1903 FEB. 19.

CRIMINAL REVISION.

30 C. 693.

their warrants. This, I submit, is illegal. The question whether or not the accused were protected by their warrants could only be decided by the Deputy Magistrate after a proper trial.

No one appeared to shew cause.

HARINGTON AND BRETT, JJ.—In this case a Rule was granted calling upon the District Magistrate to show cause why the order transferring the case to his file should not be set aside or such other order made as to this Court might seem fit on the ground that at that stage of the proceedings there was no sufficient reason for taking the case away from the Deputy Magistrate who was engaged in trying it, and on the ground that the law does not warrant the transfer of a case except for the purpose of inquiry or trial, and that that inquiry has not been held by the District Magistrate.

No cause has been shewn against this Rule, and we have perused the explanation that has been submitted by the District **[695]** Magistrate ; but in our opinion the statements therein contained do not furnish any explanation which would justify the discharging of this Rule.

It appears that the case in question, which was a case against some policemen for entering the house of a Raja, was being tried before a Deputy Magistrate, and that when the Deputy Magistrate was about to frame charges against the accused persons, the District Magistrate withdrew the case to his file and dismissed it, because he thought the police were protected by their warrants.

In our opinion the case ought to have been left with the Deputy Magistrate to be disposed of, and it would have been for the Deputy Magistrate, who was trying the case, to determine whether the offence charged was made out, or whether, assuming the facts to be proved, the police were or were not protected by the warrants under which they purported to act. No grounds existed that we can see for taking the case away from the Deputy Magistrate.

The Rule is accordingly made absolute, and the order of the District Magistrate is set aside, and we direct that the case be restored to the file of the Deputy Magistrate to be disposed of according to law.

Let the record be returned to the Lower Court with as much despatch as possible.

Rule absolute.

30 C. 696.

[696] CIVIL RULE.

PROKASH CHANDRA SARKAR *v.* E. E. ADLAM.* [1st June, 1903.]

Reciever—Agreement to pay salary of Receiver—Position of Receiver—Civil Procedure Code Act (XIV of 1882) *s.* 503.

A promise to pay the salary of a Receiver without leave from the Court, even if unconditional, being in contravention of the law, is not binding on the promisor.

A Receiver being an officer of the Court, the Court only is to determine his fees or remuneration ; and the parties cannot by any act of theirs add to, or derogate from, the functions of the Court without its authority.

Manick Lall Seal v. *Surrut Coomaree Dassee* (1) referred to.

RULE granted to the defendants, Prokash Chandra Sarkar and another.

* Civil Rule No. 293 of 1903, against the order of R. C. Roy, Small Cause Court Judge of Gaya, dated Sept. 12, 1902.

(1) (1895) I. L. R. 22 Cal. 648.

1903 JUNE 1.

CIVIL RULE.

30 C. 696.

This Rule arose out of a decree of the Court of Small Causes, Gaya, dated the 12th September 1902. The facts show that upon the application of all the defendants, the plaintiff, E. E. Adlam, was, on the 14th September 1901, appointed Receiver of the estate of one Ram Narayan Ram and others who were the judgment-debtors in a suit. By this order it was clearly stated that all expenses were to be paid out of the collections. The Receiver could not collect sufficient money, and the District Judge verbally advised the petitioners, the decree-holders in that suit, to finance the Receiver for two or three months by way of an advance or loan, in order that the Receiver might carry on his work in the villages and that such advance be paid off with interest by the Receiver from his collections.

One of the petitioners having made a conditional promise to pay two-thirds of the Receiver's salary provided another defendant paid his share of the same, the Receiver on several occasions wrote to the petitioners demanding his salary, but they refused to pay him in contravention of the standing orders of the District [697] Judge. Ultimately the plaintiff (Receiver) applied to the District Judge of Gaya, requesting him to order the petitioners and their co-sharers to pay him his salary. On the 4th April, 1902, the District Judge passed an order that the Court had no power to direct the remuneration of the Receiver to be met otherwise than from the rents and receipts of the property in his hands, and refused to make the order prayed for.

In consequence of the above order the plaintiff (Receiver) instituted a suit on the 28th July 1902, in the Court of Small Causes, Gaya, and obtained a decree on the 12th September 1902 against the petitioners with costs.

