should inquire and decide how far, if at all, Lakshumanbhat is entitled to avail himself of the decision in favour of his brother Krishnambhat, and how far, if at all, Vishrámbhat bin Shivrámbhat is concluded by the decree against his brother, Krishnambhat; and for that purpose should receive all such evidence as may be offered by either of the parties.

*Decree reversed.*

VALLABHRA'M JAGJIVAN *et al.* ..... *Plaintiffs.*
WOODHOUSE *et al.* ..... *Defendants.*

*Jurisdiction—Public Servant—Munsif.*

A Munsif has not jurisdiction to try an action brought against a public servant for acts done by him in his official capacity.

*Semble*—The only judicial officers having jurisdiction to try such cases would be the Judge or Assistant Judge of the District in which the cause of action arose.

THIS case was referred by the Judge of Súrat, requesting the opinion of the High Court whether, under the alterations recently introduced into the procedure of the Civil Courts of the Mofussil, it was competent to judicial functionaries below the grade of the District Judge and his Assistants to try cases in which a public officer was sued for acts done in his official capacity. The circumstances under which the reference was made fully appear in the following minute, recorded by the District Judge of Súrat, R. H. Pinhey:—

"*Original Suit No.* 217 *of* 1863.

VALLABHRA'M JAGJIVANDA'S and SHEK SARFULLA' FARZULLA', Plaintiffs, v. R. WOODHOUSE, Esquire, Executive Engineer of Súrat, and DANKAR MA'L.

"Rs. 300.

"This case is referred to the District Court by A'zam Krishnaráv Vithoji, Munsif at Orpár, under the provisions of Sec. 43 of Reg. II. of 1827, because the second defendant, R. Woodhouse, Esquire, Executive Engineer of Súrat, is a public servant, and the suit is brought for acts done by him in his public capacity.

"Under the Code of 1827, the law which gave jurisdiction to the Civil Courts over actions of this nature was Sec.

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22 of Reg. II. of 1827, which enacted that 'the jurisdiction of the Civil Court shall also extend over collectors of the revenue and customs, and generally over all public officers, whether Europeans or others, within the zillah, for acts done in their official capacity unauthorised by any established Regulation.' Cl. 2 of Sec. v. of Reg. I. of 1830 provides that suits coming under Sec. 22 of Reg. II. of 1827 are to be tried by the Judge or Assistant Judge.

"Sec. 22 of Reg. II. of 1827 has been repealed by Act X. of 1861, but Sec. 43 of the same Regulation, which requires that such suits should be sent up to the Judge, and cl. 2 of Sec. v. of Reg. I. of 1830, which provides that such suits (that is, suits over which the Civil Court acquires jurisdiction by the provisions of Sec. 22 of Reg. II. of 1827) are to be tried by the Judge or the Assistant Judge, still stand unrepealed.

"The question, then, arises, do the provisions of Sec. 43 of Reg. II. of 1827, and of cl. 2 of Sec. v. of Reg. I. of 1830, compel the Judge (or his Assistant) to try every suit brought against a public servant for acts done in his public capacity, and deprive inferior courts of the jurisdiction which they would otherwise undoubtedly have over such suits under the Code of Civil Procedure. I think not.

"Of course, if there appeared to the District Court 'sufficient cause for so doing,' the District Court is competent, under the provisions of Sec. 6 of the Code of Civil Procedure, to withdraw this suit from the Munsif's Court at Ulpár, and to direct that it be tried either by the District Court itself, or by any other court subordinate to the authority of the District Court, and competent, in respect of the value of the suit, to try the same. But there does not appear sufficient cause for so doing in this case. It might perhaps be more convenient to the first defendant, whose head-quarters are at Súrat, if the suit were tried, either by the District Court, or by one of the Courts at Súrat, subordinate to the District Court. But the trial of the suit at Súrat would be very inconvenient to those who may either wish or be required to attend the trial, and live within the jurisdiction of the Munsif's Court at Ulpár, viz., the plaintiffs, the second defendant, and, above all, the witnesses, who, having no interest in the trial, would be dragged away from their homes a long

distance, because the plaintiffs and defendants chose to quarrel about their relative rights. The question, therefore, which remains for consideration is not one of expediency, but of law—Am I bound to transfer this suit from the file of the Munsif at Ulpár to the file of the District Court ?

