

Before Mr. Justice Mitter and Mr. Justice Maclean.

LUCHMAN LALL (PLAINTIFF) *v.* RAM LALL (DEFENDANT).*

1880
Dec. 14.

Suit for Adjustment of Accounts of a Partnership—Jurisdiction—Contract Act
(IX of 1872), s. 265.

Section 265 of the Contract Act, while it enables a partner, after the termination of a partnership, to apply to the District Court to wind up the business, does not take away the ordinary right of suit in any Civil Court having jurisdiction to have the accounts of the partnership taken.

THIS was a suit for the adjustment of account of a partnership, and to recover a sum of money alleged to be due.

The plaintiff, *inter alia*, stated, that the plaintiff and defendant entered into partnership for the purpose of carrying on a trade in grain, upon the agreement that each partner should supply a moiety of the capital, and that the profits should be divided equally between them; that the said partnership continued from the 15th May 1877 to the 3rd October of the same year; that during the continuance of the said partnership the plaintiff purchased grain at Roypura, and despatched it for sale to a Calcutta firm, and that part of the grain so purchased was sold at Roypura; that the grain sent to Calcutta was sold under the management of the defendant; that the value of the grain purchased by the plaintiff, together with the price of the bags, amounted to Rs. 3,230-8-3; that the defendant being liable for a moiety of this sum, paid Rs. 1,542-4-1½, leaving a balance of Rs. 73 still due, which sum was paid by the plaintiff in excess of the sum due and paid by him as his moiety of the capital expended; that the plaintiff incurred a further expense of Rs. 193-15-3 for certain additional bags despatched by him to Calcutta; and that the two last-mentioned sums, together with the share of the profit due to him on the sale of the grain in Calcutta, amounted to Rs. 949-5-4½, the subject of the present suit.

* Appeal from Appellate Decrees, Nos. 1726 and 1888 of 1879, against the decree of J. F. Stevens, Esq., Officiating Judge of Patna, dated the 5th June 1879, affirming the decree of Baboo Chuckerdhar Proshad, Second Sudder Munsif of that district, dated the 30th December 1878.

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The defendant, in his written statement, denied the allegations in the plaint in all material particulars, and set out his own version of the partnership transactions, which went to show that the plaintiff was indebted to the defendant. A cross-suit was filed by the defendant against the plaintiff.

The Court of first instance on the facts dismissed the plaintiff's suit. The lower Appellate Court was of opinion, that the present suit was not one for a balance due on a mutually adjusted account, but (the partnership having been already dissolved) an application for winding up the business of the firm under s. 265 of the Contract Act; and that such application could, under that section, only be entertained by a Court not inferior to the Court of a District Judge. The suit having been instituted in the Court of the Munsif, therefore failed on the plea of jurisdiction. For this reason the lower Appellate Court dismissed the appeal.

The plaintiff thereupon appealed to the High Court.

Baboo *Hem Chunder Banerjee* and Baboo *Umakali Mookerjee* for the appellant.

Baboo *Umbika Churn Ghose* and Baboo *Pran Nath Pundit* for the respondent.

The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—These are two cross-suits between persons who at one time were carrying on a partnership business in grain. The object of the suits was for adjustment of account, and for recovery of the money due to each other. The suits were instituted in the Court of the Munsif of Patna. The Munsif dismissed both these suits. There were two appeals; and the District Judge on appeal held, that the Munsif had no jurisdiction to entertain the suit, because, under s. 265 of the Contract Act, it was the District Judge's Court which had sole jurisdiction to grant relief in a case like this. We think that the District Judge is wrong in this view. It has been decided by

the Madras High Court in the case of *Javali Ramasami v. Sathambakam Theruvengadasami* (1), that s. 265 is only an enabling section,—that is to say, it leaves to the option of the plaintiff either to institute proceedings under that section in the District Judge's Court, or to pursue his ordinary civil remedy by instituting a regular suit in the Court which has jurisdiction having regard to the pecuniary value of the suit. We entirely concur in this view of the section, and think that it does not oust the Civil Court from its jurisdiction.

We, therefore, set aside the decisions of the lower Appellate Court, and remand the two cases to that Court for retrial. Costs to abide the result.

Appeal allowed—Case remanded.

APPELLATE CRIMINAL.

Before Mr. Justice Morris and Mr. Justice Prinsep.

THE EMPRESS ON THE PROSECUTION OF JOGENDRONATH BOSE
v. THOMPSON.*

1881
Jan. 5.

Presidency Magistrates' Act (IV of 1877), s. 124—High Courts' Criminal Procedure Act (X of 1875), s. 147—Dismissal of Complaint after Partial Hearing for want of Attendance of Complainant—Institution of Fresh Proceedings.

An order of dismissal under s. 124 of Act IV of 1877 does not operate as an acquittal.

THIS case came before the High Court under s. 147 of Act X of 1875, on the application of one James Augustus Thompson (who carried on business as Thompson and Coondoo), who had been charged on the 5th August 1880, before the Presidency Magistrate of Calcutta, with having fraudulently retained and kept a telegraphic message sent by the Executive Engineer of Debrooghur, which message ought to have been delivered to one Jogendronath Bose (who carried on business under the name of Thompson, Coondoo, & Co.), and with hav-

* Criminal Rule, No. 301 of 1880, from a decision of Mr. B. L. Gupta, Presidency Magistrate of Calcutta, dated 25th October 1880.

(1) I. L. R., 1 Mad., 340.