

Before Mr. Justice Wilson and Mr. Justice Tottenham.

SORBOJIT ROY AND OTHERS (DEFENDANTS) *v.* GONESH
PROSAD MISSEK AND OTHERS (PLAINTIFFS).*

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May 6.

Jurisdiction of the High Court over Sonthal Pergunnahs—Act XXXVII of 1855, s. 2—Civil Procedure Code, Act XIV of 1882, ss. 1 and 3—Notifications in Gazette.

An appeal lies to the High Court from the Sonthal Pergunnahs in all civil suits in which the matter in dispute is over Rs. 1,000 in value.

THE plaintiffs, the sons and nephews of one Chuni Lal Misser, brought a suit in the Court of the Sub-Judge of Deogurh in the Sonthal Pergunnahs for a declaration of their rights in respect of certain immovable properties of the estimated value of Rs. 1,000, which had been attached and sold in execution of a decree obtained by the present defendants against Chuni Lal Misser, and had been purchased at the auction sale by the defendants.

The Court of first instance found that only the right, title and interest of Chuni Lal had passed to the defendants under their decree, and therefore gave the plaintiffs a decree declaring their right to the property claimed exclusive of the interest of Chuni Lal therein.

The defendants (the auction purchasers) appealed to the Deputy Commissioner valuing their appeal at Rs. 825. The Deputy Commissioner affirmed the decree of the lower Court.

The defendants appealed to the High Court, and at the hearing the respondents' (plaintiffs') pleader objected—(1) that there was no provision for an appeal from the Sonthal Pergunnahs to the High Court; (2) that even if there was, the value of the present appeal (Rs. 825) was too low to allow the High Court to entertain it.

Baboo Kalli Kissen Sen for the appellants.

Baboo Hari Mohun Chuckerbutty for the respondents.

The judgment of the Court (WILSON and TOTTENHAM, JJ.) upon the preliminary points was as follows:

* Appeal from Appellate Decree No. 806 of 1883, against the decree of W. Oldham, Esq., Deputy Commissioner of the Sonthal Pergunnahs, dated 12th January 1883, modifying the decree of S. S. Jones, Esq., Subordinate Judge, of Deogurh, dated 10th of August 1882.

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WILSON, J. (TOTTENHAM, J., concurring).—A preliminary objection has been argued before us in this case, *viz.* whether this appeal will lie.

The suit was brought in the proper Court within the Southal Pergunnahs in respect of property exceeding Rs. 1,000 in value. It was brought on appeal before the Deputy Commissioner; and he states that the appeal is under Rs. 1,000 in value. The objection has been put in two ways: *First*, it is said that there is now no provision for an appeal from the Southal Pergunnahs to this Court, even in cases above Rs. 1,000 in value. We think that argument is not well founded. The matter depends upon several enactments which must be noticed. The root of the special legislation is Act XXXVII of 1855. That Act says, *first*, in s. 1, with regard to the districts now known as the scheduled districts, that they are removed from the operation of the general regulations of the Bengal Code, and of the laws passed by the Governor-General of India in Council, "except so far as is hereinafter provided." It says further: "No law which shall hereafter be passed by the Governor General of India in Council shall be deemed to extend to any part of the said districts unless the same shall be specially named therein." Then it goes on to provide for special officers to administer civil justice in most cases, and whose decisions were to be final in cases not exceeding Rs. 1,000. But it provided in s. 2 "that all civil suits in which the matter in dispute shall exceed the value of Rs. 1,000 shall be tried and determined according to the general laws and regulations in the same manner as if this Act had not been passed." It therefore reserved suits of the value of Rs. 1,000 and upwards to be dealt with as they would have been before the passing of this Act under the ordinary laws. In effect such suits were at present left to be determined by the old tribunals, though a change was afterwards made; after that the Procedure Code, Act VIII of 1859, was passed. That Act was not by its own force put into operation in the scheduled districts. Section 385 says: "This Act shall not take effect in any part of the territories not subject to the general regulations of Bengal, Madras and Bombay, until the same shall be extended thereto by the Governor-

