

allow the appeal, set aside the judgment and the decree passed by the Court below and restore the judgment and the decree of the Additional Subordinate Judge. The result is that the suit is dismissed with costs in this Court and in the Court below. So far as the costs in the court of first instance are concerned, I agree with the learned Additional Subordinate Judge that each party should bear his own costs.

ADAMI, J.—I agree.

*Suit dismissed.*

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### CIVIL REFERENCE.

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*Before Mullick and Kulwant Sahay, J.J.*

RUP LAL SINGH

*v.*

SECRETARY OF STATE FOR INDIA.\*

*Bengal Troops Transport and Traveller's Assistance Regulation, 1806 (Regulation XI of 1806), section 3(1)—“Native officer”, whether can impress a cart against the consent of the owner.*

Under section 2 of the Bengal Troops Transport and Traveller's Assistance Regulation, 1806, whenever a detachment of troops, or a single corps, shall be ordered to proceed by land or by water, through any part of the Company's territories, “the Commanding Officer is required to give timely notice to the Collectors of districts through which the troops are to pass”. On receipt of such notice the Collector “shall”, under section 3, “depute a creditable Native officer to accompany the troops through his jurisdiction.....It shall also be the duty of such Native officer to provide the troops with whatever bearers, coolies, boatmen, carts and bullocks, may be indispensably necessary to enable the troops to prosecute their route”.

*Held*, that the Native officer referred to in section 3 can legally impress carts let on hire against the consent of their owners.

1925.

RAM  
CHANDRA  
SINGH

”  
JANG  
BAHADUR  
SINGH.

DAS, J.

1925.

*July, 23, 27.*

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\* Civil Reference no. 1 of 1925.

1925.

RUP LAL  
SINGHv.  
SECRETARY  
OF  
STATE FOR  
INDIA.

Reference by the subordinate judge of Muzaffarpur under Order XLVI, Code of Civil Procedure, 1908.

It appeared that in order to facilitate the march of a detachment of cavalry through his district the Collector of Muzaffarpur ordered a Native Officer to provide the troops with bullock carts. The Native Officer, acting under Regulation XI of 1806, impressed a number of carts which had been hired by the appellant Ruplal Singh for the purpose of carrying out a contract for the repair of certain roads.

The Subordinate<sup>e</sup> Judge of Muzaffarpur found that the impressment was made against the will of the appellant. He further found that as a result of such impressment the coolies collected by the contractor were idle for two days and that he had to pay them during this time. The contractor claimed as damages the pay of the coolies. The Subordinate Judge was of opinion that a claim for damages would lie if the act of the Secretary of State, who was the defendant no. 1 in the suit brought by the appellant, was a tort. But he was doubtful of the scope of Regulation XI of 1806 and, under Order XLVI of the Civil Procedure Code he referred the case to the High Court for an opinion on section 3 of the Regulation. The question put by him was,

"Whether the Native and Police Officer referred to in paragraphs 3 and 4 of the first clause of section 3 of Regulation XI of 1806 can legally impress a cart let on hire against the consent of the owner."

*S. Saran*, for the plaintiff.

*L. N. Sinha*, Government Pleader, for the defendant.

MULLICK, A. C. J.—The Native Officer is directed by paragraph 3 of section 3 of the Regulation to provide the troops with whatever bearers, boatmen, carts and bullocks may be necessary to prosecute their route. The next paragraph empowers him in case of difficulty to seek the assistance of the nearest police

officer who is to afford his aid in providing the number of persons and of carts and bullocks required. The section does not in terms empower the Native Officer or the police to impress any carts or bullocks against the will of their owner but it is obvious that this is intended. It is not necessary here to consider whether private carts can be seized but as regards carts ordinarily let out on hire it is impossible to conceive that when a regiment is on the line of march the refusal of the owner would be sufficient to oust the jurisdiction of the officer concerned. That could not have been intended by section 3 having regard to the object for which it was enacted. This is made clearer by comparison with section 8 which relates to the supply of carts, etc., to military officers not commanding or proceeding with a corps or detachment and to other persons passing through the country. The third paragraph of this section by implication empowers the police officer to impress carts kept for hire and to compel bearers and boatmen who are accustomed to act as such to undertake such involuntary service. From this it would appear that in the case of regiments on the march it is certainly open to the Native Officer or the police officer to impress carts or bullocks which are ordinarily let out for hire.

1925.

RUP LAL  
SINGH  
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OF  
STATE FOR  
INDIA.  
MULLICK, A.  
C. J.

It is contended on behalf of the plaintiff that the Regulation could not have intended to empower the Native Officer to use means which were contrary to law and thereby encroach upon the liberty of the subject. But the answer to this is that when a statute confers a power it implies that the donee of that power shall be competent to do all that is needful for its exercise subject to the limitation that he cannot go beyond what is reasonable. If, in order to carry out the law, he does something which the Courts consider in the circumstances unreasonable, he will be guilty of a tort.

The answer therefore to the question put by the learned Subordinate Judge, in my opinion, is in the affirmative.

1925.

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KULWANT SAHAY, J.—I agree that in case of carts let on hire, the Native and police officer referred to in paragraphs 3 and 4 of section 3, clause 1, of the Regulation can legally impress them against the consent of their owner.

*Reference answered in the affirmative.*

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## REFERENCE UNDER THE COURT-FEES ACT, 1870.

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*Before Ross, J.*

KRISHNA CHANDRA GAUNTIA

1924.

July, 29.

v.

RAJA MAHAKUR.\*

*Court-Fees Act, 1870 (Act VII of 1870), section 7(v) and (xi)(e)—Occupancy land, suit by tenant against landlord for possession of.*

A tenant instituted a suit against his landlord for possession of occupancy land after determination of title. The question of title was decided in favour of the plaintiff and the suit was decreed. The defendant appealed to the District Judge. That appeal was dismissed and he appealed to the High Court. For the purposes of court-fee and jurisdiction the suit was treated as a suit under section 7(v)(b) of the Court-Fees Act, 1870, and was valued at five times the annual rental of Rs. 3. In the appeal to the High Court it was agreed that the annual rent should be taken to be Rs. 50.

Under section 7(v) of the Act, in a suit for "the possession of land" the court-fee is to be computed according to the value of the subject-matter. In a suit which falls within clause (b) of section 7(v) the value of the subject-matter, was before the amendment of the Court-Fees Act by section 3 of the Bihar and Orissa Court-Fees (Amendment) Act, 1922, deemed to be five times the revenue payable to Government. In a suit under clause (d), however, the annual value of the subject-matter is deemed to be the market-value of the land.

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\* Second Appeal no. 26 of 1924 (Cuttack).