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GOKULDOSS
v.
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that he would stand foreclosed if he did not redeem before a certain time.

It appears, therefore, that upon either view of the instrument the appellants have failed to show that they had before the assignment to the present respondents acquired the absolute interest in this village, and that the decision of the Judicial Commissioner, and of the Court of first instance, in this suit that the respondents are entitled to redeem on payment of the sum found due, is correct.

Their Lordships must, therefore, humbly advise Her Majesty to affirm the decree of the Judicial Commissioner and dismiss this appeal.

Appeal dismissed.

Agents for the appellants : Messrs. *Merriman and Pike.*

FULL BENCH.

*Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice L. S. Jackson
Mr. Justice Phear, Mr. Justice Ainslie, and Mr. Justice Morris:*

KRISHNA KISHORE PODDAR^c (PLAINTIFF) v. WOOMESH CHUN-
DER ROY AND ANOTHER (DEFENDANTS).*

*Beng. Act III of 1870, ss. 3 & 5—Transfer of Decree—Application to set
aside Decree—Jurisdiction.*

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April 22

When an *ex parte* decree of a Revenue Court has been transferred to the Civil Court under the provisions of s. 3 of Beng. Act III of 1870, an application to set aside the decree must be made to the Civil Court, and not to the Revenue Court.

THE plaintiff, on the 30th July 1870, obtained an *ex parte*, decree against the defendants' father in the Revenue Court. Subsequently, upon an application by the defendants to set aside the decree, the Revenue Court reduced the amount awarded thereby. The plaintiff appealed to the Additional Judge, urging that the Revenue Court had no jurisdiction to entertain

* Special Appeal, No. 1601 of 1873, from a decree of the Additional Judge of Zilla Backergunge, dated the 5th of February 1873, confirming a decree of the Deputy Collector of Madareepore, dated the 30th of November 1871.

the defendants' application, inasmuch as the decree had been transferred to the Civil Court under the provisions of s. 3, Beng. Act III of 1870, which Act came into force on the 1st June 1870. The objection was overruled, and the appeal dismissed; and the plaintiff then preferred the present appeal to the High Court.

The appeal was heard by Jackson and Ainslie, JJ., who, in consequence of the decisions in the cases of *In re Wooma Churn Mozoomdar (1)*, *Oodwunt Mahtoon v. Biddhi Chand*

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KRISHNA
KISHORE
PODDAR
v.
WOOMESH
CHUNDER
ROY.

(1) Before Mr. Justice L. S. Jackson
and Mr. Justice Macpherson.
The 13th September 1871.

IN THE MATTER OF THE PETITION OF
WOOMA CHURN MOZOOMDAR.*
Beng. Act III of 1870—Transfer of
Decree—Jurisdiction.

ON the 7th May 1870, a decree for rent was obtained by one Chunder Kant Roy Chowdhry against the petitioner in the Court of the Deputy Collector. Before any execution had been taken out under that decree, Beng. Act III of 1870 came into force, and under s. 2 of that Act the suit was transferred to the Munsif's Court. Subsequently the Munsif made an order for the issue of execution, and thereupon the present petitioner appeared in the Munsif's Court, and stating that he wished to apply under s. 58 of Act X of 1859 to have the case reheard, on the ground that the decree of the 7th May had been obtained against him *ex parte* without his having had any notice that a suit was instituted against him, he prayed the Munsif to send the record back to the Deputy Collector in order that an application might be made to the Deputy Collector for a rehearing. The Munsif declined to send the record back to the Deputy Collector, but at the same time, apparently,

expressed an opinion that it was not in the Munsif's Court, but in the Deputy Collector's Court alone, that the application under s. 58 could be entertained. An application was subsequently made to the Deputy Collector, who sent for the record from the Court of the Munsif, and on the 22nd of December 1870 ordered that there should be a fresh trial. On the 27th of February 1871 he reheard the case and decided it in favor of the defendant (the present petitioner).

The Collector on appeal, on the 9th May 1871, held that the Deputy Collector had no power to set aside the order.

On an application by the petitioner to the High Court (Macpherson and Ainslie, JJ.) the learned Judges, on the 31st July 1871, granted a rule calling upon Chunder Kant Roy Chowdhry to show cause why this order of the Collector should not be set aside on the ground that it was made without jurisdiction, the following judgment being delivered by

MACPHERSON, J.—The reason why I think that the petitioner is entitled to the rule is, that it appears to me that the whole of the proceedings, both before the Collector and the Deputy Collector, were without jurisdiction.

* Rule No. 2247 to show cause against an order of the Collector of 24-Pergunnahs, date the 9th May 1871 quashing an order of the Deputy Collector of Diamond Harbour, dated the 7th May 1870.

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Chowdhry (1) and Raja Mohesh Chunder Singh Surman v.

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(The learned Judge then stated the facts as above, and continued) :— It appears to us to be clear that the Deputy Collector had no jurisdiction in the matter and that under Beng. Act III of 1870 it was by the Munsif, and the Munsif alone, that the application for the rehearing of the case under s. 58, Act X of 1859, could be heard. I think the whole of the proceedings of the Deputy Collector are irregular and without jurisdiction. But the fact that the Deputy Collector was acting without jurisdiction does not give the Collector jurisdiction in the matter. The Deputy Collector's proceedings were wholly irregular; but so far as I know, no provision is made for any appeal to the Collector in such cases, and the proper remedy would have been by an application to this Court.

In strictness, therefore, I think the petitioner is entitled to a rule (if it be worth while to issue it) calling upon the opposite party to show cause why the Collector's order should not be set aside.

Baboo *Rash Behari Ghosa* and *Bhowani Churn Dutt* showed cause.

Baboo *Anundo Chunder Ghosal* in support of the rule.

The judgment of the Court was delivered by JACKSON, J.—We do not consider it necessary to quash the order of the Collector by which the original order of the Deputy Collector was set aside, but we add to it the direction that the application made by the defendant to the Deputy Collector for a new trial

be transferred to the Court of the Munsif, who will consider the propriety of granting such application. We do not allow any costs.

(1) *Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainslie.*

The 24th June 1872.

OODWUNT MAHTOON (JUDGMENT-DEBTOR) v. BIDDHI CHAND CHOWDHRY (DECREE-HOLDER).*

Beng. Act III of 1870—Transfer of Decree—Procedure.

THE judgment-debtor in this case having been arrested in execution of an *ex parte* decree passed against him by the Revenue Court, which decree was afterwards transferred to the Civil Court under Beng. Act III of 1870, applied to the Munsif for a review of judgment. This application was made more than fifteen days after process of execution first issued. The Munsif held that the case must be decided under Act X of 1859, and refused the application, and his order was confirmed on appeal by the Judge, who was of opinion that the cases of *In re Sreemutty Juggo-dumba Dossee (a)* and *In re Wooma Churn Mozoomdar (b)* clearly showed that the case must be reheard under s. 58, Act X of 1859, and not under s. 119, Act VIII of 1859.

The judgment-debtor then preferred the present appeal.

Baboo *Nal Madhub Sen* for Appellant.

Baboo *Kalikishen Sen* for Respondent.

(a) 10 B. L. R., App., 22.

(b) *Ante*, p. 215.

* Miscellaneous Special Appeal, No. 125 of 1872, from an order of the Judge of Zilla Patna, dated the 19th January 1872, affirming an order of the Munsif of Behar, dated the 9th September 1871.