General of India in Council, or by the local Government to which such territory is subordinate and notified in the *Gazette*." That section therefore gave the local Government power to extend the Act to the scheduled districts by notification in the *Gazette*. Accordingly on the 19th of August 1867 a notification appeared in the *Calcutta Gazette* by which Act VIII of 1859 with a subsequent amending Act were extended to the Sonthal Pergunnahs. There were in the notification certain modifications and qualifications which it is unnecessary now to notice. Between the date of that notification in 1867 and the passing of the next Procedure Code in 1877, it was repeatedly held that Act VIII of 1859 was in force in the Sonthal Pergunnahs, and under it, appeals to this Court were from time to time entertained. The cases on the point are numerous, and it is unnecessary to refer to them in detail.

Then came the Code of 1877 (Act X), and that Act said in s. 1, after giving the short title and the commencement of the Act, that "this section and s. 3 extend to the whole of British India. The other sections extend to the whole of British India except the scheduled districts." Then in s. 3 it said, "the enactments specified in the first schedule hereto annexed are hereby repealed:" and amongst the Acts repealed is Act VIII of 1859. Therefore Act VIII of 1859 can no longer apply in the Sonthal Pergunnahs or elsewhere, because the repeal extended to the whole of British India. And the Code of 1877 does not by its own proper force apply in the scheduled districts, because it is only s. 1 and s. 3 that apply to the whole of British India. But s. 8 contains a further clause, "but when in any Act, regulation or notification, passed or issued prior to the day on which this Code comes into force, reference is made to Act VIII of 1859, Act XXIII of 1861, or the Code of Civil Procedure, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code, or the corresponding part thereof." It appears to us that the effect of that is, that we should take the notification of 1867, strike out of it the words "Act VIII of 1859," and read into it in their place "Act X of 1877" subject to the qualifications contained in the notification itself.

Then followed the present Code of 1882, which contains provisions similar to those in the Code of 1877. It has a similar

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s. 1 and a similar s. 3. It repeals the Code of 1877 with respect to the whole of British India including the scheduled districts, and it contains a similar provision that the Act itself, the Code of 1882, is to be taken as substituted in the place of Act VIII of 1859 and Act X of 1877, in any Act, regulation or notification.

We must, therefore, again go back to the notification of 1867, strike out of it what the Act of 1877 had inserted, and insert in its place the Act of 1882.

The effect is that the Act of 1882 is now in force in the Sontal Pergunnahs subject to the qualification contained in the notification.

Then there remains a second question. It is said that even supposing that an appeal lies under the present law from the Sontal Pergunnahs, still the value of this appeal is too low to allow this Court to entertain it. We think that is not a correct construction of the law. The question depends upon s. 2 of Act XXXVII of 1855. That section says: "All civil suits in which the matter in dispute shall exceed the value of Rs. 1,000 shall be tried and determined according to the general laws and regulations." By that section the question is made to depend on the value of the suit, not on the value of the appeal. Inasmuch as the suit in this case is over Rs. 1,000 in value, although the value of the appeal is less, there is an appeal.

[The learned Judge then proceeded to give a decision on the merits, and dismissed the appeal with costs.]

Appeal dismissed.

Before Mr. Justice Tottenham and Mr. Justice Norris.

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 May 20.
 BEHARY LOLL DOSS AND OTHERS (DEFENDANTS) v. TEJ NARAIN
 (PLAINTIFF).*

Bond, Suit on a—Penalty—Liquidated damages—Evidence—Oral Evidence when admissible to show intention of parties to treat a clause in a bond as penal.

Where a document contains covenants for the performance of several things, and then one large sum is stated to be payable in the event of a breach, such sum must be considered a penalty; but when it is agreed

Appeal from Original Decree No. 202 of 1882 against the decree of Moulvie Hafiz Abdool Karim, Khan Bahadoor, First Subordinate Judge of Bhagulpore, dated the 31st of May 1882.