Thereupon the petitioners moved the High Court and obtained this Rule against the plaintiff (Receiver) to show cause why the decree obtained in the Court of Small Causes, Gya, should not be set aside, mainly on the grounds that the said decree was *ultra vires* and made without jurisdiction.

Babu *Sarat Chandra Roy Chowdhury* and Babu *Manmatha Nath Mukerji* for the petitioners. The Receiver is an officer of the Court, and he should look to the Court and nobody else for his remuneration. In answer to the argument of the learned Judge of the Court of Small Causes, that the petitioner had entered into a contract to make advances to the Receiver, I submit that, that contract is not only void for want of consideration, but must also be looked upon as a contempt of Court: see *Manick Lall Seal* v. *Surrut Coomaree Dassee* (1).

No one appeared to shew cause.

PRATT AND MITRA, JJ. This is a Rule to shew cause why the decree of the Court of Small Causes, Gaya, dated the 12th September 1902, should not be set aside. It appears that the plaintiff was appointed Receiver of certain properties on an application of all the defendants. The order of the District Judge appointing the plaintiff a Receiver was made on the 14th February 1901. The Receiver apparently could not collect sufficient money. On the 2nd February 1902, one of the defendants, namely, defendant No. 1, made a conditional promise to pay him two-thirds of his salary provided the third defendant, who was [698] interested in a one-third share, also paid his share of the same. No money was, however, paid by the defendants, and the plaintiff

(1) (1895) I. L. R. 22 Cal. 648.

1903 JUNE 1.

CIVIL RULE.

30 C. 696.

applied to the District Judge for an order directing the defendants to pay his salary. The District Judge made the following order : " It does not seem that this Court has any power to order the remuneration of the Receiver to be met otherwise than from the rents and receipts of the property in his hand ; no order can, therefore, be passed as prayed for by the Receiver."

Thereafter the plaintiff instituted the present suit without any leave from the District Judge and obtained a decree against defendants Nos. 1 and 2 for two-thirds of his salary calculated up to the date of the institution of the suit. Now, the defendant No. 2 is a minor ; and even if the plaintiff could recover under the promise made on the 22nd February 1902, there could be no decree passed against the minor. The Court below, however, gave a decree for two-thirds of the salary, mainly relying upon this promise made on the 22nd February.

It seems to us that even if defendant No. 1 had made a promise to pay, and even if it was not conditional, yet it was not binding, as it was made in contravention of the law. Under section 503 of the Code of Civil Procedure, the Court is to determine what fee or commission a Receiver is entitled to by way of remuneration. The Receiver is an officer of the Court, and the parties cannot by any act of theirs add to or derogate from, the functions of the Court without authority from the Court itself. In the case of *Manick Lall Seal* v. *Surrut Coomaree Dassee*(1), this Court held that an agreement between a Receiver and a party without the knowledge of the Court was a gross contempt of Court.

We are of opinion that the parties in the present case entered into a contract which was not valid, and, therefore, the suit was not maintainable. We, therefore, set aside the decree complained of and make the Rule absolute with costs.

Rule absolute.

30 C. 699 (=7 C. W. N. 651).

[699] ORIGINAL CIVIL.

BENODE BEHARY MOOKERJEE *v.* RAJ NARAIN MITTER.*

[25th February, 1903.]

Plaint, Amendment of—Mistake—Limitation—Power of Receiver to sue—Limitation Act (XV of 1877) s. 19—Acknowledgment of liability.

By an order of the Court the plaintiff was appointed Receiver in a certain suit with authority to sue for and recover an attached debt. Through some mistake in the office of the attorneys of the plaintiff in that suit, the money sought to be attached was wrongly described in the Tabular Statement as money due under the agreement of the 25th October 1895, whereas it should have been the agreement of the 26th August 1895, and the Court, acting on this representation, made the order, which applied to the alleged agreement of the 26th October 1895. On application to amend the order and the plaint or in the alternative to read the existing order as if it were in reality applicable to the right agreement :—

Held, that no order for amending the plaint or the order could be made ; the amendment of the order would operate only as a new order, taking effect from the date on which it is made, and could not therefore operate as the basis or authority for the present suit. The plaintiff's authority to maintain this suit depends solely upon the order appointing him Receiver : if it has been made under any mistake, it cannot by any course of construction be regarded as applying to anything other than the subject-matter specified by the order itself, the intention of the parties being immaterial.

* Original Civil Suit No. 447 of 1899.

(1) (1895) I. L. R. 22 Cal. 648.