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receiver can establish that he has a present right to remove the opposite party from possession and custody of the mortgaged property.

The Division Bench, which had referred the question to the Full Bench, then passed the following order :

THOM and ALLSOP, JJ.:—This is an application in which the Court is prayed to appoint a receiver of the mortgaged property in suit. In view of the decision of the Full Bench, in which it was held that the Court had no jurisdiction to appoint a receiver to mortgaged properties in the circumstances which obtain in the present suit, this application is dismissed with costs.

## APPELLATE CIVIL

*Before Mr. Justice Bajpai*

UPPER DOAB SUGAR MILLS, LTD. (APPLICANT)  
v. DAULAT RAM (OPPOSITE-PARTY)\*

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March, 11

*Workmen's Compensation Act (VIII of 1923), sections 2(g) and 4(1)(C); schedule I—"Permanent partial disablement"—Index and middle fingers of right hand crushed and had to be amputated—Loss of use of the other fingers—Calculation of compensation.*

Having regard to the definition of "permanent partial disablement" in section 2(g) of the Workmen's Compensation Act, what the court has got to see is whether the earning capacity of the workman has been reduced in every employment which he was capable of undertaking at the time of the accident and not merely the particular employment in which he was engaged at the time of the accident resulting in the disablement. So, where a workman, employed as a blacksmith fitter, had the index and the middle fingers of his right hand crushed while on duty so that they had to be amputated, and the finding of the Commissioner was that he had become permanently incapable of performing the duties of a blacksmith fitter with that hand, it was held that the workman was not entitled to compensation

\*First Appeal No. 67 of 1935, from an order of N. C. Mehta, District Magistrate of Muzaffarnagar, dated the 19th of February, 1935.

calculated as for the loss of the thumb and all the fingers of the right hand, in accordance with section 4(1)C and schedule I of the Act, unless upon a further finding that there was a complete and permanent loss of the use of the thumb and the remaining fingers of the hand, which would be equivalent, according to the note to schedule I, to the loss of the thumb and the fingers.

Mr. *Basudeva Mukerji*, for the appellant.

Mr. *Ram Nama Prasad*, for the respondent.

BAJPAI, J.:—This is an appeal under section 30 of the Workmen's Compensation Act (Act VIII of 1923) against the order of the Commissioner of Labour awarding 50 per cent. of Rs.1,890 to Daulat Ram against the Upper Doab Sugar Mills, Ltd., Muzaffarnagar. The facts of the case are that Daulat Ram was employed as a blacksmith in the factory of the Sugar Mills and he lost the index and middle fingers of his right hand in an accident on the 14th of October, 1934. The compensation was awarded by the Commissioner for Workmen's Compensation under section 4 of the Act.

It was agreed between the parties that Rs.45 were the emoluments of Daulat Ram, fitter, including all perquisites, and it is clear that Rs.1,890 would be the correct figure under sub-section (1)B of section 4 in the case of permanent total disablement. The percentage has now got to be worked out under the provisions of schedule I, as this is a case of permanent partial disablement. The case for the Mills is that as the employee has lost his index finger he is entitled to 10 per cent. of Rs.1,890 and as he has lost one other finger he is further entitled to another 5 per cent. of Rs.1,890. The contention is that Daulat Ram should have been awarded 15 per cent. of Rs.1,890 as compensation and the Commissioner has erred in awarding 50 per cent. of Rs.1,890. The latter percentage has obviously been arrived at on the finding that Daulat Ram has lost the use of the right hand. Now in schedule I there is no provision for the loss of a hand, hand being commonly understood as the terminal

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part of the human arm beyond the wrist. In the schedule a provision is made for the loss of thumb and the loss of fingers. On the assumption therefore that Daulat Ram has lost the thumb as well as all the fingers of the right hand the percentage has been correctly assessed by the court below.

The court below refers to the evidence of the Civil Surgeon on the point which is as follows: "His right index and middle fingers crushed completely while on duty . . . necessitating their amputation. His right hand has become permanently disabled and he is incapable of performing his duties of a blacksmith fitter with that hand." The Commissioner for Workmen's Compensation then says: "I have myself examined the injured hand and am satisfied that the Civil Surgeon's report is absolutely correct in its conclusions regarding the loss of the use of the right hand." If this finding of the court below that Daulat Ram has lost the use of the right hand be not vitiated by some misdirection of law the decision appealed against would be quite correct and could not be challenged under section 30 of the Workmen's Compensation Act which provides that no appeal shall lie against any order passed under the Act unless a substantial question of law is involved in the appeal.

