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the possession) the Principal Sudder Ameen's decree, really vary its terms, by inserting a general declaration that the plaintiffs are the rightful owners of the property, instead of the specific order that the deeds should be set aside. They reversed the decision of the Principal Sudder Ameen with regard to the possession—a reversal in which their Lordships concur—and added what follows in their formal decree, "and that so much of the decree of the said Court as declares that the said plaintiffs are the rightful owners of the said property be confirmed." Their Lordships think that as the plaint had prayed for substantive relief,—namely, that the deeds should be set aside,—the more correct form of decree is in the terms of that prayer.

Their Lordships will, therefore, humbly advise Her Majesty to vary the decree of the High Court by striking out so much thereof as purports to confirm the decree of the Principal Sudder Ameen, and to order that in lieu thereof so much of the last-named decree as ordered the deed of sale and the mukhtar nama to be cancelled and set aside be affirmed.

Decree varied.

Agent for the appellant: Messrs. *Watkins* and *Lattey*.

FULL BENCH.

Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Kemp, Mr. Justice L. S. Jackson Mr. Justice Markby, and Mr. Justice Ainslie.

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April 22.

A. B. MACKINTOSH (PLAINTIFF) *v.* KASHINATH BISWAS AND OTHERS (DEFENDANT).*

Jurisdiction—Act X of 1859, *s.* 162—*Beng Act VI of* 1862, *s.* 20—*Suit for Rent.*

Under s. 20 of Beng. Act VI of 1862 (1), suits under that Act, or under Act X of 1859, must be instituted in the Revenue Office of a sub-division of a district where there is a sub-division, and not in the Revenue Office of the district.

(1) *Beng. Act VI of* 1862, *s.* 20.—Suits under this Act, or under Act X of 1859, shall be preferred in the Revenue Office of the district, or when a sub-division of a district has been placed under the jurisdiction of a Deputy

* Regular Appeal No. 242 of 1872, against a decree of the Judge of Zilla 24-Pergunnas, dated the 16th July 1872,

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But where a suit has been brought in the Revenue Office of the district, where there is a sub-division, and has been referred by the Collector to another Deputy Collector, the decree is not absolutely void for want of jurisdiction, but only voidable at the instance of the defendant.

THE plaintiff, a mortgagee of certain lands in the village of Muneerampore, a sub-division of Baraset, after obtaining a decree for foreclosure, brought this suit to set aside a sale and recover possession of certain lands sold in execution of a decree for arrears of rent against the mortgagors, of which lands some of the defendants had become the purchasers. The suit in which the decree was obtained was brought in the Revenue Office of the district at Alipore, and was afterwards transferred by the Collector to a Deputy Collector. The plaintiff contended that that suit was improperly brought in the Revenue Office of the district; and that, under s. 20 of Beng. Act VI of 1862, it should have been brought in the Revenue Office of the sub-division in which the lands were situated, and in which the cause of action had arisen; and he alleged that the wrong Court was selected in fraud and in collusion with the mortgagors, and therefore the decree was void. The defendants, on the other hand, contended that the suit was properly brought in the Revenue Office of the district, and that their purchase at the auction-sale was valid. The Judge of the 24-Pergunnas decided the question against the plaintiff, and dismissed his suit, saying that in other respects also the plaintiff had failed to make out his case. The Judge also remarked that it had been the constant practice with suitors to elect between the Court of the sub-division and the District Court, and to bring their suits in either of the two Courts, and that a great many suits of the kind had been brought in the principal District Court where a sub-divisional office existed,

Collector, or the Revenue Office of the sub-division in which the cause of action shall have arisen, or when the cause of action shall have arisen within the limits of the local jurisdiction of any Deputy Collector not in charge of a sub-division, but who has been specially authorized by Government to receive such suits, then in the office of such last-mentioned Deputy Collector. Provided always that the Collector may withdraw any suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector.

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without any fraudulent intention. On appeal the case came on to be heard before Couch, C.J., and Jackson, J., who, not agreeing with the decision in *Purna Chandra Chatterjee* v. *Macarthur* (1), referred to a Full Bench the following questions :—

"Whether, under s. 20 of Beng. Act VI of 1862, a suit under that Act, or Act X of 1859, may be preferred in the Revenue Office of the district where a sub-division of a district has been placed under the jurisdiction of a Deputy Collector, or can only be preferred in the Revenue Office of the sub-division in which the cause of action has arisen ; and whether, when a suit has been preferred, not in the Revenue Office of the sub-division in which the cause of action arose, but in the Revenue office of the district, and was referred by the Collector to another Deputy Collector, the decree in such suit is void for want of jurisdiction ?"

