

LETTERS PATENT APPEAL.

Before Mr. Justice Shadi Lal and Mr. Justice Martineau.

SADDA SINGH AND OTHERS (DEFENDANTS)—
Appellants,

versus

KIRPALA AND OTHERS (PLAINTIFFS)—
Respondents.

Letters Patent Appeal No. 48 of 1919.

Punjab Land Revenue Act, XVII of 1887, section 117 (2) (c) (as amended by the Punjab Courts Act, III of 1914)—appeal from decree of Assistant Collector in determining a question of title—lies to District Judge.

Held, that since the substitution of the phrase "Subordinate Judge" for "District Judge" in section 117 (2) (c) of the Punjab Land Revenue Act by the Punjab Courts Act, III of 1914, an appeal from the decree of an Assistant Collector in the matter of the determination of a question of title lies to the Court of the District Judge.

Appeal from the decree of Sir Henry Rattigan, Chief Justice, dated the 5th November 1919.

N. C. PANDIT, for Appellants.

SHEO NARAIN, for Respondents.

The judgment of the Court was delivered by—

SHADI LAL, J.—Upon a question as to title having been raised before him, the Revenue Officer proceeded under section 117 of the Punjab Land Revenue Act to determine the question as though he were a Civil Court. Now, it is true that under the Land Revenue Act, as it existed prior to 1914, the Revenue Officer was deemed to be a District Judge for the purpose of determining the *forum* which was competent to hear an appeal from a decree passed by him in regard to a dispute of this character. But the Punjab Courts Act passed in 1914 substituted the phrase "Subordinate Judge" for "District Judge" in section 117 (2) (c) of the Land Revenue Act, and there can, therefore, be no doubt that the Assistant Collector in the matter of the determination of the question of title was acting as Subordinate Judge, and that the appellant was justified in filing his

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appeal in the Court of the District Judge. The order of the District Judge returning the appeal for presentation to this Court and that of the learned Judge of this Court dismissing the appeal as barred by time proceed upon an assumption that the law as originally declared in section 117 (2) (c) has not been subsequently amended; and they must be set aside.

Mr. Sheo Narain for the respondents frankly admits that the appeal in view of the amendment mentioned above was rightly presented to the District Judge, but the learned Advocate contends that this amendment was not brought to the notice of either the District Judge or the Judge in Chambers, who dealt with the matter, and that the Division Bench, hearing an appeal under the Letters Patent, should not, therefore, interfere with the judgment of the Single Judge. Considering that the matter is patent, and that the amendment in the law was not noticed either by the Counsel or by the Court, we see no reason why we should uphold the judgment which is admittedly wrong.

We, accordingly, set aside the judgment of the learned Judge in Chambers as well as the order of the District Judge returning the appeal for presentation to this Court, and direct that the memorandum of appeal be returned to the appellant for presentation to the District Judge. The court-fee on the memorandum of appeal shall be refunded and other costs shall be borne by the parties themselves.

Appeal accepted.
