1910

RAM SAHAI v. MUSAMMAT AHMADI BEGAM.

present Code. The learned counsel for appellant referred us to the case of *Rangasami Pillai* v. *Krishna Pillai* (1). That case has been overruled by the later Full Bench ruling of the same court in *Thrikaikat Madathil Raman* v. *Thiruthiyil Krishnan Nair* (2). This last ruling is clearly against the appellant and supports the view of our learned colleague. We dismiss the appeal with costs.

Appeal dismissed.

1910

December 5.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

BISHAMBHAR NATH (DEFENDANT) *v.* GADDAR (PLAINTIFF).*

Execution of decree—Attachment—Property under wrongful attachment stolen by bailiff—Liability of attaching decree-holder—Small Cause Court—Act No. IX of 1887 *(Provincial Small Cause Courts Act), schedule II, article* 35 *(j)—Jurisdiction.*

Where crops of a third party had been wrongfully attached by a decree-holder as those of his judgement-debtor, and, while so attached, were stolen by the *shahna* (or bailiff, in whose custody they were, it was *held* that the decree holder was responsible to the owner for their value; also that a suit by the owner against the decree-holder to recover the value of the crops and damages was not a suit cognizable by a Court of Small Causes. *Goma Mahad Patil* v. *Gokaldas Khimji* (3) followed. *Musamat Subjan Bibi* v. *Sheikh Sariatulla* (4) not followed. *Kisori Mohun Roy* v. *Harsukh Das* (5) referred to.

THIS was an appeal under section 10 of the Letters Patent from a judgement of GRIFFIN, J. The facts of the case appear from the judgement under appeal, which was as follows:—

"The defendant, who is appellant in this court, in execution of a decree held by him against one Tula Ram, attached, as the property of his judgement-debtor, the crops of the plaintiff Gaddar. The plaintiff filed an objection against the attachment. His objection was allowed and the attachment was removed. While the property was under attachment and in the custody of the *shahna* (or temporary bailiff) of the court, most of the attached crops disappeared. The *shahna* was prosecuted and found guilty under section 403, I. P. C., and sentenced to imprisonment. The plaintiff has instituted the present suit to recover a sum of Rs. 457-8-0, which is made up of two items, namely, Rs. 417-8-0, the value of the crops which disappeared while under attachment and Rs. 40 as damages for the wrongful act of the defendant. The court of first instance decreed the suit for Rs. 40, that is, for the damages claimed by the plaintiff, and dismiss-

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*Appeal No. 72 of 1910 under section 10 of the Letters Patent.

(1) (1883) I. L. R., 26 Mad., 259.
(2) (1906) I. L. R. 29 Mad., 153.
(3) (1878) I. L. R., 3 Bom., 74.
(4) (1869) 3 B. L. R., A. J., 418.
(5) (1880) I. L. R., 7 Calc., 436.

1910

BISHAMBHAR NATH v. GADDAR.

