

the parties. If the lower appellate court was inclined to think that the paper upon which the plaintiff pre-emptor relied evidenced a contract, and that that contract was still in force at the time that the disputed sale was made and the present suit instituted, the plaintiff pre-emptor should have been allowed to amend his plaint and the case should have been remanded for trial on the amended plaint. We, therefore, allow the appeal and modify the order of the court below to this extent that the case will go back to the first court for trial with permission to the plaintiff pre-emptor to amend his plaint, basing his claim on the ground of contract. The defendants vendees would, of course, be allowed to urge their defence to the new plea and to give evidence if they think it necessary. With this modification the order of the court below is affirmed. As to costs, we think the costs should abide the event.

Order modified.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

PANCHAYATI AKHARA MAHA NIRBANI (PLAINTIFF) v. THE
SECRETARY OF STATE FOR INDIA IN COUNCIL (DEPENDANT).*

*Suit against Secretary of State for India in Council—Cause of action—
Plaintiff deprived of goods by erroneous order of Magistrate.*

The plaintiff came into court on the following allegations: that he, being in lawful possession as pawnee of certain ornaments, had made over the same to the Court Inspector of Fyzabad, as they were required to be produced in a criminal case. Subsequently, however, the ornaments, instead of being returned to him, were made over by the court of the Pargana Officer at Fyzabad to the original owner, one Pashpat Nath. The plaintiff, therefore, sued the Secretary of State for India in Council for damages.

Held that the plaint disclosed no cause of action against the Secretary of State. *The Secretary of State for India in Council v. Sukhdeo* (1) followed.

THE facts of the case sufficiently appear from the judgment of the Court.

Dr. Kailas Nath Katju and Pandit Kashi Narain Malaviya, for the appellants.

Babu Lalit Mohan Banerji, for the respondent.

* Second Appeal No. 1086 of 1920, from a decree of B. J. Dalal, District Judge of Allahabad, dated the 1st of June, 1920, confirming a decree of Gauri Shankar Tewari, Officiating Subordinate Judge of Allahabad, dated the 19th of December, 1919.

(1) (1899) I. L. R., 21 All., 341.

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PANCHAYATI
AKHARA
MAHA
NIRBANI
v.
THE
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL.

MUHAMMAD RAFIQ and PIGGOTT, JJ. :—This was a suit for damages against the Secretary of State for India in Council. The plaintiff firm states that it was lawfully in possession as pawnee of certain ornaments; that it made them over to Gopal Ram, Court Inspector, Fyzabad, upon his stating that the production of the same “was necessary under an order of the Magistrate *in re King-Emperor v. Shambhu Dayal and Girdhari Lal* under section 420 of the Indian Penal Code, which was pending in the Criminal Court at Fyzabad.” Subsequently, according to the plaint, the ornaments in question were made over to their original owner, one Pashpat Nath, “by the court of the Pargana Officer” at Fyzabad. The criminal case in question had been tried by the court of the Assistant Sessions Judge of Fyzabad, and that was undoubtedly the proper court to pass orders regarding the disposal of property in respect of which the offence or offences set forth in the charge tried by it had been committed. The plaintiff firm very properly applied to the Assistant Sessions Judge for relief and obtained an order from that court directing Pashpat Nath to replace the ornaments in the possession of the court, or else to make good their value. This would of course have satisfied the plaintiff; but it so happened that Pashpat Nath was unable or unwilling to replace the ornaments and that he became insolvent, after only a trifling sum had been realized from him on account of their value. The plaint asserts that “the Criminal Court at Fyzabad showed negligence and slackness in realizing the remaining amount due from Pashpat Nath”; but admits that, once he had been “declared insolvent”, nothing more was to be realized from him.

It is clear, therefore, from the plaint that the acts or omissions by which the plaintiff alleges himself to have been damnified were perpetrated by :—

- (i) Gopal Ram, Court Inspector; Fyzabad.
- (ii) The Court of the Pargana Officer at Fyzabad.
- (iii) The Court of the Assistant Sessions Judge at the same place.
- (iv) The Criminal Court at Fyzabad, which may or may not be identical with the second or third of the above.

It is nowhere alleged in the plaint how any of these four was acting, under the alleged circumstances, as servant or agent of the Secretary of State for India in Council, or how the said defendant is liable for damage suffered through the act of any one of them. In short, the plaint discloses no cause of action against the Secretary of State for India in Council. The case is very much on all fours with *The Secretary of State for India in Council v Sukhdeo* (1); indeed the present plaintiff's position is much weaker than that of the plaintiff Sukhdeo.

The courts below have, however, inquired into the facts of this case. It has been proved that Gopal Ram, Court Inspector, obtained possession of the ornaments under a warrant lawfully, and very properly, issued by a court of competent jurisdiction; the plaintiff has no cause of action on this ground. The return of the ornaments to Pashpat Nath was effected under an order improperly passed by the Magistrate who had committed the criminal case for trial: the proper court, that of the Assistant Sessions Judge, did its best to rectify the mistake. These courts are not the servants or agents of the Secretary of State and he is not liable for damages if they make a mistake.

The suit has rightly been dismissed by both the courts below; we dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Lindsay.

GIRWAR LAL v. BANSIDHAR AND ANOTHER.*

Criminal Procedure Code, section 139—Public nuisance—Some of the jurors refusing to return a verdict at all—Procedure.

Where in the matter of an inquiry into an alleged public nuisance three out of the five jurors appointed under section 139 of the Code of Criminal Procedure refused to return any verdict at all, it was held that the Magistrate concerned was not justified in stopping the proceedings entirely, but he should have appointed a fresh jury.

* Criminal Reference No. 168 of 1922.

(1) (1899) I. L. R., 21 All., 341.

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