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case of *Kedarnath Nag* v. *Khettur Paul Sritirutno* (1), and the second that of *Gunesh Dass* v. *Gondour Koormi* (2). In neither of those cases is any reason given for the conclusion at which the Court arrived that article 32 was inapplicable. Moreover those cases are not cases under the Bengal Tenancy Act, or cases exactly of the class to which the present case belongs. If we found that they were identical with the present case, we should have been bound to refer the matter to a Full Bench, but we think it unnecessary to do so here. This suit was brought under section 25, clause (*a*) and section 155 of the Bengal Tenancy Act, and the question is whether a suit of that kind comes within article 32 of the Limitation Act. That question has never yet, as far as we know, been decided. We think that it does come under article 32.

In the result we set aside the decision of the Subordinate Judge and restore that of the Munsif. The appellants are entitled to their costs in this Court and in the lower Appellate Court.

S. G. C. *Appeal allowed.*

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*Before Mr. Justice Trevelyan and Mr. Justice Beverley.*

DEWAN ROY (PLAINTIFF) *v.* SUNDAR TEWARY AND OTHERS (DEFENDANTS).*

1896. *August* 18.

*Second Appeal—Civil Procedure Code (1882), section 586—Suit for money paid and damages incurred by distraint of crops—Provincial Small Cause Court Act (IX of 1887), Schedule II, Article 35, clause (j).*

A suit to recover money paid to redeem crops which had been distrained by the defendants for rents due from persons other than the plaintiffs, and also for damages sustained on account of the distraint, is, so far as the claim relates to damages, a suit coming under clause (*j*), art. 35 of the Provincial Small Cause Court Act (IX of 1887), and is therefore not entirely a suit of the nature of a Small Cause Court suit.

Section 586 of the Civil Procedure Code (1882) does not bar a second appeal in such a suit.

THE facts of the case, so far as they are necessary for the

* Appeal from Appellate Decree No. 163 of 1895, against the decree of G. G. Day, Esq., District Judge of Shahabad, dated the 17th of December 1894, reversing the decree of Babu Tara Pado Chatterjee, Munsif of Arrah, dated the 30th of June 1894.

(1) I. L. R., 6 Calc., 34. (2) I. L. R., 9 Calc., 147.

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purposes of this report, were as follows: One Sundar Tewary made an application under section 122 of the Bengal Tenancy Act for the purpose of distraining certain crops, alleging that they were grown by his tenants Katik and Nabob Roy. Dewan Roy and others made an application under section 137 of the Bengal Tenancy Act to have the distrained crops released, on the ground that they, and not the alleged tenants, were the owners of the distrained property; they deposited the amount of arrears due and the distraint was withdrawn; they then instituted this suit for recovery of the money so paid and for compensation. The first Court decreed the suit, ordering a refund of the money deposited, but allowed no damages other than interest. The defendants appealed to the District Judge, who dismissed the suit. The plaintiffs preferred this special appeal to the High Court. The amount claimed in the suit was less than five hundred rupees.

Babu *Mohini Mohun Roy* and Dr. *Asutosh Mookerjee* for the appellant.

Dr. *Rashbehari Ghose* and Babu *Satis Chandra Ghose* for the respondents.

Dr. *Rashbehari Ghose* for the respondents took a preliminary objection that under section 586 of the Civil Procedure Code no second appeal lay to the High Court. [TREVELYAN, J.—The suit is not cognisable in the Court of Small Causes under art. 35, clause (*j*), of the second schedule of Act IX of 1887.] The words "illegal, improper or excessive distress" used in that clause do not cover the present case; "illegal distress" is used in the same sense as in the English law. See Woodfall on Landlord and Tenant, Chapter XII, section 2, sub-sec (*c*), 13th Edition, pages 522—524. The present action is clearly one for recovery of money wrongfully received, and is within the cognizance of the Small Cause Court.

Babu *Mohini Mohun Roy* for the appellant.—The present action is not one solely for the recovery of money wrongfully received but also for compensation; it is in fact a suit under section 140 of the Bengal Tenancy Act. Sections 121 and 122 show that if distress is had against the goods of one who is not a tenant, such distress is *illegal*, and its *legality* may be questioned under section 136, clause 4. The word "illegal" in art. 35,

clause (*j*), of the Small Cause Courts Act clearly refers to section 136, clause 4 of the Bengal Tenancy Act. Section 586 of the Civil Procedure Code therefore does not apply.

Dr. *Rashbehari Ghose* replied.

The case was then argued on the merits. There were fifteen other appeals, Nos. 171 to 185 of 1895, which were tried together with this appeal, the same judgment governing all the cases.

The judgment of the High Court (TREVELYAN & BEVERLEY, J.) was as follows :—

These are appeals from decrees passed in a series of suits brought by different plaintiffs against the same defendants. The suits were all tried together in the first Court, and the appeals were tried together in the lower Appellate Court.

The plaintiffs claimed to recover money paid by them to get back their crops which had been distrained by the defendants for rents alleged to be due by persons other than the plaintiffs. The plaintiffs also claimed damages on account of the distraint.

It has been contended before us that no second appeal lies, as the suits are of a nature cognizable by Courts of Small Causes, and the value of the subject-matter of the suits does not in any case exceed Rs. 500. There can be no doubt, we think, that so far as the suits were for the purpose of recovering the monies which the plaintiffs paid under decrees, the suits were cognizable by a Court of Small Causes.

Article 35 (*j*) of the second schedule of Act IX of 1887 is intended, in our opinion, to apply only to suits for damages for illegal, improper, or excessive distress, and not to apply to these suits so far as they seek to recover back the money paid.

A suit for money paid to redeem a distress is not on a different footing from a suit for other money which can be recovered as being paid under distress of person or of goods or by abuse of legal process. It is on the same footing as any other suits where the defendant has received money, which in justice and equity belongs to the plaintiff, and there is nothing to exclude the jurisdiction of the Small Cause Court with regard to it. The claim to damages is, however, on a different footing. The learned Vakil for the respondents contends that it does not come

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under article 35 (*j*) because there was no relationship of landlord and tenant between the plaintiff and defendants, and that the suit is really a suit for damages for trespass of property. We are unable to agree with that contention. The article, we think, applies generally to acts done under colour of distress. The relationship between the parties, whether it was in question or not, could not alter the jurisdiction of the Court. The suit as constituted was therefore not entirely of the nature of a Small Cause Court suit. In the first Court the claim to damages was disallowed. The claim was one of substance and not inserted for the purpose of giving the Court jurisdiction. In our opinion a second appeal lies.

We think, however, that the findings of fact by the lower Appellate Court preclude the plaintiffs' success in the appeals. Before the plaintiffs can succeed they must show that the crops distrained upon, or at any rate a portion of such crops, belong to them. We read the finding of the lower Appellate Court to be that the plaintiffs have not made out their case. The Judge says: "There is nothing in the evidence as to title which renders it improbable that the disputed crops should have been sown by the defendants." He points out that the witnesses could answer no questions as to details, and that the plaintiffs could have given definite evidence about their own fields separately if those fields really were sown by them, but they have chosen not to take that course. He says the plaintiffs have chosen to rest their cases "on general assertions of possession to the whole disputed land, and as those assertions are in all probability false as regards part, and not certainly true as regards any other part of the area in dispute, I see no alternative but to reject their claims for compensation."

It may be that the trial of the suits together was the cause of the plaintiffs giving their evidence in this way, but we must take the evidence as it has been given. The finding of the lower Appellate Court compels us to dismiss these appeals with costs.

S. C. C. *Appeals dismissed.*