

1885

PHULCHAND

MILLER.

The District Judge in the event gave the plaintiff a decree against the firm of Phulchand-Makhan Lal for Rs. 1,198, the value of the goods, and dismissed the suit as against the other defendants.

The defendants against whom the suit was decreed appealed to the High Court.

Munshi *Sukh Ram*, for the appellants.

The *Junior Government Pleader* (Babu *Dwarkanath Banarji*) and Mr. *E. C. H. Greenway*, for the respondent.

The Court (PETHERAM, C.J., and BRODHURST, J.) delivered the following judgment:—

PETHERAM, C.J.—We think that this appeal must be dismissed. The question is, whether a transaction between certain insolvents, or persons who shortly afterwards were adjudicated insolvents, and one of their creditors, is void. The answer to this question depends on what are the proper inferences to be drawn from the facts. The facts are, that on the 12th March the insolvents suspended payment. On the night of the previous day, the 11th March, the creditor, the impending bankruptcy of the insolvents having become known, urged the latter to make over a part of their stock-in-trade as security for the debt, and to this the insolvents consented. Now, was this a voluntary transfer? because if it were, it is void under s. 24 of 11 and 12 Vic., c. 21. All that appears is, that on the 11th March security was demanded from the insolvents. There was no pressure which could not be resisted. There were no legal proceedings against the insolvents existing, nor could they have feared any, as they must have known that on the following day they would stop payment. Under these circumstances, we are of opinion that the transfer was a voluntary one.

Appeal dismissed.

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

BANDHU NAIK (PLAINTIFF) v. LAKHI KUAR AND ANOTHER (DEFENDANTS).*

Transfer of suit—Civil Procedure Code, s. 25—Court to which suit is transferred deciding suit on evidence taken by Court from which suit is transferred.

Where the trial of a suit was commenced by a Subordinate Judge, and then transferred by the District Judge to his own file under s. 25 of the Civil Procedure

* First Appeal No. 114 of 1884, from a decree of G. J. Nicholls, Esq., Officiating District Judge of Azamgarh, dated the 27th June, 1884.

1885

January 14.

Code, and the latter did not re-take the evidence, but dealt with the case as it came to him from the Subordinate Judge, and dismissed the suit,—*held* that the District Judge had not “tried” the case within the meaning of s. 25 of the Code.

THE plaintiff in this case claimed Rs. 30, the price of a bullock sold and delivered to one Raja Ram, represented in the suit by the defendants. The trial of the suit was commenced by the Subordinate Judge of Azamgarh, and after he had taken evidence, the District Judge of Azamgarh transferred the suit to his own file, under s. 25 of the Civil Procedure Code. The District Judge did not retake the evidence, but dealt with the case as it came to him from the Subordinate Judge. He found that the sale of the bullock was not proved, and dismissed the suit. The plaintiff appealed to the High Court.

Munshi *Kashi Prasad*, for the appellant.

Munshi *Sukh Ram*, for the respondents.

The Court (PETHERAM, C.J., and BRODHURST, J.) delivered the following judgment:—

PETHERAM, C. J.—We think that the appeal must be allowed, and the suit tried again. The question is, whether it has been tried. The trial was commenced by the Subordinate Judge, and the suit was then transferred by the District Judge to his own file under s. 25 of the Civil Procedure Code. By that section the District Judge had power to transfer and try it. But inasmuch as the evidence was not taken before the District Judge, we do not think that he has *tried* the case. The decree must be set aside, and the case remanded to the Court which has cognizance of suits of the nature of the present one for trial on the merits.

Appeal allowed.

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

AZIMAN BIBI AND ANOTHER (PLAINTIFFS) v. AMIR ALI AND OTHERS
(DEFENDANTS)*.

Pre-emption—Mortgage by conditional sale—Wajib-ul-arz—“Transfer”—Act IV of 1882 (Transfer of Property Act), s. 58 ^{1/2} *ing*

A clause in the *wajib-ul-arz* of a village gave a right of pre-emption in respect of “transfer” by the sharers of their rights and interests by sale and mortgage.

* Second Appeal No. 35 of 1884, from a decree of Rai Raghunath Sahai, Subordinate Judge of Gorakhpur, dated the 27th August, 1883, reversing a decree of Muhammad Hafiz Rahim, Munsif of Bausgaon, dated the 23th June, 1883.

1885

BANDHU
NAIK
v.
LAKHI KUAR.

1885

January 15.