

while finding in his favour on the merits, assessed the damages at Rs. 2,000 and allowed him proportionate costs on *that* amount only. I think the same course should be followed in this case and the plaintiff-appellant allowed costs in both Courts in proportion to the amount of damages decreed, recoverable from Inayat Shah, respondent No. 2.

I would accordingly accept Civil Appeal No. 1901 of 1923, in so far as to modify the order as to costs, to the extent indicated above. In all other respects this appeal must be dismissed.

AGHA HAIDAR J.—I agree.
N. F. E.

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*Letters Patent Appeal accepted.
Civil Appeal dismissed save in part.*

MISCELLANEOUS CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

RAM PARTAP-SUKH DIAL, Petitioners

versus

THE COMMISSIONER OF INCOME TAX,
DELHI, Respondent.

Civil Miscellaneous No. 334 of 1927.

Indian Income Tax Act, XI of 1922, sections 13, 23 (2)—Assistant Commissioner—Findings—reasons to be stated—section 13—whether it empowers Income Tax Officer to dispense with notice under section 23 (2).

Held, that an Assistant Commissioner should state facts and give reasons for his findings.

Held further, that section 13 of the Income Tax Act does not empower the Income Tax Officer to dispense with notice under section 23 (2).

Application under section 66 (3) of the Income Tax Act, praying that the Commissioner of Income

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Tax be called upon to state the case to this Court on certain questions of law.

JAGAN NATH AGGARWAL, for Petitioners.

CARDEN-NOAD, Government Advocate, for Res-
pondent.

The order of the Court was delivered by—

ZAFAR ALI J.—The two orders in appeal recorded one after the other in this case by the Assistant Commissioner of Income Tax are extremely perfunctory and brief giving no statement of facts and no reasons for the conclusions arrived at. We are of opinion that the Assistant Commissioner must state facts and give reasons for his findings. The Assistant Commissioner of Income Tax who does not do so, fails to perform his duty properly.

It may further be observed that some remarks in the order of the Income Tax Officer which was appealed from, are not quite intelligible, and it appears that he made an estimate of the income on the general report of the extent of the assessee's business.

But this application under section 66 (3) of the Income Tax Act appears to be premature inasmuch as some of the questions raised before us are yet to be enquired into under the order of remand made by the Commissioner who will pass final orders on receiving a return to his order of remand.

We may further observe that an Income Tax Officer does not appear to be empowered by section 13 to dispense with a notice under Section 23 (2), but it is not clear from the papers before us whether a notice under section 23 (2) was served on the assessee or not.

With these remarks we dismiss this application on the ground that it is premature. The assessee will

be at liberty to present a fresh application, if so advised, after the Commissioner has passed his final orders. We refrain from expressing any opinion as to whether the questions sent back by him for inquiry are questions of law or not.

No order as to costs. The hundred rupees already deposited by the Petitioner may be refunded.
N. F. E.

Petition dismissed.

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Skemp.

FATEH SHER AND OTHERS, Donees (DEFENDANTS)

Appellants.

versus

RAJA (PLAINTIFF) and MST. WALLAN, Donor,
(DEFENDANT) Respondents.

Civil Appeal No. 1736 of 1924.

Custom—Alienation—ancestral land—gift to daughter—Bakhars of village Bakhar, district Shahpur—valid to what extent—Riwaj-i-am.

Held, that by custom among *Bakhars* of village Bakhar, district Shahpur, a father can make to a daughter a gift of part of his immoveable property not exceeding the share that would go to her by inheritance according to the Muhammadan Law, but he cannot, without the consent of the agnates, make a gift to such relative of a larger share than this.

Wilson's Tribal Custom in the Shahpur District, page 72, referred to.

Second appeal from the decree of Khan Bahadur Munshi Rahim Bakhsh, District Judge, Shahpur, at Sargodha, dated the 8th February, 1924, varying that of Makhdoom Muhammad Afzal, Junior Subordinate

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