

tion enters into an agreement for the purpose of compromising a claim *bonâ fide* made to which he believes himself to be liable, and with the nature and extent of which he is fully acquainted, the compromise of such a claim is a sufficient consideration for the agreement, and the agreement is valid. This principle has been recognised in the Indian law in the provisions of the Procedure Code, which enable the parties to a suit to go before the Court and obtain a decree in the terms of a compromise. Furthermore, that the parties to a suit may before a decision is passed in the Court of first instance agree to abide by the decision of that Court and forego their right of appeal is shown by the decision of the Privy Council in *Munshi Amir Ali v. Maharani Inderjit Koer* (1). That case was, it is true, decided before the Indian Contract Act was passed, but if, as we are of opinion, the provisions on which the appellant relies only declare what was before a recognised rule of law, it is an authority in favour of the conclusion at which we have arrived, that those provisions are not applicable to the circumstances of the present case. By the agreement not to appeal, for which the indulgence granted by the respondents was a good consideration, the appellant did not restrict himself absolutely from enforcing a right under or in respect of any contract. He forewent his right to question in appeal the decision which had been passed by an ordinary tribunal. Such an agreement is in our judgment prohibited neither by the language nor the spirit of the Contract Act, and an appellate Court is bound by the rules of justice, equity, and good conscience to give effect to it and to refuse to allow the party bound by it to proceed with an appeal.

### APPELLATE CIVIL.

(*Mr. Justice Turner and Mr. Justice Oldfield.*)

THE MUNICIPAL COMMITTEE OF MORADABAD (DEFENDANTS) v.  
CHATRI SINGH (PLAINTIFF).\*

Act XV of 1873 (*North-Western Provinces and Oudh Municipalities Act*), ss. 28,  
43—*Local Government—Notice of Suit—Special Appeal.*

Where, in a suit against a Municipal Committee, the Magistrate of the District was impleaded as representing the Local Government, the Court refused to

\* Special Appeal, No. 341 of 1876, against a decree of the Subordinate Judge of Moradabad, dated the 7th January, 1876, reversing a decree of the Munsif, dated the 30th September, 1874.

(1) 9 B. L. R., 460.

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allow the plea that the Local Government had not been made a party to the suit in accordance with the provisions of s. 28, Act XV of 1873.

The notice previous to suing a Municipal Committee for a thing done by them under that Act required by s. 43 of the Act is only necessary where compensation is claimed for the thing done.

The plea that no notice was given as required by s. 43 cannot be taken for the first time in special appeal.

*Quere.*—Whether a plea that the Local Government had not been made a party to a suit against a Municipal Committee in accordance with s. 28 can be taken for the first time in special appeal.

ONE Dhokal Singh complained to the Magistrate that the plaintiff was encroaching on a certain public highway in the Municipality of Moradabad. The Municipal Committee took the matter up, and in the carrying out of a resolution by them the line of the highway was marked out so as to admit of the passage of carts. The plaintiff instituted the present suit against Dhokal Singh and against the Magistrate of the District as president of the Municipal Committee and as representing the Local Government, in which he claimed to be maintained in possession of the piece of land which he alleged would be cut off his property if the highway were carried along the line marked out. The Court of first instance dismissed the suit, holding that the plaintiff had failed to prove his title to the land. The lower appellate Court, holding that the land was the plaintiff's property, gave him a decree.

On special appeal to the High Court by the Magistrate as president of the Municipal Committee, it was urged that the suit should be dismissed as the Local Government had not been made a party thereto in accordance with the provisions of s. 28, Act XV of 1873, and that the suit was not maintainable because notice of action was not given in accordance with s. 43 of that Act.

The *Senior Government Pleader* (Lala Juala Parshad), for the appellant.

Pandit *Bishambar Nath* and *Mir Zahur Hussain*, for the respondent.

