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has power at any time for sufficient reasons to be recorded in writing to cancel any bond for keeping the peace provided that the bond be one given in obedience to an order of a court in his district not superior to his court. In the present case the magistrate who passed the order was a magistrate subordinate to the District Magistrate, and I agree entirely with what was said in the concluding sentence of this Court's judgment in *Banarsi Das v. Partab Singh* (1), thus far, namely:—"The matter is one concerning the peace of the district, and I think it advisable in the circumstances of the case that the record should be placed before the present District Magistrate so that he may examine it himself and see whether or not it is any longer necessary to keep the opposite party under his bond." I see nothing in the words contained in section 125 of the Code of Criminal Procedure to prevent the District Magistrate from cancelling the bond for reasons other than that the persons bound over can be released without hazard to the community or any other person. Where a Code gives a particular court jurisdiction to act, it has been held by this Court on several occasions that it is that court which should be applied to and not this Court. I decline to interfere, but direct that the record be laid before the District Magistrate in order that he may, if he thinks fit, deal with it under section 125 of the Code of Criminal Procedure.

*Order upheld.*

## REVISIONAL CIVIL.

*Before Mr. Justice Muhammad Rafiq.*

DRIGPAL SINGH (PLAINTIFF) v. KUNJAL (DEFENDANT). \*

*Act No IX of 1887 (Provincial Small Cause Courts Act), Schedule II, Article 31—Suit for mesne profits of a grove—Jurisdiction.*

*Held* that a suit for recovery of mesne profits of a grove from which the plaintiff had been wrongfully dispossessed is a suit the cognizance of which by a Court of Small Causes is barred by article 31 of schedule II, to the Provincial Small Cause Courts Act, 1887. *Pravadi Lal v. Imdad Husen* (2) distinguished. *Sheo Bodh v. Surjan* (3) followed.

THE plaintiff instituted in the Court of Small Causes a suit for the recovery of Rs. 60 on account of the wrongful use of his

\* Civil Revision No. 194 of 1917.

(1) (1912) I. L. R., 95 All., 103. (2) Weekly Notes, 1898, p. 10.

(3) (1913) 11 A. L. J., 293.

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land by the defendant, who had wrongfully taken possession of it and cultivated it. The Judge returned the plaint for presentation to the proper court holding that the case fell within article 31 of the second schedule of the Provincial Small Cause Courts Act. The plaintiff applied to the High Court in revision.

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Munshi *Purushotam Das Tandon*, for the applicant, contended that the suit was cognizable by the Small Cause Court. The case is on all fours with the case of *Kunjo Behary Singh v. Madhub Chundra Ghose* (1) in which it was set out in the plaint that the defendant had dispossessed the plaintiff and it was against the defendant in possession that mesne profits were claimed. This case has been consistently followed by later Calcutta cases. A suit to recover damages on account of the wrongful eviction of the plaintiff from immovable property is not a suit falling within article 31 of the second schedule of Act IX of 1887, though the profits of the property may be the measure of the damages claimed; *Prasadi Lal v. Imdad Husen* (2). This is a Division Bench ruling of this Court and follows the Calcutta Full Bench case. A later ruling of our Court is certainly against my contention, but in that case it does not appear that either of the two cases cited above were cited. Moreover, it is a single Judge case; *Sheo Bodh v. Surjan* (3).

Munshi *Mangal Prasad Bhargava*, for the respondent, was not called upon.

MUHAMMAD RAFIQ, J. :—This is an application in revision from the order of the Small Cause Court at Fatehpur returning the plaint to be presented to the proper court. It appears that the plaintiff applicant sued to recover mesne profits of a grove from which he said he had been wrongfully kept out of possession for three years by the opposite party. The learned Judge considered that the claim of the applicant fell under article 31, schedule II, of the Small Cause Courts Act, and was not therefore cognizable by him. He accordingly returned the plaint for presentation to the proper court. He is supported in the view of the law he has taken by a case of this Court *viz.*, *Sheo Bodh v. Surjan* (3), as

(1) (1896) I. L. R., 23 Calc., 884. (2) Weekly Notes, 1898, p. 10.

(3) (1913) 11 A. L. J., 238.

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also by several cases of the Bombay, and the Madras High Courts. For the applicant reliance is placed on the Full Bench Ruling of *Kunjo Behary Singh v. Madhub Chundra Ghose* (1). The view taken by the Calcutta High Court seems to have been adopted by this Court about eighteen years ago in the case of *Prasadi Lal v. Imdad Husen* (2). The facts of that case are not quite the same as those of the present case. In the case of *Prasadi Lal v. Imdad Husen* (2), the plaintiff had sued for damages for wrongful eviction. In the present case the plaintiff is suing for the mesne profits of the property from which he was kept out of possession for three years. The case of *Prasadi Lal* does not apply to the present case. The application fails and is dismissed with costs. Let the original plaint be returned.

*Application rejected.*

## REVISIONAL CRIMINAL.

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*Before Mr. Justice Tudball.*  
EMPEROR v. RAM SAHAI\*

*Criminal Procedure Code, sections 499 and 476—Revision—Jurisdiction of High Court—Order for prosecution passed by District Magistrate instead of by Collector acting as a Court of Revenue.*

The Collector of a district in deciding a Revenue appeal came to the conclusion that a receipt filed in the case was not genuine. He took no action at the time as a Court of Revenue, but subsequently acting as District Magistrate he held an inquiry into the matter of the receipt and sent the person whom he thought to be concerned with the making of the receipt to a subordinate magistrate for trial. *Held* that the High Court had jurisdiction to interfere in revision and that the order passed by the District Magistrate was *ultra vires*.

THE facts of this case were as follows :—

There was a *lambardari* case pending in appeal in the court of the Collector of Farrukhabad. The present applicant Ram Sahai had been appointed by a subordinate court as *lambardar* and the opposite party had appealed against the order. The opposite party pleaded that Ram Sahai was in debt, that his estate was burdened, and that he should not be

\*Criminal Revision No. 688 of 1917, from an order of O. L. Alexander, District Magistrate of Farrukhabad, dated the 11th of October, 1917.

(1) (1896) I. L. R., 28 Cal., 884, (2) Weekly Notes, 1898, p. 10.