

1939
 EMPEROR
 v.
 CHHADAMI

Tribes Act and therefore section 23 of the Act is not applicable. The applicant is an old man of about sixty and the property which he stole consisted of a pair of old shoes worth a few annas. Having regard to these circumstances we are of opinion that a sentence of one year's rigorous imprisonment will meet the ends of justice.

In the result we alter the conviction to a conviction under section 451 of the Indian Penal Code and we reduce the sentence to one year's rigorous imprisonment. In other respects this appeal is dismissed.

APPELLATE CIVIL

Before Justice Sir Edward Bennet and Mr. Justice Verma

SARDAR SINGH (OPPOSITE PARTY) v. CHHOTY LAL
 (PETITIONER)*

1939
 November, 30

District Boards Act (Local Act X of 1922), section 35C(1)—Question about validity of election of Chairman—Reference by Local Government to a District Judge for decision of the question—Persona designata—Not acting in his capacity as District Judge—No appeal lies from the decision—Bengal, Agra and Assam Civil Courts Act (XII of 1887), sections 3, 20.

No appeal lies from the decision by a District Judge of a question referred to him by the Local Government under section 35C(1) of the District Boards Act. In such cases the District Judge acts merely as a *persona designata* and not in his capacity of a District Judge.

Under section 20, read with section 3, of the Bengal, Agra and Assam Civil Courts Act an appeal can lie from the court of the District Judge, and not from the District Judge when not acting as a court.

Mr. *Shabd Saran*, for the appellant.

Mr. *Gopi Nath Kunzru*, for the respondent.

BENNET and VERMA, JJ.:—This is a first appeal from order brought by Chaudhri Sardar Singh against a decree of Mr. Hamilton passed on the 30th of March, 1937. Objection has been taken that no appeal lies to this Court. The appellant before us was elected as a Chair-

*First Appeal No. 167 of 1937, from an order of A. Hamilton, District Judge of Saharanpur, dated the 30th of March, 1937.

man of the District Board of Moradabad and the opposite party made an application against that election. Under section 35C of the U. P. District Boards Act of 1922 the Local Government appointed Mr. Hamilton to decide the matter. The point taken is that Mr. Hamilton was a *persona designata* and not a civil court under the Civil Courts Act, and as he was not a civil court no appeal lies to the High Court. On the other hand, it is argued that Mr. Hamilton was a District Judge and that an appeal will lie from his decree because he was actually a District Judge.

The wording of the section 35C, sub-section (1) is as follows: "When the question is raised by a petition preferred to the Local Government by an elector entitled to vote in any of the circles of a Board, or by any member of the Board, whether the Chairman of a Board has been duly elected or nominated under the provisions of section 35 or section 35B, the Local Government shall, without considering the merits of the question raised, refer it for decision to a judicial officer not below the rank of a District Judge."

It is clear from the words used that any judicial officer might be appointed by the Local Government provided such an officer is not below the rank of District Judge, for example the Local Government might appoint a Judge of the High Court, or a Judge of the Federal Court or a District Judge of another province. It is clear that in the case of such appointments there would be no question of an appeal to the High Court on the ground that the decree was the decree of a District Judge because the officer concerned would not be a District Judge. We consider that the argument is quite wrong that because a particular person appointed by the Local Government to decide a special matter under the provisions of a Special Act happens to hold at the time of his appointment a particular office such as the office of District Judge, he carries that office with him in his

1939

 SARDAR
SINGH
v.
CHHOTRY
LAL

1939

SARDAR
SINGH
v.
CHHOTAY
LAL

appointment. Moreover, the Civil Courts Act to which learned counsel refers for the right of appeal in section 20, has defined civil courts and in the first clause in section 3 is "the court of the District Judge".

Now an appeal lies not from the District Judge but from the court of the District Judge. It is essential to distinguish the particular officer who is presiding in the court from the court itself. Perhaps the distinction will be clearer in the case of a Sessions Judge who does not constitute a sessions court under the present Criminal Procedure Code unless he is sitting with assessors and it is still more clear in the case of a trial by jury where the court is made up of the Judge and the jury combined. As civil cases are never tried in India by the help of a jury the matter perhaps is not so clear as it is in England and in countries where a civil court sometimes consists of a Judge and a jury combined. We are quite certain that the present case is one in which Mr. Hamilton was merely a *persona designata* selected by Government and he was not acting in his capacity as District Judge. It may also be noted that he was not the District Judge of Moradabad where the dispute arose but he was the District Judge of Saharanpur.

There is ample authority for this view. In *Ghulam Nizamuddin v. Akhtar Husain Khan* (1), a Bench of this Court of which one of us was a member held that no revision lay from the order of Mr. Ardagh, District Judge of Agra, sitting as an election tribunal under section 18 of the same District Boards Act, 1922. In that case the provision in section 18 is not so clear as the present provision. In section 18(1) it is stated: "An election petition shall be heard by the District Judge within whose jurisdiction the constituency concerned is situated (unless some other person or tribunal has been appointed by rule in this behalf)." In that case it was only by inference from the portion of the section in brackets that the conclusion was reached that the District Judge was

(1) (1933) I.L.R. 55 All. 1008.

sitting as a *persona designata*. In the present case there is much more reason for this decision because the Local Government has to appoint someone in every case under section 35C.

Another ruling to which reference has been made is *Abdur Rahman v. Abdur Rahman* (1). It was there held that there was no right of appeal against the order of a Commissioner on an election petition presented to him under the provisions of the U. P. Municipalities Act, 1916. That Act had similar provisions and the basis of the decision was the same.

For these reasons we consider that no appeal lies to this Court and we dismiss this appeal from order with costs.

REVISIONAL CIVIL

Before Justice Sir Edward Bennet and Mr. Justice Verma

PANNA LAL (DECREE-HOLDER) *v.* COLLECTOR OF
MEERUT AND OTHERS (JUDGMENT-DEBTORS)*

1939
November, 30

Co-operative Societies Rules, rule 137(i)—Recovery by Collector of a claim by Co-operative Bank as if it were an arrear of land revenue—Claim thereby does not acquire same priority as land revenue.

The fact that a particular claim or debt is, by law, recoverable by the Collector as if it were an arrear of land revenue does not invest it with the character of land revenue so as to confer on it the right of priority which land revenue has. The method or procedure which can be adopted for the recovery of the money is one thing, and the substantive right of priority is another.

So, where the crops belonging to the judgment-debtor were attached by the decree-holder, and subsequently the same crops were attached by the Collector for recovery of a sum due to the District Co-operative Bank, such sum being, under rule 137(i) of the Co-operative Societies Rules, recoverable as if it were an arrear of land revenue, it was held that the decree-holder's attachment prevailed, and the sum due to the District Co-operative Bank had no priority.

Mr. S. B. L. Gaur, for the applicant.

Mr. Shiva Prasad Sinha, for the opposite parties.