

of 1873. By that section it is provided that: "Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him." Here the cultivation was not actually and absolutely continuous, but it was as continuous as the nature of the case admitted of, and it was besides cultivation against which necessarily there could not have existed any adverse right of a similar kind. The occupancy or cultivation therefore by the respondent of the lands in question was in my judgment such as to give him a claim to be an occupancy-tenant within the meaning of the Rent Law; for, as I have shown, the Subordinate Judge has found that these lands were cultivated by the defendant for eighteen or twenty years. His findings go to negative the contention of the plaintiff-appellant; and following a ruling by Pearson, J., and myself in First Appeal No. 125 of 1879, dated the 4th August, 1880 (1), I must hold that the defendant could not be ejected from or dispossessed of his holding otherwise than as provided by s. 34 (b) and s. 35 of the Rent Act XVIII of 1873. It is not pretended that there is any ground for holding that these sections of the Rent Act have any application to the present case. This appeal altogether fails, and it is dismissed with costs.

BRODHURST, J.—As the lower Courts have found that the defendant-respondent had acquired a right of occupancy in the lands in suit, and as the latter person had neither relinquished those lands nor been ejected from them, under cl. (b), s. 34 of Act XVIII of 1873, I concur with the Hon'ble the Chief Justice in dismissing the appeal with costs.

*Appeal dismissed.*

## CIVIL JURISDICTION.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Brodhurst.*

IN THE MATTER OF THE PETITION OF JAUNDHA KUAR v. THE COURT OF WARDS.

*Lunatic—Native of India—Act XXXV of 1858, s. 23—High Court's Charter, s. 12—Original jurisdiction of High Court in respect of the persons and estates of lunatics who are natives of India.*

The High Court has not, under s. 12 of its Charter, any original jurisdiction in respect of the persons and estates of lunatics who are natives of India.

(1) Not reported.

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LACHMAN  
PRASAD  
v.  
BAL SINGH.

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IN THE MAT-  
TER OF THE  
PETITION OF  
JAUNDHA  
KUAR  
v.  
THE COURT  
OF WARDS.

THIS was an application to the High Court by Jaundha Kuar, the wife of one Gauri Shankar Prasad, a lunatic, to appoint her guardian of her husband's person and estate in the exercise of the powers conferred on it by s. 12 of its Charter. Gauri Shankar Prasad had been adjudicated a lunatic by the District Court of Allahabad under Act XXXV of 1858, and Narain Kuar, the widow of the lunatic's paternal uncle, had been appointed guardian of his person, and one Dalthaman Singh, the brother's son of Narain Kuar, was appointed manager of his estate. On the death of Dalthaman Singh, in June, 1880, the District Court appointed his brother, Sarju Prasad, manager. On the death of Narain Kuar in October, 1880, Jaundha Kuar applied to the District Court to be appointed guardian of the lunatic's person. The District Court, by an order dated the 19th November, 1880, rejected this application, and directed the Collector of the Allahabad District to take charge of the lunatic's estate. Jaundha Kuar appealed to the High Court from this order. This appeal came for hearing before Stuart, C. J., and Duthoit, J., who ordered that it should be struck off the file, and directed the appellant to prefer a petition, if so advised, praying that under s. 12 of the High Court's Charter she might be appointed guardian of the lunatic with power to nominate the manager of his estate. Thereupon Jaundha Kuar presented the present petition to the High Court, praying that, for the reasons stated therein (which, for the purposes of this report, it is not material to state), it would, under s. 12 of its Charter, appoint her guardian of the lunatic's person and estate, with power to appoint Sarju Prasad manager. The preliminary question raised by this application was as to the original jurisdiction of the High Court in respect of the persons and estates of lunatics who are natives of India.

Messrs. Conlan and Colvin and Pandit Bishambhar Nath, for the petitioner.

The Senior Government Pleader (Lala Juala Prasad), for the Court of Wards.

The following judgments were delivered by the Court :

STUART, C. J.—This is an application on behalf of the wife of Babu Gauri Shankar Prasad, a lunatic, and it prays that she be

appointed guardian of the lunatic's person and estate. The matter came originally before a Bench of this Court consisting of Duthoit, J., and myself, in the form of an appeal to us from the order of the Judge of Allahabad, whereby the Court of Wards was authorized and requested to take charge of the property of the lunatic, and to appoint a proper guardian of his person. In that appeal no appearance was made for the respondent, but the appellant was represented by two learned advocates of this Court, Messrs. Conlan and Colvin. The learned counsel argued against the order of the Judge, but they contended at the same time that we had jurisdiction to entertain an application and make an order for the appointment of a guardian, not merely in the way of appeal from the order of the District Judge, but in virtue of the powers conferred on us by s. 12 of our Charter, which is in these terms: "And we do further ordain that the said High Court of Judicature for the North-Western Provinces shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the North-Western Provinces, as that which is exercised in the Bengal Division of the Presidency of Fort William by the High Court of Judicature at Fort William in Bengal, but subject to the provisions of any laws or regulations now in force." It was thus clear that whatever powers in such a case as the present the High Court of Calcutta has, as successor of the old Supreme Court, we have equally in these Provinces. And we thought it better that the very important question which had been raised ought to be considered in the form suggested by the learned counsel, with whatever result. We therefore considered it unnecessary to make any order in the appeal, and we at the same time informed the learned counsel that it would be open to them to make any further application to this Court they might think proper. Hence the present application, which is based on the assumption of original jurisdiction in this Court to entertain and make an order upon it under s. 12 of our Charter.

