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unusual procedure. He might therefore very well have been able to remember whether or not he administered an oath to each witness. Having regard to the care with which he seems to have tried the case, I do not think it at all likely that he, a magistrate of the first class, would omit to administer the oath before recording a witness's deposition. I would also refer the learned Judge to section 13 of the Indian Oaths Act.

The third ground is that the finding of the small packet of cocaine is most suspicious. This is a question of fact, and after examining the record carefully I am not in agreement with the learned Sessions Judge.

The fourth ground taken is that the search was not conducted in accordance with law. This is based on the finding that one of the search witnesses remained outside the shop while the other stood at the threshold while the search was being conducted. I see nothing improper in this, having regard to section 103 of the Code of Criminal Procedure. The shop apparently was quite a small one and I have no doubt that the witnesses could see perfectly well what was going on, in fact perhaps better than if they had gone inside. In my opinion the trial was properly conducted and the conclusion arrived at by the Magistrate was right. I decline to interfere. Let the record be returned.

Record returned.

FULL BENCH.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.

NAND RAM (DEFENDANT) v. CHOTE LAL AND ANOTHER (PLAINTIFFS).*

Act (Local) No. 1 of 1900 (United Provinces Municipalities Act), section 187 (1)(h)—Municipal election—Rules framed by the Local Government for regulation of elections—Validity of rules—Petition against successful candidate—Appeal.

Held (1) that the provisions of section 187 of the United Provinces Municipalities Act which gave power to the Local Government to make rules "generally for regulating all elections under the Act," were wide enough to include rules for the filing and decision of election petitions; and (2) that no

* Second Appeal No. 242 of 1913, from a decree of F. S. Tabor, District Judge of Shahjahanpur, dated the 13th of February 1913, confirming a decree of Priya Nath Ghose, Munsif of Shahjahanpur, dated the 16th of September, 1912.

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appeal lies from the order of a "competent court" passed on an election petition under rule 42 of the rules framed by the Local Government under section 187 (1), clause (h) of the Act. *Khunni Lal v. Raghunandan Prasad* (1) followed. *Sundar Lal v. Muhammad Faig* (2) approved.

THIS was a petition asking for a declaration that the election of one Babu Nand Ram to the Municipal Board of Shahjahanpur was invalid. The Munsif before whom the petition was filed declared the election to be invalid. The defendant preferred an appeal to the District Judge, who held that no appeal lay from the Munsif's order and dismissed the appeal. The defendant thereupon appealed to the High Court. The case came up before the Hon'ble Chief Justice and Mr. Justice Tudball who made the following orders and referred the case to a Full Bench.

RICHARDS, C. J.—This appeal arises out of a municipal election petition. The petition came before the Munsif of Shahjahanpur, who declared the election to be invalid. An appeal was preferred to the learned District Judge, who held that no appeal lay and dismissed the appeal on this ground.

Under section 187 of the Municipalities Act, I of 1900, the Local Government have power to make rules in the manner therein prescribed for various matters connected with municipal elections. Clause (h) is as follows:—"Generally for regulating all elections under this Act." In pursuance of the powers conferred or supposed to have been conferred under the section, the Local Government made the following rule:—"The validity of an election made in accordance with these rules shall not be questioned except by petition presented to a competent court within fifteen days after the day upon which the election was held by a person or persons enrolled in the Municipal electoral roll." When the draft rules were published the words were "presented to a District Magistrate" instead of "to a competent court." The question, therefore before us is whether, assuming the rule to have been duly made under section 187 of the Municipalities Act, an appeal lies. In the case of *Khunni Lal v. Raghunandan Prasad* (1) a Bench of this Court held that no appeal lay in a municipal election petition. It is quite obvious that if an appeal does lie, there can be in all municipal election cases at least one appeal, and in all cases where the petitioner goes in the first instance to the Munsif there can be two appeals. In almost all cases this would mean that the parties would be involved and the time of the court taken up in more or less useless litigation, because by the time the matter was finally decided the term of the election might easily have expired. Great confusion might also arise having regard to the provisions of Rule 42 and Rule 43. It seems to me that, whatever our decision on the question raised in the present appeal ought to be, the Government ought to seriously consider an amendment to Rule 42, by laying down in clear language the tribunal intended to try election petitions and prescribing such rights of appeal, if any, as are intended to be given. I feel,

(1) (1913) I. L. R., 35 All., 460. (2) (1912) 16 Oudh Cases, 36.

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however, that our decision upon the present question might possibly decide important questions of principle arising perhaps under totally different circumstances. I therefore think that the present appeal ought to be referred to a larger Bench.

TUDBALL, J.—I fully agree with the learned Chief Justice that the case does involve certain questions of principle which are of considerable importance and a decision on the point by a larger Bench is a necessity in the case. I therefore agree in the order proposed.

The case coming on before the full Bench.

