entry is not inconsistent with the finding that both brothers were joint.

The third plea refers to certain decisions in suits with which the present litigation has nothing to do. It is alleged that in one at least of these suits it was held that the brothers were joint.

The learned vakil for the appellant contends that the lower appellate Court ought to have found whether the debt was contracted for a family necessity. It seems to me that the Court did intend to hold that the debt was incurred for the purposes of the family, but there was no express finding because in the memorandum of appeal to the lower appellate Court no plea was taken to that effect. The appeal, in my opinion, has no force, and the findings of the Court below are fatal to it. I dismiss the appeal with costs.

Appeal dismissed.

Before Sir George Knox, Acting Chief Justice, and Mr. Justice Richards.

GENDA (DEFENDANT) *v.* SUKH NATH RAI (PLAINTIFF) AND RAI SINGH (DEFENDANT).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 177, 199, 200—*Question of proprietary title—Appeal—Civil and Revenue Courts—Jurisdiction.*

When a Revenue Court, under the powers conferred on it by section 199 of the Agra Tenancy Act, 1901, decides a question of proprietary title it becomes for the moment a Civil Court; an appeal lies at the instance of either party to the District Judge, and if such an appeal is wrongly preferred to and decided by a Commissioner, such decision will have no effect in preventing the Revenue Court's decree from becoming final.

THIS was a suit to recover possession of land, and also for an injunction restraining the defendants from interfering with the possession of the plaintiff. The plaintiff's case was that the defendants had been his tenants, that they had been duly ejected and had retaken possession. One of the defendants appeared and pleaded that the possession was possession as owners, and that they were not and had never been the tenants of the plaintiff *quoad* the land in dispute. It appears that in a suit in the

* Second Appeal No. 263 of 1906, from a decree of G. C. Badhwar, Additional Judge of Saharanpur, dated the 18th of December 1905, reversing a decree of Murari Lal, Munsif of Saharanpur, dated the 18th of September 1905.

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Revenue Court between the same parties the defendants had pleaded that they were proprietors and not tenants. The Assistant Collector on the 19th of January 1903 gave a decree for possession deciding the question of proprietary title himself against the defendants. There was an appeal to the Commissioner, who reversed the finding of the Assistant Collector. The Court of first instance (Mūnsif of Saharanpur) held that, the Commissioner having no jurisdiction under the circumstances to entertain an appeal from the decision of the Assistant Collector, that decision was final and accordingly dismissed the plaintiff's suit. On appeal by the plaintiff the Additional District Judge reversed the decree of the Munsif and passed a decree in favour of the plaintiff. From this decree the answering defendant appealed to the High Court.

Maulvi *Muhammad Ishaq*, for the appellant.

Babu *Durga Charan Banerji* (for whom Munshi *Gokul Prasad*), for the respondent.

KNOX, ACTING C.J and RICHARDS, J.—This was a suit to recover possession of land, and also for an injunction restraining the defendant from interfering with the possession of the plaintiffs. The plaintiff's case was that the defendant had been his tenant, that the latter had been duly ejected and had retaken possession. The defendant pleaded that his possession was the possession of an owner, and that he was not and had never been the tenant of the plaintiff *quoad* the land in dispute. It appears that in a suit in the Revenue Court between the same parties the defendant had pleaded that he was a proprietor and not a tenant. The Assistant Collector on the 19th of January 1903 gave a decree for possession deciding the question of proprietary title himself against the defendant. There was an appeal to the Commissioner, who reversed the finding of the Assistant Collector. It is quite clear that if the Commissioner had any jurisdiction to entertain the appeal, his decision is binding on the parties and that the plaintiff cannot succeed in the present suit. On the other hand, if the decision of the Commissioner was made absolutely without jurisdiction, and if the decree of the 19th of January 1903 was made by a Court of competent jurisdiction and never set aside on appeal by a Court competent to set it aside, the decree of the 19th

