

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.*

1906  
August 14.

LACHMI NARAIN (DEFENDANT) v. NIROTAM DAS AND ANOTHER  
(PLAINTIFFS).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), sections 176, 177 and 182—  
Appeal—Jurisdiction.*

*Held* that no third appeal will lie to the High Court from a decree of the District Judge passed in appeal from an appellate decree of the Collector under the provisions of the Agra Tenancy Act, 1901. *Lachmi Narain v. Nirotam Das* (1) followed.

THIS was a suit brought to recover arrears of rent in the Court of an Assistant Collector. The plaintiffs obtained a decree. The defendant preferred an appeal to the Collector under the provisions of section 176 of the Agra Tenancy Act, 1901. On this appeal the Collector affirmed the decree of the Assistant Collector. A second appeal was then preferred to the District Judge under section 180 of the Act with the result that the District Judge affirmed the decrees of the Courts below. The defendant thereupon appealed to the High Court. When the appeal came on for hearing a preliminary objection was taken that under the provisions of the Tenancy Act no third appeal lay under the circumstances to the High Court.

Babu *Jogindro Nath Mukerji*, for the appellant.

Mr. *M. L. Agarwala* (for whom *Babu Sital Prasad Ghose*), for the respondents.

STANLEY, C.J., and BURKITT, J.—The hearing of this appeal was referred by our brother Aikman to a Bench of two Judges, inasmuch as he had some doubt as to the propriety of the decision of our brother Richards in the unreported case of *Lachmi Narain v. Nirotam Das* (Second Appeal No. 256 of 1905, decided on the 3rd of July of the present year).† The question arises under these circumstances: Nirotam Das sued for arrears of rent in the Court of an Assistant Collector of the second class and obtained a decree. An appeal was preferred to the Collector under the provisions of section 176 of the North-Western Provinces Tenancy Act, Act II of 1901. On appeal the Collector

\* Second Appeal No. 275 of 1905, from a decree of Saiyid Muhammad Ali, District Judge of Mirzapur, dated the 12th of January 1905, confirming a decree of the Collector of Mirzapur, dated the 6th of September 1904.

(1) Weekly Notes, 1906, p. 251.

† Since reported, Weekly Notes, 1908, page 251,

1906

LACHMI  
NARAIN  
v.  
NIROTAM  
DAS.

confirmed the decree of the Assistant Collector. A second appeal was preferred to the District Judge under section 180 of the Act, with the result that he also confirmed the decrees of the Courts below. Now an appeal from the decision of the District Judge has been preferred to this Court, and a preliminary objection is raised to the hearing of the appeal, namely, that no third appeal lies to this Court. The language of section 182 is as follows:—"A second appeal shall lie to the High Court from the decree in appeal of a District Judge in accordance with the provisions of Chapter XLII of the Code of Civil Procedure. It is contended on behalf of the appellants that the words "second appeal" as used in this section include a "third appeal" and that therefore the appellants are entitled to appeal to this Court. We are of opinion that this contention is not sound. The Legislature has used a word in the section which is clear and unequivocal, namely, "second," and we do not think we should be justified in giving to that word "second" a meaning which it does not possess, namely, "third." We must remember that an appeal is the creation of Statute, and no person is entitled to appeal unless the right to do so has been expressly given by Statute. We think that the expression "second appeal," as used in this section, is obviously of limited significance and does not include third appeals. It will be noticed that in the latter part of the section the words used are "from the decree in appeal of a District Judge" not "from the decree in appeal or second appeal of a District Judge." Under the Act, in cases which come before an Assistant Collector of the second class, an appeal is allowed first to the Collector and then to the District Judge. So in the case in which a suit which comes in the first instance before an Assistant Collector of the first class an appeal is given by section 177 to the District Judge and under section 182 to the High Court. We think that section 182 was intended to meet, and was confined to, suits which were instituted in the Court of an Assistant Collector of the first class or of a Collector, and was not intended to embrace suits instituted before an Assistant Collector of the second class, most of which are very petty in their nature; for example, there is involved in this appeal the sum of Rs. 5 odd only. We agree in the view which was taken by our brother Richards in the case to

which we have referred. We may point out that when the Legislature gave permission to institute a third appeal in an Act which was passed two days after Act No. II of 1901, namely, Act No. III of 1901, they used the expression "third appeal." We refer to section 213 of the Land Revenue Act. For these reasons we allow the preliminary objection and dismiss the appeal with costs.

*Appeal dismissed.*

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice  
Sir George Knox.*

RAJ KISHORE (PLAINTIFF) v. DURGA CHARAN LAI, AND OTHERS  
(DEFENDANTS).\*

*Hindu law—Hindu widow—Effect of relinquishment of estate by widow in  
favour of the present reversioners.*

A Hindu widow in possession of a widow's estate in property of her deceased husband, a separated and childless Hindu, relinquished possession thereof to two persons who at the time were the next reversioners, they agreeing to pay her a maintenance allowance; but it did not appear that she intended to make them, if she could, full owners of the property, although certain incorrect recitals in the agreement entered into by the widow, when she gave possession of the property, might have lent colour to this suggestion. Both the persons thus put into possession predeceased the widow. *Held* that the nearest reversionary heir to the widow's late husband was entitled to succeed on the death of the widow.

*Quere* whether in those Provinces a Hindu widow can accelerate the estate of the heir by conveying absolutely and destroying her life estate? *Behari Lal v. Madho Lal Ahir Gaya* (1) and *Ramphal Rai v. Tula Kaari* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

The Hon'ble Pandit *Sundar Lal* and *Munshi Mangal Prasad Bhargava*, for the appellant.

Messrs. *A. E. Ryves*, and *W. Wallach*, and *Munshi Haribans Sahai*, for the respondents.

STANLEY, C.J., and KNOX, J.—The plaintiff appellant during the course of the hearing of this appeal abandoned his

1906

LACHMI  
NABAIN  
vs.  
NITOTAM  
DAS.

1906  
August 14.

\* Second Appeal No. 957 of 1904, from a decree of *Lala Baijnath, Rai Bahadur*, District Judge of Jaunpur, dated the 16th of June 1904, reversing a decree of *Maulvi Syed Zainul-abdin*, Subordinate Judge of Jaunpur, dated the 18th of March 1904.

(1) (1891) I. L. R., 19 Calc., 236.

(2) (1883) I. L. R., 6 All., 116.