REVISIONAL CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge.

MAHABIR (DEFENDANT-APPLICANT) *v.* RAM SARAN SINGH (PLAINTIFF OPPOSITE PARTY)*. 1925 *December,* 3.

Provincial Small Cause Courts Act, section 25—High Court not to interfere in Small Cause Court decisions unless case mismanaged or decision perverse—Decision in Small Cause Court suits, requirements of.

Held, that High Courts should not ordinarily exercise the powers under section 25 of the Provincial Small Cause Courts Act, unless they have reason to suppose that there has been a real mismanagement of the case or an actual perversity in decision.

Held further, that a Judge exercising Small Cause Court powers is not required, and rightly not required, to make an elaborate record but he is expected obviously to apply his mind to the decision of the Small Cause Court case as carefully as he would apply his mind to the decision of a regular suit.

Mr. *Ghulam Hasan*, for the applicant.

Mr. *Radha Krishan*, for the opposite party.

STUART, C. J.:—This is an application under section 25 of the Provincial Small Cause Courts Act. I have been through the record and I find that these are the facts. The plaintiff Ram Saran Singh, son of Gajodhar of Agai, tahsil Kunda in the Partabgarh district, instituted the suit out of which this application arises in the Small Cause Court against Mahabir, son of Mangre Kurmi of the same village of Agai on the allegation that the defendant had executed a promissory note in his favour for Rs. 272. The promissory note was produced. It is written on country paper and bears a thumb impression. When the case came on for hearing before Mr. GOKUL

* Civil Revision No. 168 of 1925, against the decree, dated the 7th of August, 1925, of Gokul Prasad, Subordinate Judge of Partabgarh, decreeing the plaintiff's claim.

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PRASAD, Subordinate Judge of Partabgarh, who has Small Cause Court powers up to Rs. 500, Mahabir put in a written statement to the following effect. He said that a certain Nimar Kurmi had executed a deed in favour of Gajodhar Singh, the father of the plaintiff Ram Saran Singh, and that Nimar had died without heirs. His allegation was that Ram Saran Singh alleging the defendant to be Nimar's heir had filed a suit against him which was decided *ex parte* by the Honorary Munsif of Dingwas and that he applied for execution of this *ex parte* decree. The defendant having objected, the matter was settled by a compromise under which the parties agreed that the decree should be executed not against defendant personally but against such property of the deceased Nimar as might happen to be found in defendant's hands, the defendant's case being that there was no property of Nimar Kurmi in his hands. The defendant went on to state that on the 18th of October, 1924, Ram Saran Singh, having obtained a warrant of attachment, came to his house, attached certain of his own property which was not Nimar's property, and brought it outside the door and having obtained the property offered the defendant an opportunity of having it released if he would affix his thumb impression to a piece of paper. The defendant continued that he put his thumb impression to a piece of paper but being an illiterate man he was unable to say whether the piece of paper in question was the promissory note upon which he was now being sued. He asserted that he had never executed any promissory note in favour of the plaintiff and had never received any consideration from him. This was a clear and distinct statement in reply. It raised questions that required decision.

This is how the case was decided by Mr. GOKUL PRASAD. The parties appeared before him and he framed two issues :—

"(1) Were defendant's signatures to the pro-note and receipt obtained by fraud and undue influence as alleged?

(2) Is the promissory note without consideration?"

He put in a note: "Execution admitted by the defendant."

He then recorded the statement of three witnesses for the defendant. The first witness stated that he was present at the time of the execution of the document, that an attachment was going on and that the plaintiff obtained the defendant's signature but "he did not know why." The second witness stated that he knew nothing about it. The third witness stated he was present at the attachment, that he saw something executed but did not know what it was. The plaintiff then came into the witness-box and deposed: "The promissory note and receipt were executed in my presence. I paid the entire money in cash. This has nothing to do with my father's decree. I do money-lending on my own account."

He called no further evidence. The defendant had filed a statement made by the plaintiff's father on the 8th of November, 1924, in the execution proceedings in which the father had said: "Neither I nor any one else got any promissory note executed by the judgement-debtor at the time when I went to make attachment in execution of my decree. Mahabir has not executed any promissory note in my favour and I am not in possession of any promissory note executed by him in my favour."

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This is the judgment of Mr. GOKUL PRASAD :—

"*Findings.*—For want of evidence both the issues are decided in the negative. Suit decreed in full with costs and future interest at 6 per cent per year. Order XX, rule 1 of the Code of Civil Procedure."

That is all. I do not consider that High Courts should ordinarily exercise the powers under section 25 of the Provincial Small Cause Courts Act unless they have reason to suppose that there has been a real mismanagement of the case or an actual perversity in decision; but in this case I have no doubt whatever as to the fact that there has been a real mismanagement of the case. I do not express any opinion on the merits. It is clear, however, that the circumstances were very peculiar. Admittedly the defendant and the plaintiff's father had been at complete variance in reference to the decree which has been passed against the deceased Nimar and, in the circumstances, it was somewhat surprising, though not impossible, that the plaintiff (the son of the plaintiff in that case) should have been ready to lend money to the defendant. Possibly he did so but I should have expected the Judge to approach the case with care and caution upon this point. A Judge exercising Small Cause Court powers is not required, and rightly not required, to make an elaborate record but he is expected obviously to apply his mind to the decision of the Small Cause Court case as carefully as he would apply his mind to the decision of a regular suit and I am satisfied that in this case the Judge did not apply his mind to the decision of the case in a proper manner. It is impossible for me to decide on the materials before me the matter on the merits. The course that I take is

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this. I set aside all the proceedings and send the case back for trial upon the merits to Pandit KISHAN LAL KAUL, Additional Subordinate Judge of Partabgarh, exercising Small Cause Court powers up to Rs. 500, to be heard *de novo* as a Small Cause Court case. The pleadings will remain as they are. He will utilize the documents on the record and permit parties to file such other documents and oral evidence as they may think fit. He will arrive at an absolutely independent judgment upon the case. Costs here, and hereafter, will follow the result. A copy of this order is to be sent to Mr. GOKUL PRASAD.

Re-trial ordered.

REVISIONAL CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge.

ALI ABBAS ALIAS BANNEY SAHEB AND OTHERS *v.* EMPEROR.*

1925 November, 5.

Local Act (IV of 1910), sections 53 and 63—Cocaine traffic—Search without warrant under Local Act (IV of 1910) without recording the reasons, whether an illegality or irregularity—Entry in the accused's house with a ladder, legality of—Irregularity of search whether a good defence when guilt established.

A police officer received information that traffic in cocaine was proceeding in a certain house. He went and made the search without a warrant but did not record the grounds of his belief that the offender was likely to escape or to conceal the evidence of his offence as required by section 53 of the Local Act (IV of 1910). On reaching the house he put up a ladder against the wall and sent up certain constables to get inside the premises and open the front door. Cocaine was discovered in the possession of the accused persons and

* Criminal Revision No. 155 of 1925, against the order of Shankar Dayal, Sessions Judge of Lucknow, dated the 5th of September, 1925, modifying the order of Saiyid Ain-uddin, Magistrate of the first class, dated the 11th of July, 1925.