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FULL BENCH.

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

THE COLLECTOR OF BIJNOR, MANAGER OF THE ESTATE OF CHAUDHURI

RANJIT SINGH, A MINOR, (DEFENDANT) *v.* JAFAR ALI KHAN (PLAINTIFF)*

Order of remand—Appeal—Suit of the nature cognizable in Small Cause Court—Second appeal—Act X of 1877 (Civil Procedure Code), ss. 584, 586, 588 (28), 589.

An order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X of 1877, remanding the suit for re-trial is appealable, s. 586 of Act X of 1877 notwithstanding, as that section applies to appeals from appellate decrees and not to appeals from orders.

THE plaintiffs in this suit claimed “to recover Rs. 69, damages for nine cows and one calf, which the defendant caused to be attached and sold by auction on the 25th April, 1878, as the property of Muzaffar Khan, his judgment-debtor; also to recover Rs. 46-14-4 damages and costs charged against the plaintiffs in the Revenue Court; entire amount of claim Rs. 115-14-4; by cancellation of the miscellaneous orders of the Revenue Court dated the 18th and 27th March, 1878.” It appeared that the defendant had caused the cattle which the plaintiff claimed as his property to be attached in the execution of the decree of a Revenue Court held by him against Muzaffar Khan. The plaintiff objected to the attachment, but his objections were disallowed by the Revenue Court; and the cattle were sold on the 25th April, 1878. The Court of first instance dismissed the suit on a preliminary point which it is not material to notice. On appeal by the plaintiffs the lower appellate Court reversed the decree of the Court of first instance on such point, and remanded the case for re-trial, under s. 562 of Act X of 1877. On appeal by the defendant to the High Court, it was objected by the plaintiff-respondent that the suit was of the nature cognizable in a Court of Small Causes and consequently no second appeal in the case would lie. 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

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

the appeal was admissible, in reference to the provisions of ss. 586 and 589, Act X of 1872," the order of reference being as follows :

PEARSON, J. (OLDFIELD, J., concurring).—This suit is in substance and effect merely a suit for damages. The establishment of the plaintiff's right to the property sold is, as a matter of course, necessary for the establishment of the right to damages. The plaintiffs are not seeking to recover as their own the property which has been sold, but damages on account of its sale. The sale is irrevocable; and the cancelment of the order disallowing their objection to the sale and claim to the property in the miscellaneous department is not sought for the purpose of preserving the property from sale. What is sought is a finding that the order was wrong and that the property really belonged to the plaintiffs, and this is sought with the view of establishing their claim to damages. Regarding the suit therefore as a suit for damages of an amount below Rs. 500, we have to consider whether this appeal is admissible in reference to the provisions of ss. 586 and 589, Act X of 1877. This question has been determined in the negative by a decision of a Division Bench of this Court, dated 29th August, 1879 (1), but we think it desirable to refer it to the Full Bench: referred accordingly.

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

Mir *Zahur Husain*, for the respondent.

The following judgments were delivered by the Full Bench:

PEARSON, J., (STUART, C. J., and STRAIGHT, J., concurring).—The order which is the subject of the appeal is an order of the lower appellate Court remanding the case to the Court of first instance under s. 562, Act X of 1877, and is expressly declared to be appealable by s. 588 (28) thereof; and the only question for consideration is whether it is barred by the provisions of s. 536. That section, which declares that "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

(1) Unreported.

THE COLLECTOR OF BANGOR, MANAGER OF THE ESTATE OF CHAUDH RANJIT SINGH v. JAFAR ALI KHAN.

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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.