

1896.
August 25.

ARNOLIS v. LEWISHÁMY.

C. R., Tangalla, 1,187.

Appeal from judgments of Courts of Requests—Petition when to be presented—Ordinance No. 12 of 1895, s. 13.

In the case of an appeal from a judgment of a Court of Requests, the petition must be presented to the Court below within the period fixed by the Civil Procedure Code, whether the appeal be as of right or with leave as provided for by section 13 of the Courts of Requests Amendment Ordinance, 1895.

THE facts of the case appear in the order.

25th August, 1896. WITHERS, J.—

This is an application for leave to appeal from a judgment of Mr. Commissioner Steen in an action to recover a sum of Rs. 50, alleged to be the price agreed to be paid by defendant to plaintiff, but not paid, for an almirah alleged to be sold and delivered by the defendant to the plaintiff.

* Section 21 of Ordinance No. 3 of 1876:—In determining the amount of compensation to be awarded for land acquired under this Ordinance, the district judge and assessors shall take into consideration—

First, the market value at the time of awarding compensation of such land.

Secondly, the damage (if any) sustained by the person interested at the time of awarding compensation, by reason of severing such land from his own land.

Thirdly, the damage (if any) sustained by the person interested at the time of awarding compensation by reason of the acquisition injuriously affecting the other property, whether movable or immovable, in any other manner, or his earnings; and

Fourthly, if in consequence of the acquisition he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

After hearing the evidence of plaintiff the Court came to the conclusion that he had failed to prove his claim.

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After delivery of judgment plaintiff applied to the Court for leave to appeal.

WITNESS, J.

The plaintiff did not prefer any matter of law, nor did he complain of improper admission or rejection of evidence.

Wishing, as I gather from his petition to this Court, to appeal on the ground that the judgment was against the weight of evidence, he applied to the Court for leave to appeal.

The Court of Requests Amendment Ordinance of 1895 does not indicate the mode of procedure to be adopted when a party desires to appeal from a judgment in the Court of Requests. I imagine, however, that the rules of the Civil Procedure Code must be taken to apply when circumstances warrant an appeal; that is to say, if the matter of the application is within the exception contained in the 13th section of the Ordinance the petition must be presented to the Court below within the period fixed by the Civil Procedure Code.

If a defendant desires to appeal on other grounds I presume that he must obtain leave, and if he obtains leave he must present his petition within the same period.

In this particular case I think that the Commissioner was right in refusing leave to appeal.

The question at issue was a simple question of fact, and the Commissioner found himself unable to credit the case put forward by the plaintiff. This petition is accordingly rejected.
