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OF THE  
STATE OF  
AUNDHRI  
'ANJIT  
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exceed Rs. 500," is a part of a chapter which treats of appeals from appellate decrees, and is not applicable to appeals from orders which form the subject of a separate chapter. There is nothing in s. 589 which militates with the view above taken; indeed that section only indicates the Courts to which appeals from orders lie.

OLDFIELD, J.—I was a party to the decision in the case referred to in the order of reference, but after hearing the question discussed and on further consideration I am of opinion that this appeal is admissible. It is true that by s. 586, Civil Procedure Code, no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed Rs. 500; but the second appeal there intended appears to be a second appeal of the nature of those to which Chapter XLIII and s. 584 relate, that is, a second appeal allowed on special grounds from appellate decrees; and the term second appeal as used in s. 586 will not in consequence apply to the appeal we are dealing with, which is a first appeal from an order, to which the provisions of Chapter XLIII apply, and which is therefore not excluded by any thing in s. 586, which has no reference to appeals from orders.

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

THE COLLECTOR OF BIJNOR, MANAGER OF THE ESTATE OF CHAUDHRI RANJIT SINGH, A MINOR, (DEFENDANT) v. MUNUVAR (PLAINTIFF).\*

*Public Officer—Notice of Suit—Collector of the District—Court of Wards—Disqualified Proprietor—Act X of 1877 (Civil Procedure Code), ss. 2, 424—Act XIX of 1873 (N.-W. P. Land-Revenue Act), ss. 194, 199, 204.*

A Collector when acting under s. 204 of Act XIX of 1873 as the agent of the Court of Wards in respect of the estate of a disqualified person is a public officer within the meaning of ss. 2 and 424 of Act X of 1877, and consequently, when sued for acts done in that capacity, is entitled to the notice of suit required by the latter section.

THIS was a suit in which the plaintiff claimed from "the Collector of Bijnor, manager of the estate of Sherkot, placed under the Court of Wards" damages for the wrongful attachment and sale

\* First Appeal, No. 25 of 1880, from an order of Maulvi Sami-ul-lah Khan, Subordinate Judge of Moradabad, dated the 27th November, 1879.

of certain moveable property in the execution of a decree held by the Court of Wards on behalf of the proprietor of that estate. The defendant set up as a defence to the suit that "the plaintiff had issued no notice to the Collector, a public officer, under s. 424, Act X of 1877, and therefore his claim was not cognizable." Upon the preliminary point whether or not the suit was cognizable by reason that no notice of suit had issued under s. 424 of Act X of 1877, the Court of first instance held that it was not cognizable for that reason, and dismissed it, its decision on that point being as follows: "On the first issue of law I find that, in my opinion, the plaintiff ought to have issued a notice, under s. 424, Act X of 1877, to the Collector of Bijnor, manager for the Court of Wards, and a public officer and servant, of his intention to institute a suit against him, and would have been competent to sue him on the expiration of the term specified in that section. For, although the Collector is impleaded as manager on behalf of a Government subject, yet the rules under s. 424 cannot be dispensed with even with reference to this capacity. Therefore this suit is not cognizable under that section." On appeal by the plaintiff the lower appellate Court reversed the decree of the Court of first instance upon the preliminary point stated above, and remanded the suit for re-trial, for the following reasons: "I do not concur in the Munsif's opinion. S. 424 does not apply to such a case. The claim is not against the Collector personally or as a public officer. In fact, it is a claim against the Rais of Sherkot, who is under the Court of Wards, and would affect his property alone. If a decree is passed, its amount would be recovered from the estate in question, while, if the claim is dismissed, the estate would benefit thereby. The Government has no interest in such profit or loss. The mere circumstance of the Collector being the manager of the estate, and of his being impleaded in that capacity, would not bring the case into the category of suits provided for by s. 424. In my opinion, therefore, the cognizance of the claim is not barred by reason of the notice not having been issued."

The defendant appealed to the High Court, contending that, as the suit was against a public officer officially in charge of an estate, the plaintiff was bound to give the notice prescribed by s. 424

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of Act X of 1877, and as he had failed to give such notice the suit should have been dismissed. The Division Bench (PEARSON, J., and OLDFIELD, J.,) before which the appeal came, on the 26th April, 1880, referred to the Full Bench the question "whether the Collector, as a manager of an estate under the Court of Wards, is a public officer, within the meaning of ss. 2 and 424, Act X of 1877."

The *Senior Government Pleader* (Lala Juala Prasad), for the appellant.

Mr. *Conlan* and Mir *Zahur Husain*, for the respondent.

The following judgments were delivered by the Full Bench :

STUART, C. J.—My answer to this reference is in the affirmative. Under s. 424, Act X of 1877, the Collector is in two positions, the first as the representative in India of the Secretary of State in Council, and next as a public officer, and as such entitled to the notice after the expiration of two months provided by s. 424.

