

BY THE COURT.—We allow the appeal of the transferee with costs, but amend the decree of the court below by making a decree for money against Musammat Subhadra with costs.

*Appeal allowed.*

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PARAM HANS  
v.  
RANDEER  
SINGH.

## MISCELLANEOUS CIVIL.

*Before Mr. Justice Walsh and Mr. Justice Sundar Lal.*

GANGA PRASAD (PETITIONER) v. HAR NARAIN (OPPOSITE PARTY)\*

1916  
May, 11.

*Act (Local) No. II of 1901 (Agra Tenancy Act), sections 58 and 177 (e) — Suit for ejectment—Question of proprietary title—Appeal—Jurisdiction.*

In a suit for ejectment under section 58 of the Tenancy Act, the defendant denied the plaintiff's title and set up another man as his landlord. The court of first instance decreed the claim.

*Held*, that an appeal from this decision lay to the District Judge under section 177 (e) of the Act, inasmuch as the question of the plaintiff's proprietary title was put in issue in the court of first instance and was a matter in issue in the appeal.

THE facts of this case are fully set forth in the judgement of the Court.

The petitioner was not represented.

Munshi *Lakshmi Narain*, for the opposite party.

SUNDAR LAL, J.—This is a reference under section 195 of Act II of 1901 (United Provinces), made by the District Judge of Budaun, under the following circumstances:—

The plaintiff Har Narain avers that he is the zamindar and owner of two plots of land Nos.  $\frac{1}{2}$ <sup>7</sup> and  $\frac{5}{3}$ <sup>2</sup> in patti Muhammad Ali in *mahal* Altaf Husain of mauza Ganaur of which the defendant Inderman is a non-occupancy tenant under the plaintiff. He sues for the ejectment of the said defendant under section 58 of Act II of 1901 (United Provinces). The second defendant to the suit is one Ganga Prasad *alias* Gangola, who, according to the plaint, is colluding with defendant No. 1 and has been put in possession of the said land by the defendant No. 1. Under section 64 of the Agra Tenancy Act (II of 1901), in all suits for ejectment any person in possession claiming through the tenant may be joined as a party to the suit. Ganga Prasad *alias*

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Gangola was therefore properly made a party to the suit on the allegations made in the plaint.

Inderman filed a written statement disclaiming all interest as a tenant in the land in suit. The second defendant Ganga Prasad, *alias* Gangola, has defended the suit on the ground that he is in possession of plot No.  $\frac{4}{2}$  as a tenant of one Sheo Prasad (who is alleged to be the real zamindar and owner of the land), under a registered lease, dated the 27th of April, 1914, granted by Sheo Prasad aforesaid for a term of nine years. As to the other plot (No.  $\frac{5}{3}$ ), the defendant alleges that it is in the possession of Sheo Prasad aforesaid. It is not clear what exact interest Sheo Prasad had in the land, but it appears that in 1914, the plaintiff Har Narain had sued Inderman and Sheo Prasad for the recovery of rent due to him from the defendant Inderman. That suit was decreed in appeal by the Collector by a judgement, dated the 24th of July, 1914. Sheo Prasad's pretensions to the land seem to have been disregarded by the Collector. It was during the pendency of that suit that the lease relied upon by the defendant was granted by Sheo Prasad. The court of first instance in this case has held that the plaintiff was the real owner of the land in suit and that Inderman was a tenant of the plaintiff. It has decreed the claim.

The defendant Ganga Prasad, *alias* Gangola, preferred an appeal against the said decree in so far as it relates to plot no.  $\frac{4}{2}$ . The appeal was in the first instance filed by him in the court of the Commissioner. That officer, however, returned the memorandum of appeal for presentation to the proper court on the ground that no appeal lay to him. The defendant then filed the memorandum of appeal in the court of the District Judge, who is of opinion that the appeal really lay to the Commissioner and not to him, but in view of the fact that the Commissioner has already refused to entertain the appeal for want of jurisdiction the learned Judge has made this reference to this Court for the determination of the question to which court the appeal lies in law.

