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about eighteen or twenty years ago. Ram Saran Singh took back the land from Ram Bharos Singh or Deoki Singh and let it to Mahabir Singh at the annual rent of Rs. 12. Mahabir Singh never paid rent to Deoki Singh or to the plaintiffs. He has all along paid the rent to Ram Saran Singh and his descendants. We are inclined to believe the evidence given by Mahabir Singh and Amarjit Singh on the point under consideration.

Stuart, C. J. and Raza, J.

The result is that the plaintiffs' suit fails on our findings on the two points mentioned above. We do not think it necessary to decide any other point in disposing of this case. Hence we dismiss the appeal with costs. The defendants will get their costs from the plaintiffs in all the three courts.

Appeal dismissed.

REVISIONAL CIVIL.

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November, 17.

Before Sir Louis Stuart, Knight, Chief Judge.

RAM LAL (DEFENDANT-APPLICANT) *v.* BADAL KHAN (PLAINTIFF-OPPOSITE PARTY).*

Provincial Small Cause Courts Act (IX of 1887), second schedule, clauses 8 and 13—Tahbazari fees, suits for the recovery of—Rent, suits for—Essential elements for a suit for rent—Malikana and haq, suits in the nature of—Municipal land, occupation of, for the privilege of selling goods.

Suits for the recovery of *tehbazari* fees, which are fees payable by a man who takes a site within the municipal limits at his own free will, occupies it for a few hours and pays fees, not for the occupation of the site, but for the privilege of selling goods upon the site, are not suits for rent, nor are they suits for dues payable by a person by reason of his interest in immoveable property, they are also not suits for fees which are of the nature of *malikana* or *haq* as contemplated

* Civil Revision No. 45 of 1927, against the order of M. Humayun Mirza, First Additional Judge of the Court of Small Causes, Lucknow, dated the 1st of August, 1927, decreeing the plaintiff's suit.

by clause 13 of the second schedule of Act IX of 1887, but they are suits for fees payable for the privilege of doing certain specified acts, and are not excepted from the cognizance of the small cause court.

In order that a suit can be a suit for rent, there must be a lessor and a lessee, and that involves the existence of an agreement to give out the land on one side and to take it on the other side. A suit, therefore, for the recovery of dues against a person who takes a site within the municipal limits at his own free will, occupies it for a few hours and pays fee, not for the occupation of the site but for the privilege of selling goods upon the site, is not a suit for rent.

Mr. *K. P. Misra*, for the applicant.

Mr. *Zahur Ahmad*, for the opposite party.

STUART, C.J. :—This application involves the decision of several questions. Under the provisions of section 265 of Local Act II of 1916 (The United Provinces Municipalities Act) a person is not allowed to expose any article for sale, whether upon a stall or booth or in any manner, so as to cause obstruction in any street, and is not allowed to deposit or suffer to be deposited any building materials, box, bale, packages or merchandise in any street without the written permission of the Board, and is liable to prosecution and to a fine of Rs. 50 for transgressing these provisions. It is, however, stated at the end of that section, that nothing contained in that section shall apply to any obstruction of a street permitted by the Board under any section of the Act, or any rule or bye-law made, or license granted thereunder. The word "street" as defined by section 2(23) of the Act includes the land up to the defined boundary of any abutting property. Thus in the word "street" is included the *patri* or side-walk. Under the provisions of section 298(*e*) of the same Act, the Board is authorized with the sanction of the Local Government to make bye-laws consistent with the Act, and with other rules, permitting, prohibiting, or regulating the use or occupation of any public

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streets or places by itinerant vendors or by any person for the sale of articles, or for the exercise of any calling, or for the setting up of any booth or stall, and providing for the levy of fees for such use or occupation. The Lucknow Municipal Board has, in accordance with the provisions of section 298(*e*), framed bye-laws, which have been sanctioned by the Local Government for the levy of fees from persons selling or exposing for sale any goods otherwise than as hawkers, or setting up any stall or booth, or allowing any cart or animal to stand for business in any public street or place except in certain specified places on payment of fees. Amongst the places which are not excepted are the *patris* or side-walks of all roads within the municipal limits. The present application is concerned with a portion of the Sitapur road which is within the municipal limits. The bye-laws in question lay down that persons selling articles on these *patris* are liable to pay certain fees. These fees are called *tahbazari fees*. The name is unimportant. The questions are what is the authority to charge these fees and what is the nature of the fees charged? I have already stated the authority. The nature of the fees is clear. They are fees for permission to do certain acts, the acts in question being the sale of goods in certain places. The fees are assessed according to the circumstances of the sale. An itinerant vendor selling vegetables loaded on a pony has to pay an anna a day for the privilege, if the sale takes place within these limits. A man selling goats has to pay to the municipality a fee of six pies per goat sold. Amongst these fees are fees for persons selling off stands. Such dealers as prefer to adopt this method are permitted to sell their wares from a site and they pay per day according to the area of land occupied. There are no contracts, no agreements, and no rents. The municipality has authority to refuse to grant permission to a person to carry on such business, but if that permis-

sion is not refused, a man selling his goods from a site is permitted to select his own site, and to change his site at will. Apparently what happens is that the first comer gets every day his choice of vacant sites, subject to the reservation of certain sites for certain established traders as a matter of good feeling among the traders themselves. This preamble is necessary in order to explain some of the questions raised in the application.

