

CIVIL REFERENCE.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice
Beverley.*

KEDAR NATH BHATTACHARJI (PLAINTIFF) *v.* GORIE MAHOMED
(DEFENDANT.)*

1886
November 26.

*Right of Suit—Subscription, Suit for—Liability of subscribers to a proposed
Town Hall.*

A suit will lie to recover a subscription promised, the subscriber knowing that, on the faith of his and other subscriptions, an obligation is to be incurred to a contractor for the purpose of erecting a building to be paid for out of the monies subscribed.

THIS was a reference from the Howrah Court of Small Causes.

It appeared that it was thought advisable to erect a Town Hall at Howrah, provided sufficient subscriptions could be got together for the purpose. To this end the Commissioner of the Howrah Municipality set to work to obtain the necessary funds by public subscription, creating themselves, by deed, trustees of the Howrah Town Hall Fund. As soon as the subscriptions allowed, the Commissioners, including the plaintiff who was also Vice-Chairman of the Municipality, entered into a contract with a contractor for the purpose of building the Town Hall; estimates and plans were submitted to, and approved by, the Commissioner, the original estimate amounting to Rs. 26,000. This estimate, however, was increased to Rs. 40,000, as it was found that the subscriptions would cover this amount, and original plans were therefore enlarged and altered.

The defendant was a subscriber to this fund of rupees hundred, having signed his name in the subscription book that amount. The defendant not having paid his subscription was sued in the Howrah Court of Small Causes by the plaintiff as Vice-Chairman and Trustee, and therefore as one of the persons who had made himself liable to the contractor for the construction

* Civil Reference No. 13A of 1886, made by Baboo Krishna Mohan Mukerji, Officiating Judge of Small Cause Court of Howrah, dated the 8th August 1886.

money was to be applied, and they knew that on the faith of their subscription an obligation was to be incurred to pay the contractor for the work. Under these circumstances, this kind of contract arises. The subscriber by subscribing his name says, in effect,—In consideration of your agreeing to enter into a contract to erect or yourselves erecting this building, I undertake to supply the money to pay for it up to the amount for which I subscribe my name. That is a perfectly valid contract and for good consideration ; it contains all the essential elements of a contract which can be enforced in law by the persons to whom the liability is incurred. In our opinion, that is the case here, and therefore we think that both questions must be answered in the affirmative, because, as I have already said, we think that there is a contract for good consideration, which can be enforced by the proper party, and we think that the plaintiff can enforce it, because he can sue on behalf of himself and all persons in the same interest, and, therefore, we answer both questions in the affirmative, and we consider that the Judge of the Small Cause Court ought to decree the suit for the amount claimed, and we also think that the plaintiff ought to get his costs including the costs of this hearing.

T. A. P.

FULL BENCH.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice Prinsep, Mr. Justice Wilson, and Mr. Justice O'Kinealy.

FAHAMIDANNISSA BEGUM. AND OTHERS (PLAINTIFFS) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER (DEFENDANTS).³²

1886
KEDAR
NATH
BHATTACHARJI
v
GORIE
MAHOMED.

1886
August 14.

Assessment of re-formed land after Diluviation—Act IX of 1847, ss. 1, 6, 7 and 9, Effect of—Jurisdiction of Board of Revenue, Its extent—Civil Court, Power of—Survey Maps, their evidentiary value.

Where on inspection of a survey map, and after its comparison with a former *thak* map, the Board of Revenue assessed certain land as alluvial increment, which, however, the Civil Court in a suit against the order of the Board, found upon further evidence to be a re-formation on the original site of a

³² Appeal from Appellate Decree No. 384 of 1885, against the decree of H. Bevridge, Esq., Judge of Zillah Furriddpur, dated 28th November 1884, reserving the decree of Baboo Juggut Durlav Mozooundai, Subordinate Judge of that district, dated 21st March 1883.