It is, however, said that there is a clear misdirection in the finding of the court below and the question of law that arises is not only of importance in connection with this particular case but has a general effect on a number of other cases. The argument is that although under the note to schedule I complete and permanent loss of the use of any limb or member referred to in the schedule shall be deemed to be the equivalent of the loss of that limb or member, yet the Civil Surgeon while considering the question of the loss of the use of any limb or member (the hand in the present case) paid undue attention to the fact as to whether by reason of the injury the employee was disabled from performing

his duties as a blacksmith fitter with the hand and not merely from performing them in connection with every employment which he was capable of undertaking at the time of the accident. It is said that the note of the Civil Surgeon amounts to this that the employee is incapable of performing his duties of a blacksmith fitter with the right hand and in that sense his right hand has become permanently disabled. It is then said that the finding of the court below that the Civil Surgeon's report is absolutely correct in its conclusions regarding the loss of the use of the right hand also amounts to this that that court is of the opinion that the employee is incapable of performing his duties of a blacksmith fitter with that hand and not that the right hand has become useless for all purposes. There is some force in this contention and I think that I should have a definite finding from the court below after I have explained what I consider to be the law on the subject.

The compensation is allowable to the opposite party in the present case under section 4, sub-clause (1)C. Permanent partial disablement has been defined in section 2(g) as meaning such disablement as reduces the earning capacity of a workman in every employment which he was capable of undertaking at the time of the accident. What therefore the court has got to see in the case of a permanent partial disablement is the fact as to whether the earning capacity of the workman has been reduced in every employment which he was capable of undertaking at the time of the accident and not merely the particular employment in which he was engaged at the time of the accident resulting in the disablement. It is, therefore, conceivable that although because of the loss of the index and the middle fingers the workman was disabled from performing his duties of a blacksmith fitter with his hand he has not been incapacitated from undertaking any other employment, and in that other employ-

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ment the rest of the hand, namely the thumb and the other two fingers, might well be utilised. This seems to be apparent also from schedule I as well. According to that the loss of thumb requires a compensation at the rate of 25 per cent., the index finger at the rate of 10 per cent. and the other fingers at the rate of 5 per cent. It is clear that the thumb and the index finger have peculiar values and the other fingers have lesser values and unless in the present case the thumb and the other fingers have also lost their use for the purpose of every employment which the opposite party was capable of undertaking at the time of the accident the compensation has been awarded at an exaggerated percentage. At the same time it may well be that the court below intended to find that there was a permanent loss of the use of the thumb and all the fingers for all practical purposes and in that event the order of the court below would be perfectly right. I must, therefore, have a clear finding on the following issue:

Has Daulat Ram lost completely and permanently the use of the thumb and the other fingers of the right hand as to reduce his earning capacity in every employment which he was capable of undertaking at the time of the accident?

Parties will be at liberty to produce evidence relevant to this issue. The court below is requested to return its finding within three months and on return the usual ten days will be allowed for objections.

BAJPAI, J.:—By my order, dated the 14th of October, 1935, I remitted an issue to the court below for a definite finding on the same. I was then of the opinion that the court below had probably misdirected itself on a question of law and that in any event it was necessary that there should be a clear finding in order to arrive at a correct decision. The court below has now returned its finding, and although no written objections have been taken, it has been argued by learned counsel for the appellant that on the evidence all that is clear

is that the workman cannot hold a small object with the right hand. On the entire evidence the Commissioner for Workmen's Compensation has come to the conclusion that the earning capacity of the workman in every employment which he was capable of undertaking at the time of the accident has been reduced to nothing and that the workman has lost completely and permanently the use of the thumb and the other fingers of the right hand. It is not possible for me to go behind this clear finding of fact, and, accepting the same, I dismiss this appeal with costs because the finding concludes the matter.

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*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Bennet*

MURLI AND OTHERS (DEFENDANTS) *v.* HANUMAN PRASAD  
AND ANOTHER (PLAINTIFFS)\*

1936  
March, 12

*Riparian owners—Natural rights of user in respect of natural streams—Reasonable and equitable user—Damming up the river for the purpose of a mill—Whether material injury caused thereby to a riparian owner higher up the stream in using it for his own mill—Question of degree—Suit for damages—Prescriptive rights and Natural rights, scope of—Easements Act (V of 1882), sections 7, illustration (h), 23 and 29, illustration (a).*

All that the law relating to the natural rights of riparian owners to use the water of a natural stream requires of a party, by or over whose land the stream passes, is that he should use the water in a reasonable manner, and so as not to destroy or render useless or materially diminish or affect the application of the water by the proprietors above or below him on the stream. He has a right to the use of it for any purpose, provided that he does not thereby interfere with the rights of other proprietors, either above or below him. Subject to this condition he may dam up the stream for the purpose of a mill, but not if he thereby interferes with the lawful use of the water by other proprietors and inflicts upon them a sensible injury. This principle has been adopted in section 7, illustration (h), of the Easements Act.

\*Appeal No. 71 of 1935, under section 10 of the Letters Patent.