At the hearing Mr. Conlan repeated and enforced the arguments he had used in the appeal before Duthoit, J., and myself. Juala Prasad, the Senior Government Pleader, for the respondent, contended that this Court has no original jurisdiction in such cases,

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and that the powers conferred on us by s. 12 of our Charter, whatever they might be in other respects, are expressly qualified by that section itself as "subject to the provisions of any laws or regulations now in force," and that Act XXXV of 1858 was such a law; and he pointed out that by s. 23 of this Act the expression "Civil Court" was declared to mean "the principal Court of original jurisdiction in the district," and that such principal Civil Court was not this High Court, but the Court of the District Judge of Allahabad.

We took time to consider our judgment, and meanwhile I directed the Registrar of this Court to write to the Registrar on the original side of the Calcutta Court for the purpose of ascertaining what was the practice of that Court in such cases. From the information thus obtained it would appear that the powers exercised in matters of lunacy by that Court, as the successor and inheritor of the powers of the old Supreme Court, are, as regards natives of India, only exercised within the limits of the town of Calcutta itself, and that in other respects the procedure directed by Act XXXIV of 1858 is followed throughout Lower Bengal.

After a careful examination of the Charter of the old Supreme Court, of that of its successor, the present High Court of Calcutta, and of the Charter of this Court, I have come to the conclusion that the practice of the Calcutta Court is correct, and that the effect of it is to exclude any original jurisdiction in matters of lunacy on the part of this Court, and that the present application must therefore be refused.

Act XXXIV of 1858 clearly applies only to the Courts of Judicature in India then established by Royal Charter, while this High Court was not established till 1866. I must at the same time allow that the terms of s. 12 of our Charter are wide enough to admit of the argument submitted to us on behalf of the applicant, giving, as they appear to do, not merely appellate jurisdiction, but "the like power and authority" which is exercised by the High Court of Calcutta, or in other words, as it was maintained, all the power and all the authority wherever exercised by that Court. In this case, however, it appears to me impossible to get over the effect of

the provisions of Act XXXV of 1858, and, with the light derived from the practice of the Calcutta Court under Act XXXIV of 1858, no doubt is left on my mind that, whatever our powers may be by appeal or otherwise, we have no jurisdiction to entertain the present application, which must therefore be dismissed, but, under the circumstances, without costs.

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Of course I need say nothing at present respecting our jurisdiction over the persons and estates of lunatics who are European British subjects. The application which we have now dismissed relates only to the person and property of a lunatic who is a native of India.

BRODHURST, J.—I concur with the learned Chief Justice in dismissing, without costs, the present application on the ground that we have no jurisdiction to entertain it.

*Application dismissed.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Oldfield and Mr. Justice Brodhurst.*

**KALIAN SINGH (PLAINTIFF) v. GUR DAYAL (DEFENDANT).\***

*Pre-emption—Misjoinder—Irregularity not affecting merits or jurisdiction—Act X of 1877 (Civil Procedure Code), ss. 45, 578.*

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December 14.

The sons of *R* and of *K* and of *S* possessed proprietary rights in two maháls of a certain mauza. *P* possessed proprietary rights in one of those maháls. In April, 1879, the sons of *R* sold their proprietary rights in both maháls to *G*. In August, 1879, the sons of *K* sold their proprietary rights in both maháls to *G*. Later in the same month the sons of *S* sold their proprietary rights in both maháls to *N*. *G* sued *N* to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. *P* then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mahál of which he was a co-sharer, joining as defendants *G* and *N* and the vendors to them. *G* alone objected in the Court of first instance to the frame of the suit. That Court overruled the objection and gave *P* a decree. The lower appellate Court reversed this decree on the ground of misjoinder.

*Held* that in respect of *G* there was no misjoinder, but that in respect of the other defendants there was misjoinder of both causes of action and parties.

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\* Second Appeal, No. 975 of 1881, from a decree of C. J. Daniell, Esq., Judge of Moradabad, dated the 11th January, 1881, reversing a decree of Maulvi Maksud Ali, Subordinate Judge of Moradabad, dated the 9th July, 1880.