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It appears that the Lucknow Municipality, instead of collecting these fees in this particular area of the Sitapur road through their own servants, gave a contract to the plaintiff in these small cause court suits—a man of the name of Badal Khan—to collect these fees. The Board farmed out the fees to Badal Khan. Badal Khan has instituted a certain number of suits in the small cause court to recover certain of these fees. The application raises the question as to whether such suits as these can be instituted in a small cause court under the provisions of Act IX of 1887. The learned Counsel, who appears against Badal Khan, has argued that these suits, which are suits brought against persons who were occupying a certain area of land, are in reality suits for rent, and are thus suits excepted from the cognizance of the court of small causes under the provisions of clause 8 of the second schedule, and in the alternative he argues that they are suits to enforce the payment of dues payable to a person by reason of his interest in immoveable property, and are thus excluded from the cognizance of the court of small causes under clause 13 of the same schedule. I do not consider that these suits are for either such relief. They are certainly not suits for rent. In order that a suit can be a suit for rent, there must be a lessor and a lessee, and that involves the existence of an agreement to give out the land on one side and to take it on the other side. Here the Municipal Board in no way leases

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the site. The man takes the site at his own free will, occupies it for a few hours and pays fees, not for the occupation of the site, but for the privilege of selling goods upon the site. There is no real distinction between such a person who sells his goods seated with the goods laid out upon the ground and a person who sells his goods standing with the goods in a tray. Each pays the fees for the privilege of vend, not for the occupation of the land. It is true that the fees increase according to the extent of the land upon which the vendor has laid his goods, but the suits are not in my opinion suits for rent. They are suits for fees. Suits for fees under the provisions of clause 13 are excepted from the cognizance of a court of small causes only when the fees are of the nature of *malikana* or *haq*. The fees in question are not of the nature of *malikana* or *haq*. The suits are not suits for dues payable to a person by reason of his interest in immoveable property. They are suits for fees payable for the privilege of doing certain specified acts. In these circumstances I find that the suits were brought rightly in a small cause court. I am unable outside these clauses to find any other clause excepting these suits from the cognizance of the small cause court.

The next point which has been argued by the learned Counsel supporting this application is that the Municipal Board is not the owner of that portion of the *patri* on which his clients carried on their business, but that that portion of the *patri* had been transferred to a body called the Lucknow Improvement Trust, and that the Municipal Board had no longer any right to collect fees in respect of persons carrying on business in that portion. There is no evidence on the record to support this objection. The applicant's case is that he was wrongfully debarred from producing evidence. I do not find that he was wrongfully debarred from producing evidence. I do not consider that the applicant has any grievance in

this matter. The remaining arguments were directed to questions of fact. I see no reason to interfere thereon. I, therefore, dismiss this application with costs.

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Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan.

S. C. MITRA (PETITIONER) *v.* RAJA KALI CHARAN AND OTHERS (OPPOSITE-PARTY).*

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Criminal Procedure Code (Act V of 1898), sections 439, 423 and 561A—Criminal proceedings in a subordinate court, whether constitute process of court—Process of court, abuse of—"Quashing of proceedings", meaning of—Chief Court, whether a High Court—Companies Act (VII of 1913), sections 235 and 237—Liquidator not complying with order of court and filing criminal complaint against certain officers of the company—High Court's power to quash proceedings.

Criminal proceedings in a subordinate court constitute process of the court, and if the High Court comes to the conclusion that the process is being abused, the new section 561A introduced by the Code of Criminal Procedure Amendment Act, 1923, invests the court with the jurisdiction of passing an order to set aside those proceedings so as to prevent the abuse. But though the jurisdiction exists and is wide in its scope it is a rule of practice that it will only be exercised in exceptional cases.

The Chief Court of Oudh being expressly included in the definition of a High Court in clause (*j*) of section 4 of the Code of Criminal Procedure has, in the exercise of its powers conferred by section 439, read with section 423 sub-section 1, clause (*c*) Criminal Procedure Code, jurisdiction to quash criminal proceedings pending in the court of a Magistrate. Quashing of proceedings is a term of compendious connotations, and the practical result is the setting aside or refusal of the order initiating the proceedings.

* Commercial Case No. 14 of 1927 (Miscellaneous applications Nos. 555, 562, 629 and 639 of 1927).