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May 26.

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

RAM CHANDRA CHOWDHRY AND ANOTHER (DEFENDANTS) *v.* SUBAL PATRO AND OTHERS (PLAINTIFFS.)*

Wrongful Distraint—Damages—Jurisdiction of Collector—Act X. of 1859 s. 143.

A suit for recovery of damages, by reason of wrongful distraint, is not cognizable by the Civil Court, but is cognizable by the Collector under section 143, Act X. of 1859.

Baboo *Kali Krishna Sen* for appellants.

Baboo *Ras Behari Ghose* for respondents.

JACKSON, J.—The plaintiff brought this suit in the Civil Court to recover damages by reason of wrongful distraint over his crops, under color of the power of distraint against the defendants, Ram Chandra, who calls himself izardar, Uma Charan, calling himself dar-izardar under the last named defendant, and Nandram described as gomasta. The allegation was that Ram Chandra, claiming to have an izara of this mauza, had created a fictitious dar-izara in favor of Uma Charan, and that the so-called distraint was really the act of Ram Chandra, although the name of Uma Charan had been used.

Ram Chandra in his written statement repudiated all connection with the act complained of, and spoke of Uma Charan as dar-izardar; the latter in his written statement urged that the Civil Court could have no cognizance of this case; inasmuch as on the plaintiff's own showing, it appeared that the act done was done in the exercise of an alleged right of distraint, and consequently the suit ought to have been brought under section 141, Act X. of 1859.

The Moonsiff held that he had no jurisdiction. On appeal, the Judge reversed that decision in these words:—"The Moonsiff was wrong in thinking "that this suit will not lie in the CivilCourt; and in refering the plaintiffs to "a suit under sections 142 and 143 of Act X. of 1859 in the Revenue Court; "for, as the Moonsiff himself states, the suit is really a question of title, and "not a mere dispute about illegal distraint. It is an attempt on the part of "the defendants to establish a title which the party said to have granted such "title could not have conferrred, and which is not shown by good proof to "have given legal possession." So that the Judge looked upon the conduct of the defendant and his supposed motives as decisive of the question whether or not the Moonsiff had jurisdiction to try the suit commenced by the plaintiff.

Against this decision of the Judge the defendant has appealed specially, and the ground he takes is that this suit was clearly cognizable by the Revenue Court, and not by the Civil Court, and we are referred to *Joyloll*

*Special Appeal, No. 2867 of 1868, from a decree of the Judge of West Burdwan, dated the 28th July 1868, reversing a decree of the Moonsiff of that district, dated the 24th February 1868.

Sheik v. *Brojonath Paul Chowdhry* (1), where, on a reference from the Court of Small Causes of Kishnaghur, a Divison Bench of this Court held that, "where A distrained the paddy of B, alleging that it belonged to C, who "was A's ryot, and it was found that there was no relation of landlord and "tenant between A and B, and that C acting in collusion with A and B, "attempted under section 139, Act X. of 1859, to get possession of the dis- "trained paddy from D and E, to whose custody it had been made over under "section 118, Act X. of 1859, but was unsuccessful, and B sued A, C, D, "and E in the Small Cause Court for damages, the suit was one falling either "under section 139 or section 143 of Act X. of 1859, and came under section "23 of that Act, and was not cognizable in a Small Cause Court, but only in "a Revenue Court."

It appears to me that the authority of that decision is one which we ought to follow in the present suit. I think that not section 141, but section 143, would be the provision of law applying to this case, and that consequently the suit was cognizable by the Collector's Court, and not by the Moonsiff. That section provides:—"If any person not empowered to distrain property "under sections 112 and 114 of this Act, nor employed for the purpose under "a written authority by a person so empowered, shall distrain or sell or cause "to be sold any property under color of this Act, the owner of this property "may institute a suit under this Act to recover damages from such person "for any injury which he may have sustained from the distraint or sale;" and then clause 7, section 23, Act X, of 1859, states:—"All suits arising "out of the exericise of the power of distraint conferred on zemindars and "others by sections 112 and 114 of this Act, or out of any acts done in color "of the exercise of the said powers, shall be cognizable by the Collector, and "not elsewhere." It seems to me that, if a person alleging himself to be a zemindar or other person entitled to receive rent immediately from the cultivator should exercise the power of distraint, and distrain and sell the property of the cultivator, and it should be subsequently found that he is not such zemindar or person entitled, he comes under the description of a person not empowered to distrain property, and the act which he does is done under color of a power of distraint, and the suit consequently comes within the terms of section 143.

Now this is exactly the case before us; the defendants alleged themselves respectively to be izardar, dar-izardar, and gomasta. It was charged that in those several alleged capacities, though not really clothed with them, they made a distraint of the plantiff's property. I think therefore that the suit was precisely one that ought to have been brought under that section; that the Civil Court had no jurisdiction; that the Judge was in error; and that his decision should be set aside, and that of the Moonsiff restored with costs.

MARKBY, J.—I also think that the objection of want of jurisdiction ought to prevail. The plaintiff sues three defendants, and the only way in which

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he could sue them jointly was upon one common cause of action, namely, the joint illegal taking of his crops—taken, as he himself says, under color of distraint. It seems to me that that is a case which clearly falls under section 143, and coupling that section with clause 7, section 23, Act X. of 1859, it gives, according to the interpretation that has been put upon it by several decisions, exclusive jurisdiction to the Collector's Court.

As to the argument that section 143 applies only to cases where the relation of landlord and tenant exists, it seems to me that that argument has no foundation. I see that there is a case alluded to in Mr. Chapman's work on the Law of Landlord and Tenant, said to have been decided by this Court on the 26th of August 1864, *Roghoonath Sohoy* v. *Boondir Mundir* (1) which goes to that length. I have looked for that decision, but I have not been able to find it. The pleader however has referred us to a case, *Shaik Rowshun* v. *Bholanath Doss* (2) in which there is an expression which, if taken literally, does seem to say something of that kind; but I cannot help thinking that there was something in that case, some circumstance connected with it which, if we knew it, would probably explain away that expression. And in another case, the circumstances of which are fully set forth in the judgment delivered by the Chief Justice, it was expressly held that that section is not so limited. The Chief Justice, in a judgment concurred in by Mr. Justice Hobhouse, says, that if in that case, *Joyloll Sheik* v. *Brojonath Paul Chowdhry* (3), the crop distrained had been growing upon land in which the distrainer had no concern or interest, a suit for distraining it would lie under section 143 of Act X. It was distinctly found in that case as a fact that the relation of landlord and tenant did not exist between the plaintiff and defendant, and yet the decision was that the Civil Court had no jurisdiction, but that the Revenue Court had. I think it is clear therefore that in the case of *Shaik Roushun* v. *Bholanath Doss* (2), there must have been some circumstance not alluded to in the judgment which would explain the particular expressions relied upon by the pleader It is not unlikely that the Court may have thought that "illegal distress" was not the real cause of action at all.

(1) 1 W. R., 36. (2) 5 W. R., Act X. Rul,, 67. (3) 9 W. R., 162.