

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.

1901.
December 4.

SEETAMRAJU KONDAL ROW (SECOND PLAINTIFF), APPELLANT,

v.

THE COLLECTOR OF GODAVARI ON BEHALF OF THE
SECRETARY OF STATE FOR INDIA (DEFENDANT), RESPONDENT.*

Indian Railway Act—Act IX of 1890, ss. 7, 10, 11—Compensation for damage caused by railway works—Suit to enforce construction of a channel to irrigate land—Maintainability.

Plaintiff alleged that the execution of certain works by a Railway Company, under section 7 of the Indian Railway Act, had interfered with his right to the flow of water to his land. He did not suggest that the Company had exceeded the powers conferred on them by that section, but claimed that they had failed to discharge the obligation, imposed by section 11 (b) of the Act, to make the necessary accommodation works, and sought a decision of the Court that such works should be executed :

Held, that he had no right of action. The effect of section 11 of the Indian Railway Act is that the opinion of the executive, with reference to the sufficiency of accommodation works, is final.

SUIT for a decree directing the defendant to construct a new channel for the purpose of irrigating plaintiff's land. The plaintiff alleged that, owing to the works made by the railway authorities, the usual flow of water from the Vatlur tank had been checked and that his land had in consequence been lying fallow. He claimed that a channel should be constructed to irrigate the land, and sought to recover the amount of profits which he had lost by reason of defendant's interference. The defendant admitted that some obstruction had been caused to the irrigation of plaintiff's land but pleaded that as soon as plaintiff had complained, the railway department had done all that he had required. He also alleged that a dam had been properly constructed for plaintiff in masonry and that he had offered to give any further relief that plaintiff might reasonably require but that plaintiff had not availed himself of that offer. He contended that, under section 10 (2) of the Indian Railway Act (IX of 1890), no suit lay for the

* Second Appeal No. 882 of 1900 against the decree of T. H. Munro, Acting District Judge of Godavari, in Appeal Suit No. 695 of 1899 confirming the decree of V. Lakshminarasimham, District Munsif of Ellore, in Original Suit No. 457 of 1898.

recovery of the compensation claimed. An issue having been framed on this point, the District Munsif said :—

“ I am of opinion that this suit must fail. The suit for that portion which relates to compensation is not maintainable under article 2 of section 10 of the Railway Act (IX of 1890). Plaintiff's remedy must, in case of dispute, be determined on application to the Collector. Also, the other portion of the suit relating to the accommodation work is prohibited by section 41 of the Act. Section 11 of the Act lays down the procedure to be observed by the Railway Administration in regard to the works intended for the accommodation of the occupiers of lands adjoining the railway like plaintiff. If any owner or occupier feels dissatisfied with the works made for him, the only course open to him is to apply to the Railway Administration for such further accommodation works as he thinks necessary and are agreed to by that administration, or, in case of difference of opinion, as may be authorized by the Governor-General in Council. If the work done for him was really insufficient for the commodious use of plaintiff's land, he ought to have applied for further works instead of rashly proceeding to Court, especially in this matter in which the Collector deputed a subordinate to ascertain plaintiff's wishes (a fact not denied for plaintiff), but he did not avail himself of that opportunity, and he alleges his illness as an excuse. If he was really then ill, he might since have asked for the same as the Collector seems to have been inclined to attend to plaintiff's reasonable wishes.” He dismissed the suit. Plaintiff appealed to the District Judge who dismissed the appeal.

Plaintiff preferred this second appeal.

P. Nagabhushnam for appellent.

The *Government Pleader* for respondent.

JUDGMENT.—The plaintiff apparently asks for a decree directing the defendants to construct a new channel for the purpose of irrigating his land. The Railway Company, in the execution of the works authorized by section 7 of the Indian Railway Act, have, the plaintiff alleges, interfered with his right to the flow of water to his land. It is not suggested that the Company acted beyond the powers conferred on them by section 7. If, as the result of the exercise of these powers, the plaintiff has sustained damage, he can recover compensation if he adopts the special procedure prescribed by section 10. The plaintiff, however, docs

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not ask for compensation but says the Railway Company have failed to discharge the obligation imposed by section 11 (b) to make the necessary accommodation works and he asks the Court to decide that such works shall be executed. Under the English Railway Clauses Act 8 Vict., cap. 20, differences as to the sufficiency of accommodation works are decided by two Justices (see sections 69 and 70). But the wording of section 11 of the Indian Act makes it clear that the Indian Legislature intended that the opinion of the executive, with reference to the sufficiency of accommodation works, should be final.

We must hold the plaintiff has no right of action.

The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

VENKATESWARULU (A MINOR, BY HIS FATHER AND GUARDIAN
MUKTALA VENKATACHALLAM) (COUNTER-PETITIONER),
APPELLANT,

v.

BRAHMARAVUTU RAJA KRISTNAJI AND THREE OTHERS
(PETITIONERS), RESPONDENTS.*

*Succession Certificate Act—Act VII of 1889, ss. 10, 19—Order extending certificate—
“Order granting a certificate”—Appeal.*

The extension of a certificate under section 10 of the Succession Certificate Act to additional debts is not the grant of a certificate so as to give a right of appeal under section 19 of that Act against the extension.

PETITION under the Succession Certificate Act (VII of 1889). Petitioners had already obtained a succession certificate to recover debts due to their late father. They now applied for an extension of that certificate to enable them to collect other debts. Counter-petitioner filed a petition opposing the application. The Acting District Judge passed an order granting the extension.

Against that order counter-petitioner preferred this appeal.

* Appeal No. 60 of 1901 against the order of J. H. Munro, Acting District Judge of Godavari, in Miscellaneous Petition No. 850 of 1900.