Babu *Purushottam Das Tandan* (with whom Dr. *Satish Chandra Banerji*), for the appellant, contended that, even if there were no rules framed by the Government in that behalf, under the common law a suit would lie to set aside an election, and wherever a suit was allowed there was an appeal allowed also under the rules of procedure prescribed for the Civil Courts. The rules made by the Government, in regard to elections, which took away a right of appeal, militated against the common law and were therefore *ultra vires*. Section 187 of the Municipalities Act conferred powers on the Government to frame rules for the conduct of elections only up to the election stage and not beyond that. There was no statutory provision taking away the jurisdiction of the Civil Court. Every election petition was in effect a suit. A decree had been passed against the appellant and there must be some remedy provided to set it aside. Assuming that the rules were not *ultra vires*, there was an appeal allowed from the decree made by the Munsif. The Civil Procedure Code allowed an appeal from every decree and the order passed by the first court was in the nature of a decree. The court that exercised jurisdiction in such cases was a Civil Court. The Munsif was a Civil Court and a competent court. The word petition had been used in the rules, but no difference between a suit and petition appeared to have been intended. What was to be taken into consideration was the nature of the relief claimed and not merely the words used. The order of the Munsif was a final adjudication and was therefore a decree. Against a decree an appeal was allowed. The object of Rule 42 was to cut short the period of limitation and not to make any difference between a suit and a petition.

Munshi *Gobind Prasad* (with him Munshi *Lachmi Narain*) was not heard in reply.

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RICHARDS, C. J., BANERJI and TUDBALL, J. J. :—This appeal arises out of an election for the municipality of Shahjahanpur. It appears that Lala Nand Ram was a candidate for election and was declared duly elected. Chote Lal and Lachmi Narain presented a petition, under rule 42 of the election rules framed by the Local Government, in the Munsif's court. The result of the petition was that the election of Lala Nand Ram was declared void. Nand Ram, thereupon, presented an appeal to the District Judge. The District Judge held that he had no jurisdiction and dismissed the appeal. Nand Ram has now appealed to this Court.

It is argued on his behalf, first, that the rules framed by the Local Government are *ultra vires*; and, secondly, that even if these rules are valid, the order of the Munsif was a "decree" from which an appeal lay to the District Judge. Section 187 of the Municipalities Act, I of 1900, provides that the Local Government may frame forms for any proceeding of a "Board for which it considers that a form should be provided and may after previous publication make rules consistent with the Act and applicable to all Municipalities." Clause (h) provides for the making of rules "generally for regulating all elections under the Act." The contention of Nand Ram is that the powers of the Government are confined to making rules regulating matters up to election, but that for matters arising after the election there is no power conferred by the Act upon the Local Government to make rules. In our opinion, although the clause is not very happily expressed, the words used are wide enough to permit of the Local Government framing rules connected with elections, whether before or after the counting of votes and declaration of the poll, and that it was within the power of the Government to frame rules providing for the decision of questions relating to the validity of municipal elections. In pursuance of the powers conferred by section 187 the Local Government framed the following rule :—
 "The validity of an election made in accordance with these rules shall not be questioned except by a petition presented to a competent court, within fifteen days after the day on which the election was held, by a person or persons enrolled in the municipal election roll." Clause (2) of this rule is as follows :—"If the election be declared void, the person whose election was questioned

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shall, as from the date of the decision of the court trying the petition, vacate his office as member of the Board, and shall, if the court which tried the petition so direct, be disqualified for any period not exceeding five years from being elected as member of the Board." This rule is very vague and unsatisfactory. To refer the parties to a "competent court," without giving any definition of that tribunal, was certainly calculated to create great confusion and uncertainty, as also was the omission to provide expressly that the decision of the tribunal should be final. We are glad to say that the Government contemplate an alteration of the rules, which in our opinion is very much needed. Giving the best construction we can to this rule, we consider that it was intended to provide that the validity of municipal elections should only be tested by an election petition presented to one tribunal, and that the decision of that tribunal should be final. The same view has been taken by a Bench of this Court in the case of *Khunni Lal v. Raghunandan Prasad* (1). The Second Additional Judicial Commissioner of Oudh took a similar view in the case of *Sundar Lal v. Muhammad Faiq* (2). If this view be correct (and on the whole we think it is) then the decision of the Munsif was final and no appeal lay to the lower appellate court, and the appeal was properly dismissed. We dismiss the appeal. We direct the parties to bear their own costs.

Appeal dismissed.

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Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.

SURANJAN SINGH AND ANOTHER (PLAINTIFFS) v. RAM BAHAL LAL AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), sections 2, 104, 148—Pre-emption—Decree in pre-emption suit fixing time for payment—Order extending time—Appeal—"Decree"—"Order."

Held that section 143 of the Code of Civil Procedure (1908) does not entitle the court to extend the time fixed by the decree for payment of the purchase money in pre-emption cases.

Held also, that an order made under section 148 of the Code of Civil procedure (1908) is not a decree within the meaning of section 2 of the Code, nor is it appealable as an order under section 104. *Rahima v. Nepal Rai* (3) distinguished.

* Appeal No. 27 of 1913 under section 10 of the Letters Patent.

(1) (1913) I. L. R., 35 All., 450. (2) (1912) 16 Oudh Cases, 36.

(3) (1892) I. L. R., 14 All., 520.