The *Advocate-General* offg. (Mr. *Paul*) (with him Baboo *Bhowani Churn Dutt*) for the appellant.—The jurisdiction here is given by s. 20 of Beng. Act VI of 1862. The question is entirely one of construction. Words are to be read in their ordinary sense, and having regard to general convenience the opinion of Macpherson, J., in *Purna Chandra Chatterjee* v. *Macarthur* (1) is correct. By s. 162 of Act X of 1859, it was directed that suits under that Act should be instituted in the Revenue Office of the district, or when a sub-division of the district has been placed under the jurisdiction of the Deputy Collector, in the Revenue Office of the sub-division in which the cause of action shall have arisen. The reason for dividing districts into sub-divisions was to enable parties to bring suits for rent in the Courts situated in the lands for which the rent is claimed. The construction put on the Act by Macpherson, J., is not opposed by the law. The word "when" in s. 20 of Act VI seems to point out an exclusion of the other Courts and the vesting of an exclusive jurisdiction in the Court of the sub-division. Then again the word "shall" in the section would seem to confer an exclusive jurisdiction. If it was intended that there

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should be concurrent jurisdiction, the word "may" would have been used. The transfer by the Collector makes no difference. If the suit was intended by the Legislature to be tried in one Court the Collector could not receive and transfer the case to another Court. The second branch of the question referred will also follow the construction to be put upon the section. The decree and all proceedings in a case ought to be declared to be void. if the suit was brought in a Court that had no jurisdiction to receive and try it.

Baboo *Gopal Lal Mitter* for the respondents.—The Collector had jurisdiction to entertain and transfer such a suit. But even if he had not, the irregularity was not of such a nature as to vitiate the whole proceeding; see *Chunder Kant Chuckerbutty* v. *Elias* (1), where the land was situated in different sub-divisions, and the Collector, according to the appellant's contention, had no jurisdiction. The Collector has jurisdiction under s. 34 of Act X of 1859, and there is nothing in either of the two Acts to take away the jurisdiction of the Deputy Collector, which is conferred on him by the Collector under the provisions of the Act; see s. 150 of Act X of 1859. The word "or" in its common acceptation signifies an alternative.

The *Advocate-General* in reply.—S. 162 of Act X of 1859 must be read as enlarged by s. 20 of Beng. Act VI of 1862.

The judgment of the Full Bench was delivered by.

COUCH, C.J.—When this regular appeal came before us for decision, after hearing the argument on both sides, we considered it necessary to refer for decision by a Full Bench the question whether, under s. 20 of Beng. Act VI of 1862, a suit under that Act and Act X of 1859 may be preferred in the Revenue Office of the district where a sub-division of a district has been placed under the jurisdiction of a Deputy Collector; or can only be preferred in the Revenue Office of the sub-division in which the cause of action has arisen; and whether, when a suit has been preferred, not in the Revenue Office of the sub-division in which the cause of action arose, but in the Revenue Office of the district, and was referred by the Collec-

(1) 5 W. R., Act X Rul., 29.

tor to another Deputy Collector, the decree in such a suit is void for want of jurisdiction? A decision upon these questions—*Purna Chandra Chatterjee* v. *Macarthur* (1)—was quoted, with which at the time we were not prepared to agree.

I propose now, in the first place, to deliver the judgment of the Full Bench upon the questions referred. They have been considered by the learned Judges who sat in the Full Bench, and what I now say is on behalf of the whole Court, it not being convenient that all the Judges should meet merely for the purpose of delivering the judgment.

