

1883  
 RAMNARAIN  
 KALLIA  
 v.  
 GOPAL DOSS  
 SING.

Mr. Apcar.—The rule being informal can only be discharged with costs. [Mr. Pugh.—But Russick Lall Mitter has filed affidavits in reply]. Your Lordship can't look at anything further than the terms of the rule, and there being nothing for him to answer you cannot go into my affidavits.

NORRIS, J.—I think this rule must be discharged. It states no grounds whatever, and in granting the rule I did not intend that it should be drawn up as it has been. If it had been properly drawn up I should have been in a position to hear it, but as it stands now it must be discharged, and under the circumstances discharged with costs. I will grant liberty to apply, on affidavit, for a fresh rule, and I direct that the decree in the suit be not drawn up until the rule is disposed of as I shall give Mr. Pugh every facility for bringing this matter to a hearing.

*Rule discharged with costs.*

Attorney for the plaintiff: Mr. H. H. Remfry.

Attorneys for the defendants: Mr. E. J. Moses and Baboo Bolye Chand Dutt.

## APPELLATE CIVIL.

*Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson.*

1883  
 April 11.

GOUR HARI SANYAL (DEFENDANT) v. PREM NATH SANYAL AND OTHERS (PLAINTIFFS).\*

*Practice—Right of respondent, who has filed cross objections, to appeal, where appellant withdraws his appeal.*

No leave to appeal should be granted to a respondent who has filed cross objections, unless the Court is thoroughly satisfied upon affidavit that he was ready to appeal, and would have appealed within the proper time if the other side had not done so.

THIS was an application to withdraw an appeal on payment of the respondents' costs; the respondents, who had filed cross objections, submitted that if the appellant's application were granted, they (the respondents) ought to be allowed to appeal.

\* Appeal from Original Decree No. 89 of 1861, against the decree of Baboo Nobin Chunder Ghose, Subordinate Judge of Mymensingh, dated the 18th January 1861:

The Court ordered the respondents to file an affidavit on the question, as to whether or not they were ready to appeal, and would have appealed, in due time, if the appellant had not preferred his appeal first.

The contents of this affidavit, and the facts necessary for purpose of this report, are fully set out in the judgment of the Court.

Mr. *Evans* and Baboo *Grish Ghunder Chowdhry* for the appellant.

Mr. *Branson*, Baboo *Srinath Dass*, Baboo *Jogesh Chunder*, Baboo *Kally Ghurn Mitter* and Baboo *Dwarkanath Banerjee* for the respondents.

The judgment of the Court (GARTH, C.J., and MACPHERSON, J.) was delivered by

GARTH, C.J.—This appeal being set down for hearing before the Peremptory Board, the appellant on Friday last applied to petition to withdraw the appeal.

Mr. *Branson* for the respondents objected, that if the appellant was allowed to withdraw his appeal, the respondents, who had filed cross objections, ought to be allowed to prefer a cross appeal.

As, however, it did not appear under what circumstances cross objections had been filed, we gave Mr. *Branson* an opportunity of satisfying us, upon affidavit, that his client was ready to appeal, and would have appealed in due time if the appellant had not preferred his appeal first.

The case accordingly came on again on Monday. Mr. *Branson* produced an affidavit made by the respondents, from which it appeared that they sought the suit to recover a moiety of certain mouzahs; had been decreed as to two of those mouzahs, but as to the rest; whereupon the defendant appealed to the part of the claim which was decreed, and the respondents filed cross objections as to the part of the claim which was not decreed.

The affidavit then proceeded to say that, after judgment had been given, the plaintiffs applied

of the judgment and decree with an intention to file an appeal in this Court against that part of the decree which dismissed their claim; and that these copies were obtained on the 11th of February 1881, so that the last day for filing their appeal would have been the 11th of May following.

Meanwhile, however, the defendant (appellant) had also obtained copies of the decree, and he appealed to this Court on the 28th of April 1881, so that the respondents, instead of appealing themselves, filed cross objections to his appeal.

But what the respondents' affidavit does not state, and what it is essential that it should state, in order to entitle them to file a cross appeal now, is this: *that they were prepared to appeal on the 11th of May 1881, and would have appealed if the appellant had not done so.*

The Judges of this Bench some time ago, after consulting other Judges of the Court, came to this conclusion: that no leave to appeal should be given to a respondent who has filed cross objections, unless the Court is thoroughly satisfied, upon affidavit, that he was ready to appeal, and would have appealed within the proper time if the other side had not done so.

We are by no means satisfied of this in the present case. The respondents were well aware that they were bound to satisfy the Court upon this point; they had ample time for considering the contents of their affidavit; and yet it is perfectly consistent with the facts now before us that they did not mean to appeal if the appellant had been content not to do so.

It is true that they might have taken copies of the decree and the order of appeal; but it does not at all follow that if they had obtained the copies and taken advice, they were bound to appeal three months afterwards.

The affidavit which has been made by the appellant's counsel states that, before this appeal was filed, the respondents were advised by counsel to the appellant not to file any appeal, and that the appellant, in consequence, provided that the appellant did not.

In the circumstances we think that we should be content to refuse the cross appeal, which guides us in these cases, if we were to allow the respondents to file an appeal.

Mr. Branson has applied to us to be allowed to file further affidavits to remedy the defect in his present one; but this would be, for obvious reasons, a very dangerous thing to allow. The respondents must have known the point perfectly well upon which they had to satisfy us; and they had ample time to bring before the Court all their available materials.

We think, therefore, that the appellant should be allowed to withdraw his appeal, as he has proposed to do, on payment of costs; and that the respondents should not be allowed to file a cross appeal.

*Appeal withdrawn.*

*Before Sir Richard Garth, Knight, Chief Justice and Mr. Justice Macpherson.*

RAM CHUNDER SAO (PLAINTIFF) v. BUNSEEDHUR NAIK  
(DEFENDANT.)\*

*Evidence Act (I of 1872), s. 83—Measurement chittas.*

Chittas made by Government for its own private use are nothing more than documents prepared for the information of the Collector, and are not evidence against private persons for the purpose of proving that the lands described therein are or are not of a particular character or tenure.

The plaintiff was the purchaser at a sale for arrears of rent under Regulation VIII of 1819, of a certain patni taluk called lot Hurampur.

In 1878 the plaintiff sued defendant to recover possession of one bigha 19 cottas of land as appertaining to that taluk, on the ground that he (the defendant) held the land at a rental of Rs. 10. This suit was, however, dismissed, as the defendant denied the relationship of landlord and tenant.

The plaintiff thereupon brought the present suit for possession of this land, and also for a declaration that it belonged to mehal lot Hurampur.

The defendant admitted the proprietary right of the plaintiff in the mehal, but pleaded that the suit was barred under s. 13,

\* Appeal from Appellate Decree No 1950 of 1881, against the decree of Baboo Radha Krishna Sen, Additional Subordinate Judge of Hugli, dated the 3rd August 1881, reversing the decree of Baboo Belari Lall Mullick, Munsiff of Haripal, dated the 27th September 1880.

1888

GOUR HARI  
SANYAL  
v.  
PREM NATH  
SANYAL.

1888  
March 30.