

(1879) 08 AHC CK 0010

Allahabad High Court

Case No: None

Abdul Samad and
Another

APPELLANT

Vs

Rajindro Kishor Singh

RESPONDENT

Date of Decision: Aug. 15, 1879

Citation: (1880) ILR (All) 361

Hon'ble Judges: Straight, J; Spankie, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Spankie, J.

A preliminary objection was taken that the Subordinate Judge had dismissed the suit, and that there should have been an appeal as from a decree in an original suit, whereas the present appeal had been entered as a first appeal from an order. The Subordinate Judge has certainly made use of the words "dismiss," but it is clear from his direction that the plaint was to be given back, that he stopped and intended to stop from further hearing of the suit, when he discovered that he had no jurisdiction. He, therefore, when he returned the plaint to be presented in the proper Court, was acting u/s 57, Clause (c), Act X of 1877. It may be that the section contemplates a return of the plaint, should error be patent, when it is first presented, but there is nothing in the wording of the section which forbids the return of the plaint at a later stage in the case, and it has been so held in former cases. An order returning a plaint u/s 57 of the Act is appealable u/s 588 of the Code, and it does not come within the definition of the decree in the amended Act, which appears to have come into force on the 29th July last. We see no reason to doubt that the appeal has been properly instituted as a first appeal from an order.