The judgment of the Court, so far as it is material to the above contention, was as follows :—

A plea was, however, urged which is not entered in the memorandum of grounds of appeal that the suit ought to be dismissed on

the ground that the Local Government had not been made a party in accordance with the provisions of s. 28, Act XV of 1873. Inasmuch as in a former case (1) this objection had been allowed in special appeal and the suit remanded to the Court of first instance for retrial after adding the Local Government as defendant, we permitted the plea to be argued although it was not entered in the memorandum. In the present instance it appears to us that the plea should not be allowed. It is the practice to implead the Collector as representing the Local Government. The Collector and the Magistrate are one and the same person, and in this suit the Magistrate was impleaded not only as president of the Municipal Committee but as representing the Local Government.

At the most it appears to us in this case there was a misdescription of the officer representing Government, a misdescription which that officer might have applied to have corrected. Consequently, assuming that it would be a valid plea in special appeal that the Government must necessarily have been impleaded, and on this point we must not be taken to express an opinion, we hold that the plea cannot arise in this suit because the Government was impleaded.

The question which next calls for decision is whether or not the suit should be dismissed because notice of action was not given in pursuance of s. 43 of the Act. This plea was not, it appears, raised in either of the Courts below, and it is not a plea affecting the decision on the merits. It therefore can hardly be held to be a good plea in special appeal. We may, however, observe that a plea based on similar provisions in a former Act was considered by the Court in an unreported case. It was then pointed out that, on the construction of analogous provisions in English Statutes, it had been held that notice of action is only necessary where the suit is brought for a tort or a quasi tort—Addison on Torts (2)—and that in *Porno Chunder Roy v. Balfour* (3) Mr. Justice Phear expressed his opinion that similar provisions in Act III of 1864 (B. C.) “were directed solely to the cases of suits brought against Commissioners for damages consequential on the act done by them;” and seeing

(1) Unreported.

(2) 4th ed., 764.

(3) 9 W. R. 595; see also *Price*v. *Khilat Chandra Ghose*, 5 B. L. R., App. 50.

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that the suit then before the Court was not brought for damages, the Court held that the provisions of s. 31, Act VI of 1868, respecting notice of action were inapplicable to it. We agree with that ruling. The object of requiring such notice appears to be to enable the Committee or those acting under them to tender compensation and so prevent the necessity for a suit. In the suit now before the Court no damages are claimed. For the reasons we have stated we disallow the plea.

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### APPELLATE CIVIL.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*)

FARZAND ALI (DEFENDANT) v. ALIMULLAH (PLAINTIFF).\*

Act XXIII of 1861, s. 14—*Pre-emption—Pattidari Estate—Co-sharer—Stranger—Auction-purchaser.*

A share-holder in one patti of a pattidari estate is not a "stranger" with reference to a share-holder in another patti of the estate, within the meaning of that term in s. 14, Act XXIII of 1861.

The auction-purchaser at a sale in execution of a decree of a share in a pattidari estate seeking to establish his right as against a person whose claim to the right of pre-emption under the provisions of s. 14, Act XXIII of 1861, has been allowed and in whose favour the sale has been confirmed, cannot maintain a suit for possession of the share, but should sue for a declaration that the person claiming the right of pre-emption has no such right and to set aside the sale (1).

THIS was a suit for a declaration of the plaintiff's right to, and to obtain possession of, a certain share in a pattidari estate. The share had been knocked down at a sale in execution of decree to the plaintiff, who was a co-sharer in the estate, but not a co-sharer in the patti in which the share in suit was situated. The defendant, who was a co-sharer in that patti, had claimed to take the share sold, under the provisions of s. 14, Act XXIII of 1861. The officer conducting the sale had allowed the defendant's claim, and the Court executing the decree had confirmed the sale in his favour.

\* Special Appeal, No. 318 of 1876, from a decree of the Judge of Ghazipur, dated the 21st January, 1876, reversing a decree of the Munsiff, dated the 16th September, 1875.

(1) See *Tasuduk Ali v. Muhsud Ali*, H. C. R., N.-W. P., 1874, p. 289; and *Shib Sahai v. Thika Ram*, H. C. R., N.-W. P., 1875, p. 97.