January 1903 must bind the parties. It then becomes necessary to decide the question as to whether or not the Commissioner had jurisdiction to entertain the appeal from the decree of the 19th January 1903. The defendant contends that the Commissioner had no jurisdiction. Section 177 of the Agra Tenancy Act, 1901, provides for appeals to the District Judge in a number of cases, and amongst others, clause (*c*), in all suits in which a question of proprietary title has been in issue in the Court of first instance and is a matter in issue in appeal. Now it is quite clear that in the present case a question of proprietary title was in issue before the Assistant Collector and was also a matter in issue in appeal. *Primâ facie*, therefore, it would appear that an appeal lay to the District Judge and not to the Commissioner. We think that it was clearly the intention of the Legislature that in cases where a question of proprietary title arises, the ultimate decision of the case should rest with the Civil Court, and not with the Courts of Revenue. It is argued, however, that section 179 provides that an appeal shall lie to the Commissioner from all suits included in group C of the fourth schedule to the Act. Now the suit in which the decree of the 19th January 1903 was made was clearly included (at the time of its institution) in group C, and the argument is that, notwithstanding the provisions of section 177, to which we have referred, the appeal did lie to the Commissioner. The section is no doubt somewhat ambiguous. A reference to section 199 makes the matter fairly clear. That section provides that if in any suit filed in the Revenue Court against a person who is alleged to be the plaintiff's tenant, the defendant pleads proprietary right, the Revenue Court is either to require the defendant to go to the Civil Court, as provided by clause (*a*), or to determine the question itself, as provided by clause (*b*). It must be assumed that in the suit before the Assistant Collector, the latter decided to determine the question himself which in fact he did do when he gave the decree of the 19th January 1903. Clause (3), section 199, then provides that when the Court decides the question of proprietary title, it shall follow the procedure laid down in the Code of Civil Procedure. Section 200 provides how the District Judge or the High Court are to deal with appeals from the Revenue Court where a question of

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title has been determined by that Court. In our judgment when the Assistant Collector decided to determine the question of title himself, the suit ceased to be a suit included in group C, and the Revenue Court for the purposes of that suit ceased to be a Revenue Court in the strict sense of the word and became for the moment a Civil Court competent to try the question of proprietary title, with a right of appeal by either party to the District Judge. The result is that we allow the appeal, set aside the decree of the lower appellate Court and restore that of the Court of first instance. As we think that the defendant ought to have raised the question of jurisdiction of the Commissioner when the appeal was taken from the Assistant Collector to him, we make no order as to costs.

Appeal decreed.

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May 31.

Before Sir George Knox, Acting Chief Justice, and Mr. Justice Richards.

HANSRAJ PAL (PLAINTIFF) *v.* MUKHRAJI KUNWAR AND OTHERS (APPLICANTS) AND DALPAT PAL AND OTHERS (DEFENDANTS). *

Civil Procedure Code, section 232—*Decree for possession of immovable property—Sale of property decreed—Right to execute decree.*

If a decree-holder holding a decree for possession of immovable property sells a portion of such property, the sale does not, without express provision to that effect give the purchaser any right to execute the decree himself. *Ram Sahai* v. *Gaya* (1) referred to.

IN this case one Hansraj Pal having obtained a decree for the possession of certain immovable property sold a portion of the property so decreed, but did not execute any assignment of the decree. The vendees made an application under section 232 of the Code of Civil Procedure contending that the effect of the sale deed was to transfer to them a right to execute the decree to the extent of the property comprised therein. The Court to which this application was made (Subordinate Judge of Gorakhpur) refused the application. On appeal, the District Judge held that section 232 of the Code, did apply under the circumstances and that the applicants were entitled to execute the decree in the manner asked for, and accordingly set aside the order of the first Court and remanded the case under section 562 of

* First Appeal No. 82 of 1906, from an order of R. L. H. Clarke, District Judge of Gorakhpur, dated the 23rd of May 1906.

(1) (1884) I. L. R., 7 All., 107.