The answer to the questions depends upon the construction of s. 20 of Beng. Act VI of 1862. (The learned Judge read s. 20, and continued):—The words "or when a sub-division of a district has been placed under the jurisdiction of a Deputy Collector" might possibly be construed so as to give to a person an option of preferring the suit either in the Revenue Office of the district or in the Revenue Office of the sub-division. The section might have been more clearly worded; but although the words are capable of that construction, we think that the more reasonable construction is, that where there is a sub-division of a district placed under the jurisdiction of a Deputy Collector, it was intended that the suit should be brought in the Revenue Office of the sub-division, and the person bringing the suit was not to have an option of bringing it in the Revenue Office of the district or of the sub-division. And any inconvenience, either public or to the suitor, might be prevented by the exercise of the power that is given in the proviso, which follows; that the Collector may withdraw any suit from any Deputy Collector and try it himself or refer it to another Deputy Collector. It is more reasonable to suppose that the Legislature, with this power given to the Collector, did not intend to give a discretion to the person bringing the suit as to which Office or Court he should bring it in. It prescribed a fixed rule for him. There might be some inconvenience in leaving it to the person bringing the suit arbitrarily to select in which Court it should be brought. Although the words may admit of that meaning, we think, upon the whole, that the other is a more reasonable construction, and

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more convenient, having regard to the power which I have noticed of withdrawing the suit. So far we concur with the decision in *Purna Chandra Chatterjee* v. *Macarthur* (1), and would say that the suit cannot be preferred in the Revenue Office of the district where there is a sub-division under the jurisdiction of the Deputy Collector.

Then the other part of the question has to be considered, namely, whether when a suit has not been preferred in the Revenue Office of the sub-division in which the cause of action arose, but has been preferred in the Revenue Office of the district, and been referred by the Collector to another Deputy Collector, the decree in the suit is void for want of jurisdiction? This is a very different question, and in considering it we must look at the facts of the case in which it arose.

The case of the plaintiff in the suit in which this regular appeal is brought, is that he was a mortgagee of certain property, and that he had foreclosed his mortgage, and so became entitled to the mortgaged property. But he alleged that a suit had been brought in the Court of the Deputy Collector of Alipore, and a decree obtained in the suit collusively, as he apparently alleged, and the property had been sold under decree and purchased by some of the defendants, the zemindars. And in that way his rights under the decree of foreclosure had been interfered with, and he had not been able to enforce it. And he prayed the Court to declare his right to the mortgaged property which he had under the foreclosure, and to award possession. It having been found by the Judge of the District Court that there was no collusion in bringing the suit in the Court of the Deputy Collector of Alipore, he made in appeal an objection, which had not been prominently put forward in the first Court, that the decree of the Deputy Collector was void for want of jurisdiction, and consequently no title could be made through the sale under it. So the question which we have to decide is, whether the decree is void for want of jurisdiction?

In considering this, it is important to keep in mind that the Revenue Courts have a general jurisdiction to entertain suits of this description. This section of Act VI of 1861 is not one

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which gives the jurisdiction, but it is rather one which directs how it shall be exercised by the different Courts. Looking at it in that light, it may be that the defendant in a suit for rent, or a suit brought under Act X, can, if the suit is brought in the Revenue Office or Court of the district, when it ought to be brought in the Revenue Office of the sub-division, object to it, and claim to have the directions of s. 20 obeyed and the suit brought in the proper Court; and he may take that objection even in a special appeal, although it may not have been raised in either of the lower Courts. For, from the facts found by the lower Courts, it would appear that the suit had been brought in the wrong Court. Perhaps it might not be right to allow it to be taken if it had not been raised before. But it is one thing to say that the defendant may take the objection, that the decree was obtained in the wrong Revenue Court, and that it is voidable on appeal; and another, that a person not a party to the suit, and who seeks, as this plaintiff did, to altogether avoid the decree and the title derived from it, should be able to take it and to say that the proceedings are absolutely void. I think, considering that the Revenue Courts have a general jurisdiction, that a person not a party to the suit cannot be allowed to say that the proceedings are absolutely void because the direction of s. 20 of Act VI of 1862 has not been followed. We should answer the second part of this question by saying that the decree in such a suit in not void for want of jurisdiction, but is voidable only at the instance of the defendant. This will make the decision in *Purna Chandra Chatterjee* v. *Macarthur* (1) consistent with our opinion. There the objection was taken in special appeal and by the defendant in the suit. It would be carrying the doctrine very much further to hold that the proceeding is entirely void, and the consequencee would be very serious; for it appears that in 24 Pergunnas, and probably in other districts, suits have been brought in this manner—honestly and *bonâ fide* brought—and decrees have been obtained in them. No doubt many titles depend on the validity of sales under such decrees.

(1) 3 B. L. R, 366, A. C.