

1888

 IN THE
 MATTER OF
 THE PETI-
 TION OF H. E.
 TWIDALE.

not been admitted as a Solicitor anywhere. He applied for leave to practise at this bar. His Counsel, Sir Roundell Palmer (Lord Selborne) put the case very much as Mr. Doyne has done. Lord Cairns, on behalf of the Committee, said in that case "the qualifications are in the Schedule." That means in the Orders I suppose; it is a mistake of the shorthand writer. "The third appears to be the only one upon which any claim can be made. The third applies to Solicitors practising in India." Then Sir Roundell Palmer said "yes, I see there are affirmative words which do not embrace this case: I do not perceive that there are any negative words which would exclude it." Well that is precisely the argument which Mr. Doyne put at the bar here. The answer to this is, "Lord Cairns:—There was an obvious reason for specifying the classes which are here specified. I do not say what may or may not be done hereafter, with regard to the very wide class of vakils who are under very different jurisdictions, but certainly they are not included at present in the Order." That (as will be seen) is exactly in point.

Their Lordships collect that the Committee on that occasion, as on this, were by no means disinclined to grant the petition, if it were within their power. But it has been expressly decided that it is not within their power, and their Lordships now must follow that decision, and refuse the application.

Petition rejected.

Solicitors for the petitioner: Messrs. T. L. Wilson and Co.

C. B.

APPELLATE CIVIL.

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

MOHESH CHUNDER CHUTTOPADHYA (DEFENDANT) v. UMATARA DEBY (PLAINTIFF).*

1889
 May 21.

Appeal—Bengal Tenancy Act (VIII of 1885), s. 153—Cesses, Suit for—Bengal Act (IX of 1880), s. 47—Appeal in cases under Rs. 100.

A suit to recover cesses for an amount not exceeding Rs. 100 falls, under the provisions of s. 153 of Act VIII of 1885 with respect to appeals.

* Appeal from Appellate Decree No. 1545 of 1888, against the decree of H. Beveridge, Esq., Judge of 24-Pergunnahs, dated the 27th of June 1888, reversing the decree of Baboo Dino Nath Siroar, Munsiff of Barulpoore, dated the 31st of December 1887.

THIS was a suit for cesses.

The defendant admitted the tenancy, but contended that as no valuation of the tenure, since his holding had commenced, had been made by the Collector, he was not therefore liable to pay any cesses.

The Munsiff dismissed the suit. On appeal the District Judge reversed the Munsiff's decision and gave the plaintiff a decree for the amount claimed which was a sum under Rs. 100.

The defendants appealed to the High Court.

Baboo *Nil Madhub Bose*, for the respondent, took the preliminary objection that, under s. 153 of the Rent Act, there was no appeal, the suit being in reality one for rent, cesses being recoverable as rent under Bengal Act IX of 1880, s. 47, and the word "rent" in cl. 5, s. 3 of the Bengal Tenancy Act, being defined as "money recoverable under any enactment for the time being in force as if it was rent."

Baboo *Sharoda Churn Mitter* for the appellant.

The judgment of the Court (PETHERAM, C.J., and GORDON, J.) was delivered by

GORDON, J.—We think that the preliminary objection taken by the respondent in this case, that no appeal lies, must prevail. The appeal arises out of a claim for cesses less than Rs. 100, which, under s. 47 of the Cess Act (Bengal Act VIII of 1880), are made recoverable in the same way as an arrear of rent. And, under the definition of rent given in cl. 5 of s. 3 of the Bengal Tenancy Act (Act VIII of 1885), rent "includes also money recoverable under any enactment for the time being in force as if it was rent." That being so, the suit is really a suit for rent; and as the defendant has raised no question in his written statement as to the amount of cess which is payable by him to the plaintiff, no dispute has been decided between the parties which would have the effect of bringing the case under the provision of para. 4 of s. 153 of the Bengal Tenancy Act. We think the case does not fall within that paragraph, and that, consequently, no appeal lies to this Court. That being so, this appeal must be dismissed with costs.

T. A. P.

Appeal dismissed.

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HYA
v.
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