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after giving the case my best attention, that his judgment is right. I am confirmed in this view by the fact that a very similar question arising between another Kadim Inamdar and a Mirasdar in the same village, the land being adjacent to the land in dispute, was similarly decided in favour of the Kadim Inamdar by the learned Chief Justice and Batchelor J. in 1914.

I am, therefore, of opinion that since no complaint is made as to the amount of the enhancement and the appeal is confined to the general principle I have discussed, the decree of the lower appellate Court ought now to be confirmed with all costs upon the appellant.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

D. B. COOPER AND ANOTHER—APPLICANTS.*

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September 12.

Civil Procedure Code (Act V of 1908), section 115—Nazir's embezzlement—District Judge ordering recovery by attachment under Bom. Act XII of 1850, section 4—Jurisdiction of the High Court to revise the order.

Under section 115 of the Civil Procedure Code 1908 the High Court has no jurisdiction to revise an order made by a District Judge acting under section 4 of the Bom. Act XII of 1850 as it is an order made by him as a person at the head of an office and not an order made by a Court in any way subordinate to the High Court.

CIVIL Application under extraordinary jurisdiction against the order passed by W. Baker, District Judge of Satara.

* Civil Application No. 11 of 1916 under extraordinary jurisdiction.

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COOPER, *In re.*

One A. B. Lewis was appointed Nazir of the District Court at Satara. The applicants stood sureties for him and by a surety bond dated 4th September 1909, they agreed to make good any sum not exceeding Rs. 5,000 that may be demanded by the District Judge of Satara for any loss or damage that may be sustained by him by reason of any defalcations that may be made by the said A. B. Lewis as Nazir of the said Court.

Before Lewis was appointed Nazir, one of his predecessors Javeri had been appointed under the Guardian and Wards Act, 1890, to be guardian of the estate of one minor Agashe.

After the retirement from service of the said Javeri, Lewis assumed to himself the functions of the guardian of the said minor and began to administer the property of the minor, but no surety bond was passed by him under the provisions of the Guardian and Wards Act, 1890.

During the course of the management Lewis embezzled the funds of the minor's estate and made defalcations amounting to Rs. 19,000. He was, therefore, prosecuted for criminal breach of trust and convicted.

The applicants were, in consequence, called upon by the District Judge of Satara under the Guardian and Wards Act, 1890, to make good their surety bond. This they did under protest and brought a suit No. 337 of 1914 in the First Class Subordinate Judge of Satara for the recovery of Rs. 5,000—the amount of the surety bond—from Lewis. They obtained attachment before judgment on the property of the defendant Lewis by an order dated 21st August 1913. The decree in the said suit was passed on 10th August 1915.

Thereupon the District Judge acting under section 4 of Bom. Act XII of 1850 requested the Collector to

carry out the provisions of that section and recover the excess of Lewis' embezzlement as though it were an arrear of land revenue.

By an application dated 17th September 1915, the applicants asked the District Judge to issue orders for raising of the attachment by the Collector on the grounds that (1) the said defalcations were made by the said Lewis as guardian and not in the capacity of Nazir of the District Court of Satara and that (2) no attachment of the property of the said Lewis could, therefore, be made under the provisions of sections 137 and 155 of the Land Revenue Code inasmuch as Act XII of 1850 by which any defalcations by a public servant could be recovered by summary attachment and sale under the Land Revenue Code as arrears of land revenue applied to public servants only and the said Lewis as guardian of the minor Agashe was not a public servant within the meaning of the Act.

The District Judge, however, refused to pass orders for the removal of the attachment and subsequently in October 1915 sold the property.

The applicants, thereupon, applied to the High Court under its extraordinary jurisdiction.

Weldon with *S. V. Bhandarkar*, for the applicants.

S. S. Patkar, Government Pleader, for the opponent.

BEAMAN, J. :—The question argued upon this rule is a novel and somewhat difficult one. It arises in this way :—

In the year 1909 Alexander Lewis was appointed Nazir of the District Court of Satara. The applicants stood surety for him in that character. As a Nazir he undoubtedly falls within the definition of a public accountant within the meaning of Act XII of 1850. The two applicants executed a surety bond in favour

