under section 31 of the Court Fees Act is no part of the sentence so as to make it a sentence of fine within the terms of section 413, Code of Criminal Procedure. The order is therefore not appealable. This application is refused.

Application rejected.

H. T. H.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.

CRISP (DEFENDANT) *v.* WATSON (PLAINTIFF).*

1893 *June* 29.

Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 16 (e), proviso—Recorder of Rangoon, jurisdiction of.

The plaintiff sued in the Court of the Recorder of Rangoon to recover damages for trespass on land in his own possession situate outside the limits of the original jurisdiction of the Recorder's Court; asking at the same time for an injunction restraining the defendant from further acts of trespass. Both plaintiff and defendant resided within the limits of the original jurisdiction of the Recorder's Court. *Held*—(1) that the plaintiff having alleged that the land was in his possession, was not entitled to the benefit of the proviso to section 16 of the Code of Civil Procedure; and (2) that a suit for damage to land cannot be said to be a suit for which relief can be entirely obtained through the personal obedience of the defendant, even though it may be joined with a claim for an injunction; and that for the above reasons the Recorder had no jurisdiction to try the suit.

THIS was a suit brought in the Court of the Recorder of Rangoon to recover damages for trespass and for an injunction.

The plaintiff alleged that on the 27th March 1891, at a time when he was in possession of a piece of land, known as Extra Suburban allotment, 3rd class, No. 455, Kokine Circle, the defendant and his servants broke into and entered upon this land and cut and carried away a quantity of grass growing thereon; he claimed Rs. 500 as damages, and asked for an injunction restraining the defendant from further acts of trespass.

* Appeal from Original Decree No. 296 of 1891, against the decision of W. F. Agnew, Esq., Recorder of Rangoon, dated the 7th August 1891.

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The land in suit was situate just without the limits of the original jurisdiction of the Recorder's Court; but both the plaintiff and the defendant resided within such limits.

The defendant contended that the Court had no jurisdiction to try the case; but that if jurisdiction were found, he by way of counter-claim asked for damages against the plaintiff for an alleged trespass on some adjoining land.

The learned Recorder held that under section 16 (*c*) of the Civil Procedure Code he had jurisdiction, and on the merits found for the plaintiff.

The defendant appealed to the High Court.

Baboo *Hem Chunder Banerjee* (with him Baboo *Umakali Mookerjee*) for the appellant contended that the Recorder had no jurisdiction.

Mr. *Acworth* (with him Mr. *Eddis*) for the respondent, contended that the plaintiff was not even suing the owner, nor did the plaintiff claim any title to the land; and as to the prayer for an injunction cited *Rajmohun Bose* v. *East Indian Railway Company* (1), and on the question of jurisdiction referred to the cases of *Bagram* v. *Moses* (2) and *Juggodumba Dossee* v. *Puddomoney Dossee* (3) as being cases in which suits have been brought for land out of the jurisdiction; and distinguished the case of *Delhi and London Bank* v. *Wordie* (4) and also cited *Chintaman Narayan* v. *Madharav Venkatesh* (5).

The judgment of the Court (PETHERAM, C.J., and GHOSE, J.) was delivered by

PETHERAM, C.J.—This is an appeal from a judgment of the Recorder of Rangoon, and for the purpose of what I have to say, the simplest way is for me to read the plaint, which is a very short one. The plaint states that "the plaintiff was, on the 27th day of March 1891, in possession of a piece of land known as Extra Suburban allotment, 3rd class, No. 455, Kokine Circle, Hmawbi Township, Hanthawaddy district.

(1) 10 B. L. R., 241.
(2) 1 Hyde, 284.
(3) 15 B L. R., 318.
(4) I. L. R., 1 Calc., 249.
(5) 6 Bom. H. C. A. C., 29.

"2. The defendant, on the said 27th day of March 1891, and while the plaintiff was in possession as aforesaid, broke into and entered upon the said land, accompanied by certain servants, and cut and took and carried away a quantity of grass growing upon the said 'land' and the plaintiff claims, first, Rs. 500 damages for the wrong complained of, and for the costs of the suit; and 2nd, an injunction restraining the defendant from any repetition of the acts referred to."

Upon the plaint being filed the defendant took various objections. The first objection which he took was that the land was outside the limits of the Rangoon Municipality, and that therefore the Recorder of Rangoon had no jurisdiction to try the suit; and he also took objections on the merits.

The learned Recorder, who tried the cause, came to the conclusion that he had authority to try the cause by virtue of the proviso to section 16 of the Code of Civil Procedure, and that the plaintiff was right on the merits, and he gave the plaintiff a decree for Rs. 500 damages, that being the amount which the plaintiff himself claimed, and he gave the plaintiff an injunction. From that decree the defendant has appealed, and both points have been argued before us.

