Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Macpherson.

HYDER ALI (PLAINTIFF) *v.* JAFAR ALI (DEFENDANT).* 1875 *July* 15.

Beng. Act VIII of 1869, *s.* 98—*Suit for value of Crops—Distraint—Jurisdiction—Small Cause Court.*

The plaintiff made a complaint to the Magistrate against the defendant, his landlord, for forcibly carrying away his crops; whereupon the defendant was tried, convicted of theft, and punished. The plaintiff then instituted a suit against the defendant in the Munsif's Court, apparently under s. 95 of Beng. Act VIII of 1869, and obtained a decree declaring the distraint to be illegal, and directing the crops to be given up to him. The defendant offered to give up a smaller quantity than was mentioned in the decree. The plaintiff refused to take the same, and brought a suit in the Small Cause Court to recover the value of the quantity he had claimed before the Munsif and something additional. *Held*, that the Small Cause Court had no jurisdiction, and that the suit ought to have been brought under s. 98 of Beng. Act VIII of 1869.

THIS was a reference to the High Court by the Judge of the Small Cause Court of Bhaugulpore in a suit brought by a tenant against his landlord under the following circumstances:—

On the 18th of March 1874, the defendant distrained certain crops belonging to the plaintiff, and on the 27th of the same month applied to the Munsif under s. 78 of the Beng. Act VIII of 1869 for a order for sale, representing that the crops had been stored on the 25th. The Munsif, on the same day, made his order under s. 80 of the Act. The plaintiff, on the same day, *viz.*, the 27th of March, complained to the Magistrate that his crops had been forcibly carried off by the defendant, whereupon the defendant was tried, convicted of theft, and fined Rs. 20.

The plaintiff then instituted a suit before the Munsif on the 13th of April, apparently under s. 95, although that section was not mentioned, and obtained a decree declaring the distraint to have been illegal, and directing the property to be given up; but

* Reference from the Small Cause Court of Bhaugulpore, dated 4th May 1875.

1875

HYDER ALI v. JAFAR ALI.

no damages were awarded. The plaintiff then proceeded to execute his decree, but as the defendant would only make over ten maunds instead of twenty-eight maunds demanded under the decree, the plaintiff refused to take the quantity offered to him, and brought the present suit in the Small Cause Court for the value of twenty-eight maunds and something over not mentioned in the case before the Munsif.

The Judge of the Small Cause Court decided that he had no jurisdiction to try the case, and referred to the High Court the following question:—Will this suit lie? As the defendant refused to make over the whole of the distrained property, which appears to amount to a refusal to withdraw the distraint, has not the plaintiff his remedy by a suit under s. 98 of the said Act (Beng. Act VIII of 1869)?

The parties were not represented in the High Court by pleaders.

The judgment of the High Court was as follows:—

GARTH, C.J.—The Judge of the Small Cause Court is right in thinking that the Small Cause Court has no jurisdiction, as the suit is clearly one which might and ought to have been brought under s. 98 of Beng. Act VIII of 1869.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Birch.

1875
Aug. 28.

ELLEM AND ANOTHER (DEFENDANTS) *vs.* BASHEER AND ANOTHER (PLAINTIFFS).*

Review—Act VIII of 1859, *s.* 376—*Error in Law.*

The production of an authority which was not brought to the notice of the Judge at the first hearing, and which lays down a view of the law contrary to that taken by the Judge, is not a sufficient ground for granting a review.

IN this suit, which was one for possession of certain land, the Subordinate Judge of Sylhet delivered his judgment on 13th

* Special Appeal, No. 2331 of 1874, against a decree of the Subordinate Judge of Zilla Sylhet, dated the 4th of July 1874, reversing on review his former decree dated the 13th of June 1874, and affirming a decree of the Sudder Munsif of that district, dated the 16th of April 1874.