ed the suit for the value of the attached crops on the ground that the plaintiff had failed to prove that it was the defendant who removed them. On appeal by the plaintiff the lower appellate court held that it was immaterial whether it was the defendant who had removed the crops or not As he was a trespasser and had wrongfully attached the crops, he was responsible for the value, no matter who stole them. The learned District Judge found that the value of the crops was Rs. 92-8- 0 and gave the plaintiff a decree for that amount in addition to Rs. 40, decreed by the court of first instance. The defendant comes here in second appeal. A preliminary objection is raised that no appeal lies. It is contended on behalf of the plaintiff respondent that the suit was one of a nature cognizable by a Court of Small Causes, and, the value being below Rs. 500, no second appeal lies. I was referred to various rulings by the learned advocates of both the parties, but it appears to me on a reference to the plaint itself that the suit is not one cognizable by a Court of Small Causes. So far as it is a suit for damages, it is clearly excepted from the cognizance of a Court of Small Causes, *vide* schedule II of the Provincial Small Cause Courts Act, clause 35 (*j*). As to whether the defendant appellant can be held liable for the value of the crops or not, the ruling relied on by the court below in the case of *Goma Mahad Patil* v. *Gokaldas Khimji* (1) is a direct authority for the view taken by the learned District Judge. The facts of that case are on all fours with those of the case before me. On behalf of the appellant I am referred to the Privy Council decision in the case of *Kissori Mohan Roy* v. *Harsukh Das* (2), in which it was held that where the plaintiff's property was wrongfully attached by the defendant, the plaintiff was entitled to recover from the defendant the difference in the market value of the goods at the time of the attachment and their price when they were sold. The concluding portion of the judgement is relied on in support of the contention advanced on behalf of the appellant that he can only be held liable for the natural and necessary consequence of his act. It may be conceded that the theft or disappearance of the plaintiff's crops while under attachment was not in any sense the consequence of the wrongful attachment by the defendant. The fact remains that the plaintiff has suffered a loss for which he is entitled to compensation. His crops were wrongfully attached by the defendant appellant. He is entitled to get back his crops or their value if the crops themselves are not available. The plaintiff had a complete cause of action at the date of the wrongful attachment, and his right to the relief he was entitled to was not impaired by subsequent occurrences for which he was not responsible. In the case *Kissori Mohan Roy* v. *Harsukh Das*, referred to above, their Lordships of the Privy Council held that the plaintiffs are entitled to recover the value of the property wrongfully attached as it stood at the date of the defendant's unlawful act. The principle to be deduced from that ruling is that the plaintiff is entitled to be restored to the *statu quo ante* the illegal act of the defendant. As to the ruling reported in 3 B. L. R., p. 16, quoted on behalf of the appellant, it appears that the learned Judges who decided it were largely influenced by the English law on the subject, as held in the case of *Walker* v. *Olding*. Their Lordships of the Privy Council held in *Kissori Mohan* v. *Harsukh* that the rule of law laid down in *Walker* v. *Olding* does not apply to India. This being the state of authority

(1) (1878) I. L. R., 3 Bom., 74. (2) (1889) I. L. R., 17 Calc., 435.

1910

BISHAMBHAR NATH v. GADDAR.

on the question to be decided in this case, I prefer to follow the decision of the Bombay High Court in *Goma Mahad Patil* v. *Gokuldas Khimji*, which is directly in point. I dismiss the appeal with costs."

The defendant appealed.

Dr. *Tej Bahadur Sapru*, for the appellant:—

Only such damages as flowed naturally from the wrongful act of the appellant could be assessed against him. That doctrine applied to cases of torts as well as of contracts; *Hadley* v. *Baxendale* (1). Reference was also made to *Mayne on Damages*, 7th ed., 49, 438, *Mussamat Subjan Bibi* v. *Sheikh Sariatullah* (2) and *Kissori Mohan Roy* v. *Harsukh Das* (3). It would not be in the contemplation of parties that the very man in whose custody they were would steal them.

Maulvi *Muhammad Ishaq*, for the respondent, was not called on.

STANLEY, C. J. and BANERJI, J:—We are of opinion that the view taken by our learned colleague is correct. It is based on the ruling in *Goma Mahad Patil* v. *Gokul Das Khimji* (4), with which ruling we agree. The cases which have been relied upon by the learned advocate for the appellant appear to us to be distinguishable. The correctness of the decision in the case of *Goma Mahad Patil* v. *Gokuldas Khimji* has never, so far as we are aware, been questioned. We dismiss the appeal with costs.

Appeal dismissed.

1910
December 12.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

ZIA-UD-DIN AND ANOTHER (PLAINTIFFS) v. MUHAMMAD UMAR AND OTHERS (DEFENDANTS.)*

Landlord and tenant—Co-owners—Receipt for rent collusively given to tenant by one co-owner—Right of the others to sue tenant and remaining co-owner for rent.

W and others were co-owners of a shop which was let to U. The other co-owners, suspecting W's good faith, gave notice to U forbidding him to pay rent to W. They then commenced proceedings for partition of the shop. Subsequently W executed in favour of U a receipt for arrears of rent and for a further

*Second Appeal No. 332 of 1910, from a decree of W. H. Webb, District Judge of Bareilly, dated the 26th of January 1910, reversing a decree of Giraj Kishore Datt, Subordinate Judge of Bareilly, dated the 29th of June, 1908.

(1) 9 Exch., 341.
(2) (1869) 3 B. L. R., 413.
(3) (1889) I. L. R., 17 Calc., 436.
(4) (1878) I. L. R., 3 Bom., 74.