

1880

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more as might become due and payable by the obligor after the 1st May, 1874, by subsequent default. For the purposes of the obligee the bond could only be evidence of a transaction affecting property to the extent of Rs. 105, because his right to enforce lien was suspended until that amount had become due from the obligor. Meanwhile the obligor must be taken to have charged his immovable property with the sum of Rs. 105, and thus to have created in the obligee the right, title, and interest of a mortgagee of the value of Rs. 100 and upwards. In short, looking at the bond itself, as evidencing the intention of the parties, the conclusion appears to me irresistible, that the transaction between them, so far as it related to the creation of a charge on immovable property, was of a character that required the document recording it to be registered. Upon the other question I would say that, as the suit was brought upon the bond, and the bond is inadmissible in evidence for want of registration, the plaintiff's claim entirely failed, and the lower appellate Court rightly so held.

Appeal dismissed.

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August 12.

CIVIL JURISDICTION.

Before Mr. Justice Oldfield and Mr. Justice Straight.

IN THE MATTER OF THE PETITION OF NASIR KHAN (DEFENDANT) v.
KARAMAT KHAN (PLAINTIFF).*

Suit for Fruit upon Trees—Suit for compensation for the wrongful taking of Fruit upon Trees—Immoveable Property—Moveable Property—Suit cognizable in Small Cause Court—Act XI of 1865 (Mufassil Small Cause Courts), s. 6—Act III of 1877 (Registration Act), s. 3.

When the damage or demand does not exceed in amount or value the sum of five hundred rupees, a suit for the fruit upon trees, or damages in lieu thereof, is a suit cognizable in a Mufassil Court of Small Cause, the fruit upon trees not being immovable property, but being moveable property, within the meaning of s. 6 of Act XI of 1865.

THIS was an application to the High Court for the exercise of its powers of revision under s. 622 of Act X of 1877. It appeared

* Application No. 50B, of 1880, under s. 622 of Act X of 1877, for revision of an order of H. A. Harrison, Esq., Judge of Farukhabad, dated the 30th March, 1880.

that one Karamat Khan purchased from one Shib Charan Lal the fruit upon thirty-nine mango trees. One Nasir Khan, claiming that the trees belonged to him, removed the men employed by Karamat Khan to watch such trees, and took possession thereof, and gathered the fruit upon twenty-one of such trees. Karamat Khan in consequence sued Nasir Khan and Shib Charan Lal, claiming to recover in virtue of his purchase from Shib Charan Lal Rs. 30 as compensation for the wrongful taking of the fruit of such twenty-one trees, and the possession of the fruit upon the remaining trees, the suit being instituted in the Court of the Munsif of Farukhabad. The allegations of the parties to the suit gave rise to the issues, amongst others, whether the suit was cognizable in the Munsif's Court or in the Court of Small Causes, and whether the trees belonged to Shib Charan Lal or Nasir Khan. The Munsif gave the plaintiff a decree, holding that the suit was cognizable by him and not in the Court of Small Causes, and that the trees belonged to the plaintiff's vendor. On appeal by the defendant Nasir Khan the District Judge affirmed the Munsif's decree, also holding that the suit was not cognizable in the Court of Small Causes, on the ground that the fruit of a tree, so long as it was attached thereto, was immoveable property, and that the title to the trees in this case was in dispute. The defendant Nasir Khan applied to the High Court for the revision of the orders of the lower Courts on the ground that the suit was cognizable in the Court of Small Causes, and the lower Courts had no jurisdiction in the matter of the suit.

Munshi *Hanuman Prasad* and *Shah Asad Ali*, for the applicant.

The other parties did not appear.

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

STRAIGHT, J.—The plaintiff sued to recover the fruit of certain mango trees which he had purchased from the defendant Shib Charan Lal, and of which he had been dispossessed by the defendant Nasir Khan. He also asked in the alternative for damages in lieu of the fruit. The suit was instituted in the Court of the Munsif, and both before him, and on appeal to the Judge, it was

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urged on behalf of the defendant Nasir Khan that the case was one for a Small Cause Court. This objection was, however, overruled, and the plaintiff's claim was decreed. The same point is now taken before us in revision, and we are of opinion that it must prevail. The suit was for personal, that is, moveable property, or damages in lieu thereof, and it therefore directly falls within the terms of s. 6 of Act XI of 1865. We do not agree with the view of the Judge that fruit growing upon trees is to be regarded as immoveable property; on the contrary, the interpretation clause of the Registration Act of 1877 supplies a definition of what is moveable and immoveable property, which we think may be accepted as a guide. The proceedings of the lower Courts were therefore without jurisdiction and must be set aside, and the plaint must be returned to the plaintiff for presentation to the proper Court. The defendant Nasir Khan is entitled to his costs in the abortive proceedings.

APPELLATE CIVIL.

1880
August 12.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr Justice Oldfield.

KUNDUN LAL (PLAINTIFF) v. BANSI DHAR (DEFENDANT).*

Suit for money received by the defendant for the plaintiff's use—Fraud—Act XV of 1877 (Limitation Act), s. 18, and sch. ii, Nos. 62, 120.

The plaintiff claimed, as an heir to *N*, deceased, a moiety of moneys which at the time of *N*'s death were deposited with a banker, and which the defendant, the other heir to *N*, had received from such banker. *Held* that the suit was one for money received by the defendant for the plaintiff's use, to which the limitation provided in No. 62, sch. ii of Act XV of 1877 applied, and not one to which the limitation provided in No. 120 applied.

THE plaintiff in this suit claimed, as one of the heirs to the estate of one Nain Sukh, deceased, to be confirmed in possession of a moiety of Nain Sukh's one-third share of a house, and to recover a moiety of a sum of Rs. 376-15-6 which had belonged to Nain Sukh, and which at the time of his death was deposited with one Bhagwat Das, a banker. The defendant was the plaintiff's

* Second Appeal, No. 1299 of 1879, from a decree of Maulvi Sami-ullah Khan, Subordinate Judge of Moradabad, dated the 13th September, 1879, modifying a decree of Munshi Banwari Lal, Munsif of Amroha, dated the 24th March, 1879.