PEARSON, J.—It has been elicited in the course of the discussion before the Full Bench that the Collector, although described as the manager of the estate, has not been appointed to be the manager of it under s. 199, Act XIX of 1873, by the Court of Wards, but merely acts as its agent in the matter under s. 204 thereof. This being so, there can be no doubt that his acts, which the present suit impugns, were done by him in his official capacity, and the answer to the question referred to us must be in the affirmative.

OLDFIELD, J.—The proprietor of the estate of Sherkot having become disqualified for the management of his own land under s. 194, Act XIX of 1873, the Board of Revenue assumed the superintendence of the property under the powers conferred upon it of a Court of Wards under ss. 193 and 195 of the Act. S. 204 of the Act permits the Court of Wards to exercise all powers conferred on it by the Act through the Collectors of the districts in which any part of the property of its wards may be situated, and in the present instance the said powers have been exercised by the Court of Wards through the Collector of Bijnor. The defendant in this

suit is the Collector of Bijnor, and in the exercise of the powers thus conferred on him by the Act he obtained a decree against one Muzaffar Khan in respect of a debt due to the estate under the Court of Wards' management, and in execution caused to be attached and sold certain property claimed by the plaintiff, and the latter brings this suit for recovery of damages arising out of those proceedings.

The position defendant holds is that of Collector of the District; the law permits the Court of Wards to exercise its powers through the Collector of the District; and the Collector when exercising these powers is discharging a part of the duties of his office as Collector of the District, and he is clearly a public officer within the meaning of s. 2, Act X of 1877, when *bonâ fide* employed in the discharge of the duties of his office of Collector of the District. Such was the case here; and the answer to the reference must be that the defendant in this suit is a public officer within the meaning of ss. 2 and 424, and that the suit is against him in respect of an act purporting to be done in his official capacity, and he is entitled to the notice required by the section. A case reported in the Indian Law Reports, 1 Bom., 318 (1), is in point.

STRAIGHT, J.—In reply to the question submitted to the Full Bench by this reference, I would say that the Collector of Bijnor was acting in reference to the estate of Chaudhri Ranjit Singh as a public officer, within the definition of Act X of 1877, and was therefore entitled to two months notice of action “in respect of an act purporting to be done by him in his official capacity.” In the course of the earlier part of Mr. Conlan’s argument for the respondent, I was under the impression that the Collector of Bijnor had been formally appointed manager of Sherkot by the Court of Wards under s. 199 of Act XIX of 1873, and I then entertained, as I still do, the opinion that it was *qua* manager, and not *qua* Collector, that his status must be determined. There is no provision in the Revenue Acts of these Provinces qualifying a Collector, as Collector, for the position of manager; and while he may be put “in charge” of a disqualified person’s estate and person by order of a Civil Court,

(1) *Narsingrav Ramchandra v. Luzumanrav.*

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if he is appointed a manager, it does not appear to me that he stands in a better or worse position than would a private individual, nor do I think he could be said to be acting in his "official capacity." This difficulty, however, does not arise in the present case. The Collector of Bijnor is not correctly speaking the manager of the estate of Chaudhri Ranjit Singh. No minute or order has been passed by the Court of Wards appointing him to such office, and he seems simply to be acting, *qua* Collector, under s. 204 of the Revenue Act of 1873, as the agent of the Court of Wards. He therefore retains in the fullest sense his character and position of Collector and as such is of course a public officer within ss. 2 and 424 of the Civil Procedure Code.

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*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.*

UMR-UN-NISSA (PLAINTIFF) *v.* MUHAMMAD YAR KHAN AND OTHERS  
(DEFENDANTS).\*

*Suit for possession of Immoveable Property—Adverse Possession—Act XV of 1877 (Limitation Act), sch. ii, art. 144.*

I died in 1861 leaving a zamindari estate, a moiety of which at the time of his death was in the possession of a mortgagee. On the death of I the defendants in this suit, who were among his heirs, caused their names to be recorded, as his heirs, as the proprietors of such estate, to the exclusion of the plaintiff in this suit who was his remaining heir; and they appropriated to their own use continuously for more than twelve years the profits of the unmortgaged moiety of such estate, and the *mulikana* paid by the mortgagee of the mortgaged property. In 1877 the defendants redeemed the mortgage of the mortgaged moiety of such estate from their own moneys. In 1878 the plaintiff sued for the possession of her share by inheritance of such estate. *Held* (SPANKIE, J. doubting), with reference to the mortgaged moiety of such estate, that the possession of the defendants in respect of such moiety did not become adverse, within the meaning of art. 144 of sch ii of Act XV of 1877, on the death of I in 1861, but on the redemption of such moiety in 1877, "adverse possession" under that article meaning the same sort of possession as is claimed, that is to say, in this case, full proprietary possession, which was not the nature of the possession of the defendants until the redemption of the mortgage, and the suit therefore, in respect of such moiety, was within time.

The plaintiff in this suit claimed possession of 10 biswansis  $8\frac{1}{2}$  kachwansis of a  $2\frac{1}{2}$  biswas share of a village called Charra Rafat-

\* Second Appeal, No. 990 of 1879, from a decree of C. W. Moore, Esq., Judge of Aligarh, dated the 23rd June, 1879, affirming a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 14th February, 1879.