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of the Secretary of State for India the words of which clearly indicate that it was drafted with special reference to Act XII of 1850. Before Lewis was appointed Nazir one of his predecessors Javeri had been appointed under the Guardians and Wards Act to be guardian of the estate of a minor. The appointment appears not to have been made in the name of Mr. Javeri, but generally in that of the Nazir of the Court. Javeri was succeeded for a short time by one Pendharkar. In this argument we are told that Pendharkar did not take upon himself the duties of guardian of this estate. Then, as I have said, in 1909 Lewis was appointed Nazir. He on his own responsibility and without any fresh order from the Court took over the management of the minor's estate. No surety bond was exacted from him under the Guardians and Wards Act in favour of the District Judge, and although this is not apparent on the record of these proceedings, we think that the practice usually is that Mofussil Nazirs are appointed almost as a matter of course to be guardian of the estates of minors and no special surety bonds are taken from them under the Guardians and Wards Act, but it is assumed that they are sufficiently guaranteed by their position or by any surety bond which may have been given in favour of the Secretary of State upon their appointment. Presently Lewis proceeded to embezzle the funds of the minor's estate and was finally detected in defalcations amounting to Rs. 19,000. He was duly prosecuted and we understand that he was convicted. It is noteworthy that in this trial he was not convicted as a public servant, but merely as a private individual who had committed breach of trust. It would follow, therefore, that the defalcations attributable to him were defalcations in his character of manager of a minor's estate and not peculation of Government money in his character as Nazir. The District Judge

called upon the sureties to make good their surety bond. This in the year 1914 they did under protest. Then as we are told in this argument upon the advice of the District Judge they brought a suit against Lewis, the late Nazir, to recover from his estate the amount which they as sureties had paid under protest. Again they sued him as Nazir and not as the guardian of a minor's estate in his private capacity. They obtained a decree and levied an attachment before judgment. Thus matters stood in August 1915 when the District Judge acting under section 4 of Act XII of 1850 requested the Collector to carry out the provisions of that section and recover the excess of Lewis' embezzlement as though it were an arrear of land revenue. The effect of this order was to nullify the applicants' attachment and to deprive them of all the fruits of their decree. On the 17th of September 1915, they wrote to the District Judge protesting against his action and pointing out its injustice to them. On the 29th of September, the District Judge replied pointing out that their attachment before judgment gave them no lien upon the property and that he saw no reason to modify his application and what had been done thereon under section 4 of Act XII of 1850. This letter is what the applicants now complain of or rather the order of August of which it is a sequel. They make their grievance out of this letter because if it were referred directly to the order of August, this application might be time-barred under rule 16 (1) of the High Court Rules.

The question we have to answer is, whether assuming the application is in time, we are competent to deal with it under section 115 of the Civil Procedure Code. The revisional powers which are by that section entrusted to the High Court appear to be confined to cases decided by any Court subordinate

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thereto. The word 'case' may have a very wide and general connotation and I should have no doubt but that the facts constituting the applicants' grievance here would certainly be a 'case' within the meaning of that section. Now the difficulty, however, arises when we come to consider the nature of the substantive order which has given rise to this application. The applicants' contention is that the District Judge had no jurisdiction whatever to act under Act XII of 1850. They say that the Nazir's embezzlements were not embezzlements within the scope of his duties as Nazir, but are entirely confined to his authority as guardian of a minor's estate and therefore fall exclusively under the provisions of the Guardians and Wards Act. The surety bond which the applicants had been compelled to pay is not a surety bond such as is contemplated by that Act, and their argument is that inasmuch as the Nazir was for the purposes of that Act on the same footing as any private individual, the District Judge could only recover what he had embezzled, if he could recover it at all, by procedure under the Guardians and Wards Act. The applicants say that they never guaranteed the Nazir for the performance of any other duties than those lawfully appertaining to his office as Nazir. His appointment, specially and to be specially remunerated as guardian, was not within their contemplation and they never intended to guarantee it. That being so, they say that the whole action of the District Judge has been *ultra vires* and due to a misconception of the real facts. I go a very long way with the applicants. I certainly think that it is a question whether the District Judge acted *intra vires* when he made his order of August 1915. But when we look to the terms of section 4 of Act XII of 1850 it becomes apparent that rightly or wrongly the District Judge acting under that section made his order as a person at the

head of the Office in which the public accountant who had been guilty of embezzlement was a servant. Now there might be many such heads of Offices none of whom in that character could possibly be subject to the jurisdiction of this High Court exercising its powers under section 115, and if that be so of any number of heads of offices so constituted, I am unable to discover any logical ground upon which to distinguish the case merely because the head of the office in that case happens to be a Judge.

I do not think that the order made under that section is an order made by a Court in any way subordinate to this High Court and therefore in my opinion we have no jurisdiction to deal with this application under section 115.

I, therefore, think that the rule should be discharged with all costs.

HEATON, J. :—I agree for the reasons stated that the order made is not one in which we have jurisdiction to interfere under the provisions of section 115 of the Civil Procedure Code.

As regards the other matters the facts seem to me to be so complicated and moreover it also seems to me so doubtful whether we have before us a full account of the facts that I prefer not to express any opinion concerning them.

Rule discharged.

J. G. R.