

1883

SHEO DIAL
CHAUBEY
v.
THE COLLECTOR
OF GORAKHPUR.

for its object to set aside acts done by the ward before the date when his property came under the charge of the Court of Wards, as the Judge considers. The Collector of Gorakhpur, exercising the powers of the Courts of Wards, is in the peculiar position of bringing a suit on behalf of some of his wards against other wards of his, whom he has made defendants in their own persons. The suit against them cannot be maintained. We decree the appeal, and set aside the decree against the appellants.

CIVIL REVISIONAL.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

ATMA RAM (PETITIONER) v. BALKISHEN AND OTHERS (OPPOSITE PARTIES)*

Appeal—Addition of respondent—Civil Procedure Code, s. 559.

The Court of first instance gave the plaintiff in a suit for money a decree against the defendant *B*, exempting the defendants *A* and *H*. *B* appealed, making the plaintiff the respondent to the appeal. The plaintiff did not appeal from the decree of the Court of first instance in respect of the exemption of *A* and *H*. The appellate Court made *A* a respondent to the appeal, under s. 559 of the Civil Procedure Code, and, exempting *B*, gave the plaintiff a decree against *A*. *Held* that, inasmuch as s. 559 does not empower an appellate Court virtually to make an appeal for an appellant, who has refrained from availing himself of his privileges under the law, by introducing for him other respondents than those he has included in his petition of appeal, and it could not be said that *A* was "interested in the result of the appeal," as, having the unappealed decree of the Court of first instance behind him, his position was secure, the appellate Court had improperly made *A* a respondent to the appeal and given a decree against him.

THE plaintiffs in this case sued the defendants, Balkishen, Atma Ram, and Hira Lal for Rs. 480. The Court of first instance (Assistant Commissioner of Jhānsi) gave the plaintiffs a decree for the sum claimed by them with costs against Balkishen, "exempting from the claim" the other defendants. The defendant Balkishen appealed from the decree, making the plaintiffs respondents to the appeal. The plaintiffs did not appeal from the decree. The appellate Court (Commissioner of Jhānsi) made the defendant Atma Ram a respondent to the appeal, under s. 559

* Application No. 147 of 1882, for revision under s. 622 of the Civil Procedure Code of a decree of W. Kaye, Esq., Officiating Commissioner of Jhānsi, dated the 20th January, 1882, reversing a decree of J. V. Sturt, Esq., Assistant Commissioner of Jhānsi, dated the 22nd September, 1881.

of the Civil Procedure Code ; and gave the defendant Balkishen a decree absolving him from liability, and made a decree for the sum claimed by the plaintiffs against the defendant Atma Ram.

THE defendant Atma Ram applied to the High Court for revision of the decree of the appellate Court, contending that it had acted erroneously in making him a party to the appeal after time, and passing a decree against him ; and that it had improperly exercised its discretion under s. 559 of the Civil Procedure Code in making him a party to the appeal.

Lala *Lalta Prasad*, for the petitioner.

Babu *Jogindro Nath Chaudhri* and *Munshi Sukh Ram*, for the opposite parties.

The Court (STRAIGHT and TYRELL, JJ.) delivered the following judgment :—

STRAIGHT, J.—The first Court decreed the plaintiff-respondent's claim against Balkishen and exempted Atma Ram the applicant and his other co-defendants from it, which we must treat as a dismissal of the suit to that extent. Balkishen alone appealed to the Judge, and the plaintiff preferred no appeal against the exemption of the two defendants, so that the sole question for the Judge to determine was as to whether the liability of Balkishen had been established or not. Atma Ram, the applicant, had the decree of the Assistant Commissioner in his favour, and so long as the plaintiff did not impeach it, it must have been a complete answer to any further suit. We do not think that s. 559 of the Code empowers an appellate Court virtually to make an appeal for an appellant, who has refrained from availing himself of his privileges under the law, by introducing for him other respondents than those he has included in his petition of appeal. Moreover, we do not think that it can be said that Atma Ram was interested in the result of the appeal, as having the unappealed decree of the Assistant Commissioner behind him, his position was secure. This application is allowed, and the decision of the Judge will be reversed in so far as it affects Atma Ram. We make no order as to costs.

1883

ATMA RAM
v.
BALKISHEN.