The suit is really one under section 58 of the Agra Tenancy Act, and falls in Group "C" of the Fourth Schedule to that Act. Under section 179 of the said Act, an appeal lies to the

Commissioner from the decree of the Assistant Collector unless by some other section of the Act an appeal is given in any case to another court. Section 177 of the Act gives an appeal to the court of the District Judge "in all suits in which (e) a question of proprietary title has been at issue in the court of first instance and is a matter in issue in the appeal." The defence of Ganga Prasad, *alias* Gangola, in the suit is that the plaintiff is not the owner of the land in suit, but one Sheo Prasad under whom the defendants claim. The question of plaintiff's proprietary title to the land was thus put in issue in the court of first instance and is a matter in issue in the appeal. In the case of the *Maharaja of Benares v. Baldeo Prasad* (1), the tenant in a suit for the assessment of rent denied the title of the plaintiff to the land in suit in that case and urged that the Maharaja of Benares was the real owner of the land. The Maharaja was added as a defendant to the suit. The court of first instance decided in favour of the plaintiff. The Maharaja appealed against the said decree to the court of the District Judge, who allowed the appeal. On appeal to this Court Mr. Justice GRIFFIN held that no appeal lay to the District Judge. On appeal under the Letters Patent, the learned Chief Justice Sir JOHN STANLEY and Mr. Justice BANERJI held that under section 177 (e) of the Agra Tenancy Act, the appeal to the District Judge was rightly preferred by the Maharaja. The point referred to us is concluded by the decision in this case. There is another case reported at page 1198 of the seventh volume of the Allahabad Law Journal, which takes the same view and points out that section 198 of Act II of 1901, does not apply to the circumstances of this case, but the learned Judge has distinguished that case on the ground that the person whose title was set up by the defendant was made a party to the suit, and it therefore became possible to adjudicate upon the question of proprietary title against the said person. In this case Sheo Prasad is certainly not made party to the suit, and any adjudication made in this case on the question of the proprietary title to the land in suit would not be binding upon him. It would, however, all the same be binding upon the second defendant who has raised

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the question and a final decision as against him can be made in this case. The second defendant, who was not the tenant of the plaintiff, was competent in law to deny the plaintiff's title and the court was bound to adjudicate upon the question thus raised by him. The ruling of the Board of Revenue in the case of *Adya Saran Singh v. Thakur* (1), in our opinion correctly lays down the law upon this point. Our reply to the reference is that an appeal lies to the court of the District Judge, who is directed to entertain the appeal and proceed to hear and dispose of the same according to law. The costs of the reference will be costs in the cause.

WALSH, J.—I agree.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Walsh.*

EMPEROR v. SHAMBHU NATH AND OTHERS.\*

1916  
 May, 12.

*Security for keeping the peace—Criminal Procedure Code, section 107—Nature and quantum of evidence necessary before passing order for security.*

There must be definite evidence in the case of any and every person charged under section 107 of the Code of Criminal Procedure, that there is danger of a breach of the peace by him. It is clearly insufficient against a collective body of persons to suggest that they are indulging in feelings of hostility towards another body of persons. *Queen-Empress v. Abdul Kadir* (2) referred to.

Mr. *Nehal Chand* and Babu *Baleshri Prasad*, for the applicants.

Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

The facts of this case are fully set forth in the judgement of the Court.

WALSH, J.—In this case I am content to rest my judgement on the decision in *Queen-Empress v. Abdul Kadir* (2). There must be definite evidence in the case of any and every person charged under this section that there is a danger of a breach of the peace by him. It is clearly insufficient against a collective body of persons to suggest that

\* Criminal Revision No. 217 of 1916, from an order of Austin Kendall, Sessions Judge of Cawnpore, dated the 18th of December, 1915.

(1) 81 I. C., 853.

(2) (1885) I. L. R., 9 All., 452.