We think that the Recorder of Rangoon had no jurisdiction to try the suit at all, and that being he case, it would be improper for us to express any opinion as to the merits, inasmuch as we have no more jurisdiction to do so than the Recorder had.

It is admitted, in fact it is part of the case of both parties, that the land in respect of which the trespass mentioned in the plaint is said to have been committed lies outside the limits of the Municipality of Rangoon and outside the civil jurisdiction of the Recorder of Rangoon; and it has not been contended, and it cannot be contended, that the Recorder had any jurisdiction to try this suit unless it comes within the proviso upon which he relies.

The proviso is a proviso to section 16, and the portion of the section which applies to this suit is as follows:—"Subject to the pecuniary or other limitations prescribed by any law, suits for the determination of any right to or interest in immoveable property or for compensation for wrong to immoveable property, shall be

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instituted in the Court within the local limits of whose jurisdiction the property is situate." The plaint which I have just read is a plaint for compensation for wrong to immoveable property, with an added claim for an injunction to restrain the defendant from continuing the wrong, and it is clear that unless it is within the proviso it is within the intention of the section, which says that such a suit, that is to say, a suit for compensation for wrong done to immoveable property, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. The proviso is, "provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain." Now, it is not disputed that the defendant does reside within the local limits of the Recorder's Court, and the view which the learned Recorder has taken is that, that being so, he has jurisdiction to try this particular suit against this particular defendant.

Let us look at the proviso and the plaint. The plaint, as I said just now, is for damages for a trespass, said to have been committed on the 28th March 1891, upon land which is said, in the plaint, to be in the possession of the plaintiff, and the question is, can it come within the meaning of the proviso? The proviso relates to immoveable property held by or on behalf of the defendant, and it cannot be contended, it seems to us, that when the plaintiff, for the purpose of obtaining damages for the purpose of founding his action, alleges that the property is in his possession and has been trespassed upon by the defendant, he is at liberty to say, for the purpose of bringing it within this proviso, that it is held by the defendant. Therefore we think that it cannot come within the proviso, it being land not held by the defendant, according to the plaintiff's own case.

But in addition to that we do not think that a claim for damage to land can be said to be a claim which can be entirely obtained through the personal obedience of the defendant, even though it may be joined with a claim for an injunction.

For these reasons we think that this was not within the proviso of section 16, and that the Recorder of Rangoon had no jurisdiction to entertain this suit, and that as this objection was taken at the trial, this appeal must be allowed and the suit dismissed with costs in both Courts.

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Appeal dismissed.

T. A. P.

Before Mr. Justice Macpherson and Mr. Justice Beverley.

JAGAT CHUNDER ROY AND OTHERS (DECREE-HOLDERS) *v.* ISWAR CHUNDER ROY (JUDGMENT-DEBTOR).*

1893 *March* 28.

Attachment—Civil Procedure Code (Act XIV of 1882), *s.* 266—*Saleable property—Share of partner in partnership business.*

The share of a partner in a partnership business is "saleable property" within the meaning of those words in section 266 of the Code of Civil Procedure, and can therefore be attached and sold by an execution creditor in execution of a decree against that partner.

Dwarika Mohun Das v. *Luckhimoni Dasi* (1), *Tuffuzzul Hossein Khan* v. *Raghu Nath Pershad* (2), *Deendyal Lal* v. *Jugdeep Narain Singh* (3), and *Parvatheesam* v. *Bepanna* (4) referred to (5).

IN this case the decree-holders put in a petition stating that the judgment-debtor, Iswar Chunder Roy Chowdhry, was the owner of a two-anna share of a certain partnership business, and prayed the Court to order realization of the unsatisfied portion of the decree by attachment and sale of the said two-anna share. The Judge made an order on the petition that "the prayer for sale of the share in the partnership is rejected."

From this order the decree-holders appealed to the High Court.

* Appeal from Original Order No. 234 of 1892, against the order of W. H. M. Gun, Esq., District Judge of Noakhally, dated the 3rd March 1892.

(1) I. L. R., 14 Calc., 384.

(2) 7 B. L. R., 186; 14 Moo. I. A., 40.

(3) I. L. R., 3 Calc., 198; L. R., 4 I. A., 247.

(4) I. L. R., 13 Mad., 447.

(5) See the cases of *Thama Singh* v. *Kalidas Roy*, 5 B. L. R., 386; and *Karimbhai* v. *Conservator of Forests*, I. L. R., 4 Bom., 222.—*Ed.*