

*Civil Petition.*1864.
March 9.

TRIKAM GOVERDHAN *Applicant.*
DULLABH KUBER *Respondent.*

Attachment before Judgment—Compensation for loss of property attached—Appeal—Jurisdiction—Act XXIII. of 1861, Sec. 35.

Held that no appeal lies to the District Court from an order made by a Munsif, compensating a defendant for loss of property attached before judgment, under Sec. 84 of Act VIII. of 1859.

THIS was an application, under Sec. 35 of Act XXIII. of 1861, to set aside an order passed on appeal by C. Gonne, District Judge of the Konkan, on the ground that it had been made without jurisdiction.

Dullabh sued Purushottam and Trikam for Rs. 4,857-6-3; and, on the 8th of February 1861, applied for an attachment before judgment of property, consisting of twenty-eight carts, nineteen bullocks, and thirty-seven buffaloes.

The property was, accordingly, attached, and made over to the custody of Dullabh, in which it remained until the 6th of November 1862, when the plaint was withdrawn, the dispute having been settled out of court by arbitration.

At the same time a notice was served upon the plaintiff, Dullabh, to return the attached property; and out of the above property thirteen carts, nineteen buffaloes, and eight bullocks were missing. The Munsif, therefore, on the strength of the *kabulāyat* or acknowledgment passed by Dullabh, ordered him to pay to the petitioner Rs. 1,730-9-0.

Against this order, Dullabh appealed to the District Judge: urging that the animals having died, he could not be held responsible for their loss; that there was no condition in the *kabulāyat* passed by him to that effect; and that, under the terms of the arbitration award, which he had now put in for execution, the attached property was to be considered sold to him, so that there was no necessity why the court should pass any order for the recovery of its value.

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The District Judge did not regard the *kaḅulāyat* in the nature of a decree, observing that the law always supposed property attached before judgment, or with a view to execution of judgment, to remain in the custody of the Nāzar; and reversed the Munsif's order, leaving the petitioner, Trikam, to seek relief by a regular action.

On the 21st of December 1863, Trikam applied to the High Court to have this order reversed; and a *rule nisi* was granted, and notice served on the opposite party to show cause why the above order should not be cancelled.

The case was heard before COUCH and NEWTON, JJ.

Vishnu Moreshtar Kelkar for the applicant.

Dhirajlāl Mathurādās for the respondent.

COUCH, J. :—In this case the Munsif has made an order which the Judge who reversed it must have thought was a proper one; as he expresses his regret at being obliged to do so, and to leave the party to bring a regular suit.

We think the Judge, in reversing this order, acted without jurisdiction; and, therefore, under Sec. 35 of Act XXIII. of 1861, we can call for the record of the case, and reverse the order so made by the Judge.

PER CURIAM :—The Court reverses the order of the District Judge, with costs, as having been made without jurisdiction.

Order reversed.