

and the suit was dismissed only on the ground of limitation, that is, on the ground that Jai Kunwar's right to bring the suit was barred by lapse of time.

For the above reasons I concur with my learned colleague in making the decree proposed by him.

Appeal decreed.

FULL BENCH.

*Before Mr. Justice Know, Acting Chief Justice, Mr. Justice Blair
and Mr. Justice Burkitt.*

RAHMAT ALI KHAN (DEFENDANT) v. ABDULLAH (PLAINTIFF).*

*Act No. XII of 1887 (Bengal Civil Courts Act), section 10—Jurisdiction—
Act No. XII of 1881 (N.-W. P. Rent Act), section 189—Powers of
Subordinate Judge in charge of the office of the District Judge—
Revenue Court appeal.*

Held that a Subordinate Judge in temporary charge, under section 10 of Act No. XII of 1887, of the office of the District Judge, is competent to take up and decide Revenue Court appeals which may be pending on the file of the District Judge.

THE suit out of which this appeal arose was brought in the Court of an Assistant Collector under clause 2 of section 86 of the North-Western Provinces Rent Act for compensation on account of damage sustained by certain crops which had been distrained by the defendant. The amount claimed as compensation was Rs. 145-3-2. The Assistant Collector dismissed the suit. The plaintiff appealed to the District Judge. At the time that the appeal came on for hearing the District Judge was not at head-quarters (Saharanpur), but had gone to Dehra to hold Sessions. Under these circumstances the Subordinate Judge of Saharanpur was, by virtue of section 10 of the Bengal Civil Courts' Act, in charge of the office of the District Judge. The Subordinate Judge, finding the appeal on the District Judge's list for hearing, took it up and disposed of it, decreeing the appeal and allowing the plaintiff's claim to the extent of Rs. 120. From this decree the defendant appealed to the High Court, and his principal ground of appeal was that the Subordinate Judge had no jurisdiction to decide the appeal.

* Second Appeal No. 553 of 1899, from a decree of Babu Prag Das, Subordinate Judge of Saharanpur, dated the 8th May 1899, modifying a decree of A. T. Holme, Esq., Assistant Collector of the 1st class, dated the 17th May 1898.

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Mr. *Abdul Raoof* appeared in support of the appeal, and Mr. *A. E. Ryves* for the respondent. The arguments on both sides will be found set forth in the judgment of the Court.

On the 20th May the judgment of the Full Bench was delivered by KNOX, ACTING CHIEF JUSTICE:—

This second appeal is from a decree passed by the Subordinate Judge of Saharanpur. The case before the Subordinate Judge was itself an appeal from the Court of the Assistant Collector of Roorkee. It was an appeal under section 189 of Act No. XII of 1881. Ordinarily such an appeal can never be heard by anyone but a District Judge; the uniform practice, as far as we know, for years has been that such an appeal is always heard and determined by the District Judge.

The Subordinate Judge felt it necessary to enter in his judgment some explanation as to why he was so eager to seize upon and to determine this appeal. The explanation he gives is as follows:—"I may add here that this rent appeal had been fixed by the District Judge for to-day. He is gone to Dehra to hold his Sessions. I am in charge of his office under section 10 of the Civil Courts Act, and the appeal came to me with the other work of the District Judge, and I have decided it."

The first plea taken in appeal before us is, that the learned Subordinate Judge had no jurisdiction to decide the appeal, and consequently the decree passed by him is illegal.

The decision of this plea rests upon the true intent and meaning of the words used in section 10, clause (2) of Act No. XII of 1887 (Bengal, N.-W. P., and Assam Civil Courts Act). It is provided in this section that in the event, amongst other things, of the absence of the District Judge from the place at which his Court is held, the senior Subordinate Judge present thereat shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge. While in charge of the office of the District Judge he may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge. The plea before us was supported on two lines; the first being that the words of this section import no delegation of any judicial power to the Subordinate Judge under the circumstances mentioned; and secondly, that if those words did import

such delegation, they did not and could not refer to the hearing and determination of an appeal preferred under the special jurisdiction conferred on the District Judge by section 189 of the Rent Act.

As regards the first line of argument, it is, first, in conflict with the distinct words used in the paragraph of the section above quoted. Reference to the words used shows that they are words of the widest conceivable import, and they are used without any words of limitation whatever, and evidently in the expectation that any limitation necessary would be provided by rules framed by the High Court. Moreover, we have considered the whole of the Act, and fail to find in it, outside this section, any indication of any intention to place any limitation upon the ordinary meaning of the words above cited, *i.e.*, of the words "any of the powers of the District Judge." This view is further confirmed by a consideration of the corresponding section in Act No. VI of 1871, the Act which preceded and which is replaced in the Statute Book by Act No. XII of 1887. The corresponding section in Act No. VI of 1871 is section 8; it provided that upon a similar state of circumstances the senior Subordinate Judge should, without relinquishing his ordinary duties, assume the charge of the office of the District Judge, and discharge such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes, and the like functions. Before Act No. XII of 1887 found its place in the Statute Book, a draft Bill was published in the Gazette; that draft extended somewhat the very limited powers conferred by Act No. VI of 1871. For some reason, with which we are not acquainted, that draft, so far as this section is concerned, was not accepted by the Legislature, and the result was that the Act as it now appears found its way on to the Statute Book. From the facts above stated we infer that when the amendment of Act No. VI of 1871 was before the Select Committee, their intention, as evinced by the draft, was to diminish the limitation imposed by the existing Act; while by the Act which was passed all limitations were withdrawn, and a full delegation of all powers, judicial or otherwise, of the District Judge was substituted for the restricted powers up till then enjoyed by Subordinate Judges. If any

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limitation was to be imported, it was left to the High Court to take the necessary action. The first line of argument fails.

The second line of argument is still weaker. If this argument were sound, we should have to hold that a District Judge, hearing an appeal under section 189 of Act No. XII of 1881, is not a District Judge within the meaning of Act No. XII of 1887; this we cannot do. The hearing of such appeals is one of the powers of the District Judge, and, in our opinion, one of the powers which under section 10 of Act No. XII of 1887, the Subordinate Judge may lawfully exercise under circumstances stated in that section. It has been repeatedly held by this Court that the decisions of District Judges on appeals made to them under the Rent Act, and answers made by them on references under that Act, are decisions of, and answers by, a Civil Court to a Revenue Court. In our opinion the second line of argument also fails.

There remains the second ground of appeal, namely, that "the application to withdraw the previous suit under section 373 of the Code of Civil Procedure having been refused, the present suit is barred and cannot be entertained." As to this, it is sufficient to say that it should have been raised in the lower appellate Court as a bar to the hearing; it was not so raised, and we now decline to entertain it.

We dismiss the appeal with costs. In our opinion it would have been far better if the learned Subordinate Judge had abstained from exercising any sort of jurisdiction over the class of appeals which are not ordinarily cognizable by him, and of which he has no experience; so far as we can ascertain, there was no immediate urgency, and he would have done better if he had let it lie over until the District Judge's return.

Appeal dismissed.