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 KALKA
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 v.
 RAM DIN.

each other must hold the same character and possess identical rights of enforcing execution, and that enforcement of the decree shall only be refused, or satisfaction entered up, when this is the case. We come to this conclusion in the present instance with extreme regret, having regard to all the circumstances, but it appears to us we have no alternative but to decree the appeal with costs.

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 January 15.

 CIVIL REVISIONAL.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

KAULESHAR RAI AND OTHERS (DEPENDANTS) v. DOST MUHAMMAD KHAN
 (PLAINTIFF) *

Small Cause Court suit—Institution in Court of Subordinate Judge invested with powers of a Court of Small Causes—Trial by Subordinate Judge not so invested—Transfer of suit—Appeal—Jurisdiction—Civil Procedure Code, s. 25

A suit of the nature cognizable in a Court of Small Causes was instituted in the Court of a Subordinate Judge, the Judge of which at the time of the institution of the suit was personally invested with Small Cause Court jurisdiction. That Judge retired from office without trying the suit, and the District Judge directed his successor, who was not invested with Small Cause Court jurisdiction, to try it, and he did so. *Held* that it must be taken that the suit was transferred under s. 25 of the Civil Procedure Code to the Court of the Subordinate Judge, and that therefore, regard being had to the provisions of that section, that the Court trying any suit withdrawn thereunder from a Court of Small Causes shall, for the purposes of such suit, be deemed a Court of Small Causes, no appeal would lie in the case to the District Judge.

THIS was an application by the defendants in a suit for revision under s. 622 of the Civil Procedure Code. It appeared that the suit had been instituted in the Court of the Subordinate Judge of Ghazipur, it being a suit of the nature cognizable in a Court of Small Causes, and the Judge at the time of its institution of that Court being invested with the powers of a Court of Small Causes. Before the suit could be tried that Judge retired from service, and a new Subordinate Judge was appointed. The new Subordinate Judge was not invested with the powers of a Court of Small Causes. Under the orders of the District Judge the new Subordinate Judge entertained the suit, and dismissed it. The

* Application No. 28 of 1882, for revision under s. 622 of the Civil Procedure Code of a decree of J. W. Power, Esq., Judge of Ghazipur, dated the 11th September, 1882, reversing a decree of Maulvi Mahmud Bakhsh, Subordinate Judge of Ghazipur, dated the 10th August, 1881.

plaintiff appealed to the District Judge, who reversed the first Court's decision and gave the plaintiff a decree.

The grounds on which the defendants applied for revision were that the District Judge was not competent to entertain an appeal from the first Court's decree, as the suit had been originally instituted in a Court of Small Causes, and the District Judge's order could only be regarded as one for transfer under s. 25 of the Civil Procedure Code.

Mr. Hill and Munshi Kashi Prasad, for the defendants.

Mr. Coulton, for the plaintiff.

The Court (OLDFIELD and TYRRELL, JJ.,) delivered the following judgment :

TYRRELL, J. -- We must give effect to the first and second pleas of this application. It is unquestionable that the respondent's suit had been instituted in the Court of the late Subordinate Judge of Ghazipur, in the exercise of his Small Cause Court jurisdiction, and that on his retirement from office the District Judge directed his successor, who is not invested with Small Cause Court jurisdiction, to try the case. This action of the Judge must be held to have taken place under the terms of s. 25 of the Civil Procedure Code, which provides that " the Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes." It was contended for the plaintiff that the suit was not withdrawn from a Court of Small Causes, as that Court had gone out of existence at the time of the Judge's order. But this argument is without force. The suit was on the register of a competent Small Cause Court, which was in existence when the suit was lawfully instituted therein. If the suit was not withdrawn from that Court, from what Court was it withdrawn? Not from that of the late Subordinate Judge, on whose register the suit, as a matter of fact, had never been entered, and could not legally have been entered, as an original suit, under the mandatory provisions of s. 15 of the Procedure Code. We allow the first and second pleas; and, setting aside the decree of the lower appellate Court, we restore that of the Subordinate Judge.

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