

The findings when recorded will be returned into the Court, and ten days will be allowed for objections from a date to be fixed by the Registrar.*

On the lower appellate Court returning its findings on these issues the High Court (STRAIGHT, J., and DUTHOIT, J.) delivered the following judgment:—

STRAIGHT, J.—Upon the findings now returned it is established that Mathuria Kuar is the nearest reversionary heir, and that there is no collusion between her and Talsha in respect of the alienation sought to be set aside by the suit. The determination of these questions of fact is in favour of the appellants, whose appeal must therefore prevail, and we accordingly decree it with costs.

Appeal allowed.

CIVIL JURISDICTION.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

THE COLLECTOR OF CAWNPORE AS MANAGER OF THE ESTATE OF SHEORATAN, MINOR (DEFENDANT) v. KEDARI AND OTHERS (PLAINTIFFS)*.

Suit for money had and received for plaintiff's use—Implied contract—Small Cause Court sui—Zamindari due.*

A zamindar as such claimed and realized from a tenant Rs. 20, being one fourth of the price of trees cut down and sold by the tenant, basing his claim on general usage. The tenant sued to recover such money, denying that any such usage existed. *Held* that the suit was in the nature of one for money had and received by the defendant for the plaintiff's use, and therefore cognizable in the Court of Small Causes. *Lachman Prasad v. Chammi Lal* (1) followed.

THE manager of a certain estate under the superintendence of the Court of Wards, situated in the Cawnpore district, demanded and realized on behalf of the proprietor of such estate from the plaintiffs in this suit, who were tenants of such proprietor, one-fourth of the price of six trees which they had cut down and sold. Such demand was based on general usage as recorded in the *wajib-ul-arz* of such

* Application, No. 36 of 1881, for revision under s. 622 of Act X of 1877 of a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 30th November, 1880, affirming a decree of Munshi Lalla Prasad, Munsif of Cawnpore, dated the 25th August, 1879.

(1) *ante* p. 6.

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RAGHU
NATH
v.
THAKUR.

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June 28.

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THE COLLECTOR OF CAWNPORE AS MANAGER OF THE ESTATE OF SHEO RATAN, MINOR. KEDARI.

estate. These tenants brought the present suit against the proprietor of such estate, in the name of the Collector of Cawnpore as representing the Court of Wards, to recover the monéy, Rs. 20, so paid by them, alleging that the proprietor of such estate was not entitled by general usage to one-fourth of the sale-proceeds of trees cut down and sold by his tenants. The suit was instituted in the Court of the Munsif of Cawnpore. The defendant set up as a defence to the suit, *inter alia*, that the suit was not cognizable in the Munsif's Court but in the Court of Small Causes at Cawnpore. The Munsif disallowed this defence, and gave the plaintiffs a decree, which the Subordinate Judge of Cawnpore affirmed on appeal by the defendant.

The defendant applied to the High Court to revise the decrees of the lower Courts under s. 622 of Act X of 1877 on the ground, amongst others, that the suit was not cognizable in the Civil Courts but in the Court of Small Causes.

The *Seniôr Government Pleader* (Lala Juala Prasad), for the defendant.

Munshi *Kashi Prasad* and Babu *Beni Prasad*, for the plaintiffs.

The judgment of the Court (STRAIGHT, J., and TYRELL, J.,) was delivered by

STRAIGHT, J.—We think that this was a Small Cause Court suit, and that the lower Courts erroneously entertained it. The plaintiff's claim was in the nature of one for money had and received by the defendant for the use of the plaintiff. The case of *Lachman Prasad v. Chammi Lal* (1), decided by us on the 10th June, 1881, is an analogous case, and we think that we may properly follow it in dealing with this application for revision. We therefore reverse the decisions of the Munsif and the Subordinate Judge with costs, and direct the plaint be returned to the plaintiff for presentation to the Small Cause Court.

(1) *ante* p. 6.