

it was an appeal against the decision of the Court of first instance and not the decree, referring to *Pan Kooer v. Bhugwunt Kooer* (1). On special appeal by the defendant to the High Court it was contended that the lower appellate Court had misapplied that case.

Mir *Akbar Hussain*, for the appellants.

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

The judgment of the Court was as follows :—

We are of opinion that the ruling of the Full Bench does not apply in this case. The appellant is dissatisfied with the decree of the Court of first instance. He contends that the respondents have, under no circumstances, a right to redeem, and that their suit should have been dismissed absolutely and not in such a manner that they are at liberty to come into Court again. We admit the force of the objection, and decreeing the appeal, remand the case to the lower appellate Court for decision on the merits.

BEFORE A FULL BENCH.

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

ANANT DAS (DEFENDANT) v. ASHBURNER AND Co. (PLAINTIFFS).*

Act IX of 1872 (Contract Act), s. 28—Agreement not to Appeal—Void Agreement.

Where, in consideration of *A* giving *B* time to satisfy a decree against him held by *A*, *B* agreed not to appeal against the decree and did appeal, held that the agreement was not prohibited by s. 28 of Act IX of 1872, and that the appellate Court was bound by the rules of justice, equity, and good conscience to give effect to it and to refuse to allow *B* to proceed with the appeal which he had instituted in contravention of it.

Ashburner and Co., the respondents in this appeal, had obtained a decree against Anant Das, the appellant. On the 24th July, 1875, while certain proceedings in execution of that decree were pending, Anant Das entered into an agreement with Ashburner and Co. by which he bound himself not to appeal from the decree if they would give him until the 20th September, 1875, to satisfy it. The agree-

* Regular Appeal, No. 109 of 1875, against a decree of the Subordinate Judge of Gorakhpur, dated the 10th July, 1875.

(1) H. C. R., N.-W. P., 1874, p. 19.

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ment and consent having been notified by the parties to the Court executing the decree, it directed execution to be stayed.

Anant Das contrary to the agreement above-stated preferred the present appeal to the High Court. The respondents urged, when it came on for hearing, that it ought not to be entertained. The appellant contended that the agreement was void under the provisions of s. 28, Act IX of 1872.

The Court (Turner and Oldfield, JJ.), being doubtful whether the terms of that section applied, referred to the Full Bench the question whether, under the circumstances stated, the appellant ought to be allowed to proceed with the appeal.

The *Senior Government Pleader* (Lala Juala Parshad), for the appellant, contended that the agreement was void under s. 28, Act IX of 1872.

Mr. Howard (with him the *Junior Government Pleader*, Babu Dwarka Nath Banarji), for the respondents, contended that the section was not applicable. The agreement is a valid agreement, and the consideration, viz., the granting of time, good and sufficient. He referred to *Munshi Ali v. Maharani Inderjit Koer* (1).

STUART, C.J.—I would answer this reference in the negative. It is perfectly clear that s. 28 of the Contract Act does not apply to such a case, while in my judgment the agreement of the 24th July, 1875, was a valid and reasonable arrangement which can be enforced. The appellant therefore ought not to be allowed to proceed with his appeal.

TURNER, SPANKIE, and OLDFIELD, JJ., concurred in the following opinion :—

S. 28, Act IX of 1872, declares that every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals is void to that extent. These provisions appear to embody a general rule recognised in the English Courts which prohibits all agreements purporting to oust the jurisdiction of the Courts; but notwithstanding this rule it was long since determined that, if a person after mature delibera-

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

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.

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