"The law which defined the original jurisdiction of the Civil Courts in the Code of 1827 was Secs. 21 and 22 of Reg. II. of 1827. Both these sections were repealed by Act X. of 1861, an Act which was in fact a mere supplement to the Code of Civil Procedure. The Civil Courts, then, have no longer any jurisdiction over public officers, for acts done in their official capacity, under the provision of Sec. 22 of Reg. II. of 1827. The jurisdiction which the Civil Courts exercise over public officers for acts done in their official capacity must, therefore, be held to be conferred upon them by the general provisions of Sec. 5 of the Code of Civil Procedure. It is true that the jurisdiction of the Civil Courts conferred by Sec. 5 of the Code of Civil Procedure is 'subject to such pecuniary *or other limitations* as are or shall be prescribed by any law for the time being in force;' that cl. 1 of Sec. v. of Reg. I. of 1830 excepts from 'the jurisdiction of Native Commissioners' 'suits that may be instituted under the provisions of Sec. 22 of Reg. II. of 1827, or are reserved under Sec. 43 of the same Regulation;' and that cl. 2 of Sec. v. of Reg. I. of 1830 declares that 'original suits not tried by the Native Commissioners as coming under Sec. 43 of Reg. II. of 1827 are to be tried by the Judge, or may be referred by him to his Assistants;' but as Sec. 22 of Reg. II. of 1827 has been repealed, and as there are other suits reserved, under Sec. 43 of the same Regulation, beside those suits over which the Civil Courts acquired jurisdiction under the repealed provisions of Sec. 22, I think the words 'that the defendant is a public servant, and that the suit is brought for acts done by him in his public capacity,' in Sec. 43, must be considered as inoperative, superseded by the repeal of Sec. 22 and enactment of Sec. 5 of the Code of Civil Procedure, and that, these words being inoperative, the exemption from the jurisdiction of the Native Commissioners, by cl. 1 of Sec. v. of Reg. I. of 1830, of the suits 'reserved under Sec. 43' of Reg. II. of 1827, as well as the direction in cl. 2 of Sec. v., Reg. I. of 1830, that those suits are to be tried by the Judge or his Assistant, become inoperative also, so far

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as those suits are concerned which are described in these words, and over which the Civil Courts were given jurisdiction by the repealed provisions of Sec. 22 of Reg. II. of 1827.

"For the above reasons, I do not consider it incumbent on me to try this case myself, and I, therefore, remand it to the Munsif for disposal, at the same time (as one of the defendants resides without his jurisdiction) giving him the authority required by Sec. 4 of Act XXIII. of 1861.

"The particular circumstances of this case are of no importance, but as the point considered in this minute is one of some importance—for, if my view of the law be correct, it follows that all suits brought against the officers of Government for acts done in their official capacity (Collectors included) must, under the provisions of Sec. 6 of the Code of Civil Procedure, be brought in the Munsif's Courts, unless the amount of the suit be greater than Rs. 5,000, and as I am aware that the view of the law expressed by me is at variance with the practice of most of the Mofussil Courts, if not of all of them—I determine on sending a copy of this order to Her Majesty's High Court of Judicature. I am aware that the Honorable the Chief Justice and Judges are averse to interpreting the law, except when a case is before them judicially for decision, and when the parties interested in the decision of any point of law are represented by counsel, who are prepared to cite precedents and authorities, and to advance arguments on both sides of the question; on the other hand, however; the point of law decided by this order is of great importance, and the effect of my order, if erroneous, will be to send a large number of cases for trial by courts legally incompetent to try them. Until this order is either set aside or declared erroneous, I shall, of course, remit to the lower courts every suit arising within the jurisdiction of the Súrat District Court, in which a public officer is sued on account of acts done in his official capacity. If my view of the law is wrong, as its effect will be so serious and so widely felt, the Honorable the Chief Justice and Judges may; perhaps, in the exercise of the superintending power over the Mofussil Courts vested in the High Court by Sec. 15 of the High Courts Act, do me the favour of pointing out my error, or at least of declaring my view of the law erroneous."

The opinion of the High Court (present FORBES, WESTROPP, and TUCKER, JJ.) was as follows:—

The Court dissents from Mr. Pinhey's view, that the Munsif can take cognisance of a suit brought against a public servant for acts done by him in his public capacity, and would suggest that he review the order, which be very properly sent up for the opinion of the Court.

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## LATE SUPREME COURT, EQUITY SIDE.

1862.
Dec. 22.

PRA'NJIVANDA'S HARJIVANDA'S .....*Plaintiff.*
MAYA'RA'M SA'MALDA'S and RANSORD RAGHUNA'TH .....*Defendants.*

*Prescription—Light and Air—Windows—Injunction—Attachment.*

To acquire by prescription a right to the uninterrupted access of light and air through the windows of a dwelling-house, it is sufficient that the building in respect of which the right is claimed has assumed the appearance and outward aspect of a dwelling-house for more than twenty years before the time of the commencement of the suit, though not completed or used as a dwelling-house for the full period of twenty years before that time.

When a building is so far completed as to show an intention to use it as a dwelling-house with certain windows or openings for light and air, from that time it becomes the duty of those who are concerned in preventing a prescriptive right to the access of light and air from arising in respect of such windows to take steps to challenge and hinder the acquisition of such right.

If an injunction has been granted restraining a person from interrupting the access of light and air to certain windows, and the Court considers that the injunction has been infringed, an attachment will issue, even though the defendant has proceeded according to the advice of his surveyor and legal adviser in constructing the building complained of as a breach of the injunction. The Court in such cases does not consider itself bound by the opinion of surveyors, but will form its own judgment as to the probable effect of the structure complained of.

IN this case a bill of complaint had been filed, on the 18th day of November 1861, on the Equity side of the late Supreme Court, by the plaintiff against the defendants, praying (amongst other things) for an injunction to restrain the defendants, their servants and agents, from erecting any building, or completing or continuing a certain wall in the bill mentioned to such an elevation, or otherwise in such sort, as to darken or obstruct any of the windows or lights of the plaintiff's dwelling-house also in the bill mentioned until the further order of the Court.