and that the Court was consequently competent to revise his order.

Raghunath Das v. *Raj Kumar* (1) referred to.

THIS was an application by the plaintiffs in a suit for revision, under s. 622 of the Civil Procedure Code, of an order amending the appellate decree in the suit passed under s. 206 by the District Judge of Saháranpur. The terms of that order were as follow :—

"This application is made with regard to an order of my learned predecessor, Mr. Keene, on the 4th May, 1882, in appeal. The Munsif had given the plaintiffs a decree for a half share in the *chaupal* of a village. On appeal, the Judge held that the *chaupal* was common to the two *pattis*, and its court-yard with it, and that it must be held to be exempt from partition. The Munsif's order was entirely cancelled. But by an obvious error the Judge wrote, 'I therefore dismiss the appeal with costs,' when clearly what he meant to say was that he accepted the appeal, and cancelled the order of the lower Court with costs.....S. 206 seems especially applicable to a case of this kind, when the decree,

* Application No. 261 of 1884, for revision under s. 622 of the Civil Procedure Code of an order of C. W. P. Watts, Esq., District Judge of Saháranpur, dated the 10th June, 1884.

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by an oversight, is out of all harmony with the judgment. I accept this application, and order that the last clause of the appellate order do run thus—'I therefore accept the appeal, and cancel the Munsif's order with costs,' instead of—'I therefore dismiss this appeal with costs.'"

On the present application it was contended on behalf of the petitioners that s. 206 of the Civil Procedure Code did not authorize the alteration of the decree of the 4th May, 1882, in the manner shown.

Pandit *Ajudhia Nath* and Munshi *Kashi Prasad*, for the applicants.

Babu *Ram Das Chakarbati* and Munshi *Ram Prasad*, for the defendants.

OLDFIELD, J.—In my opinion, there is no power to entertain this reference under s. 622 for the reasons I have given in the similar case of *Raghunath Das* v. *Raj Kumar* (1). There is, in my opinion, an appeal from the amended decree, and consequently s. 622 has no application. The amended decree becomes the decree in the suit and supersedes the original decree. If, instead of applying under s. 622, the party had instituted an appeal from the decree as amended, I cannot think he could be met by the plea that there was no appeal, and if this is so, his proper cause is by way of appeal. S. 540 allows an appeal from every decree or from any part of them, and the decree as amended becomes, in my opinion, the decree in the suit. It is not the decree as it stood before amendment that can be considered the decree in the suit, but the decree after amendment, and there cannot be two decrees at one and the same time in the same suit.

I would, on the above grounds, dismiss this application. I shall make no order as to costs.

MAHMOOD, J.—I regret that, for the second time on a question of this nature, my brother Oldfield and I are unable to arrive at the same conclusion. I need not say much on the subject, because in the recent case of *Raghunath Das* v. *Rajkumar* (1) I explained my reasons for thinking that an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate

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from that concluded by a decree under the Code passed after the parties had been heard and evidence taken. The order in the present case then is a separate adjudication, and is not appealable under s. 588. So that the only question which we have to consider is, whether the matter is one of which we can take cognizance in revision under s. 622. To decide this the following facts must be borne in mind :—

The plaintiffs' claim for a share in certain property was decreed by the Munsif of Deoband on the 31st October, 1881. The defendants appealed to Mr. H. G. Keene, at that time District Judge of Saháranpur, who, on the 4th May, 1882, passed a decree, in which he clearly said that he dismissed the appeal with costs. No appeal from this decree was filed, though I should say that a second appeal would lie, under s. 584 of the Code. But on the 10th June, 1884, the defendants filed an application, purporting to be one under s. 206 of the Civil Procedure Code, to Mr. Watts, who had succeeded Mr. Keene as Judge of Saháranpur, praying him to amend the decree by substituting the word "decreed" for "dismissed." Of course there could be no question here of an "arithmetical" error in the decree, so that it was probably said that there was a "clerical" error. Mr. Watts was asked to interfere under the last paragraph of s. 206 of the Civil Procedure Code.

Now in my judgment in *Raghunath Das* v. *Raj Kumar* (1), to which I have already referred, I anticipated the very difficulty which arises here if we cannot interfere in revision with the order passed by Mr. Watts. I observed that a "Court which goes beyond what is warranted by the last paragraph of s. 206 may practically be altering the nature of the decree. If such a course were allowed, any Judge, who (as sometimes happens) took an erroneous view of his own judgment, might say, 'I meant so and so by my judgment on this point and on that,' and thus might make alterations going far beyond merely clerical or arithmetical corrections." That anticipation has actually been realized in the present case. Not only have we here the case of a Judge who undertakes to say what his predecessor meant, but he goes so far as to say that by "dismissed" his predecessor meant "decreed!"

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I do not consider that Mr. Watts has correctly interpreted the language used by Mr. Keene, or that the decree of the latter failed to give effect to his judgment. I am therefore of opinion that Mr. Watts has exercised his jurisdiction "illegally and with material irregularity," within the meaning of s. 622 of the Civil Procedure Code, and that the Court is therefore competent to revise his order. I would allow the application, and, without interfering with the decree of the 4th May, 1882, set aside the order of the 10th June, 1884.

FULL BENCH.

1885
January 17.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Oldfield, Mr. Justice Brodhurst, Mr. Justice Mahmood, and Mr. Justice Duthoit.

QUEEN-EMPRESS v. PERSHAD AND OTHERS.

Act XLV of 1860 (*Penal Code*), *s.* 71—*Criminal Procedure Code, ss.* 39, 235—*Rioting, grievous hurt, and hurt—Punishment for more than one of several offences—Powers of Magistrate of first class conferred on Magistrate of second class during trial—Power to sentence as first class Magistrate—Charge, alteration of.*

On the 8th August, 1884, a Magistrate of the second class began an inquiry in a case in which several persons were accused of rioting and of voluntarily causing grievous hurt. On the 6th September, the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and, on the 10th September, convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s. 148 of the Penal Code, held that the sentences passed by the Magistrate were illegal, as being inconsistent with the provisions of s. 71, paragraphs 2 and 4; and he accordingly reduced the sentences to imprisonment which the Magistrate had passed to the maximum of imprisonment which the Magistrate could have inflicted under s. 148.

Held by the Full Bench (PETHERAM, C. J., and BRODHURST, J., dissenting) that the sentences passed by the Magistrate were legal.

Per OLDFIELD, MAHMOOD, and DUTHOIT, JJ., that, with reference to the terms of s. 39 of the Criminal Procedure Code, a Magistrate of the second class who has begun a trial as such and continued it in the same capacity up to the passing of sentence, and who, prior to passing sentence, has been invested with the powers of a Magistrate of the first class, is competent to pass sentence in the case as a Magistrate of the first class.