1901 NOV. 26, 27, 28 & Dec. 2.

CRIMINAL REFERENCE.

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We accordingly sentence Lyall under the first head of the charge, that is under s. 147 of the Indian Penal Code to one month's simple imprisonment and to a fine of 1,000 rupees, or in default of payment to one month's further simple imprisonment. We do not think it necessary to pass further sentence on the second charge.

Rajoni Cant Ghose is sentenced under s. 147 to one month's simple imprisonment and to a fine of 200 rupees, or in default of payment to one month's further simple imprisonment.

We leave it to the District Magistrate to pass whatever (if any) sentence he may think proper on the third charge, which is not before us and of which the jury have convicted Rajoni.

The other accused who are ignorant coolies and acted on sudden impulse and under orders, are less to blame, and are therefore sentenced each to fifteen days' simple imprisonment.

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APPELLATE CIVIL.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

KASHI PROSAD SINGH *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL.*

[12th July, 1901.]

Practice—Test case—Stay of proceedings until trial of test case—Court-fees—Court Fees Act (VII of 1870) s. sch. 17. art. 1—Consolidation of Appeals.

[141] The petitioners, who were the appellants in 44 references under the Land Acquisition Act, obtained an order directing the trial of one of them as a test-case with a stay of proceedings in the remaining appeals until the decision of the test-case. The test appeals having been decided adversely to the appellants, they next applied to have the decision of the Court on the remaining appeals offering to pay the proper court-fees leviable thereon.

***Held*, that having regard to the terms of the order the appellants were not precluded from requiring the consideration of the Court with regard to the other appeals.**

***Held further*, that having regard to the fact that the parties were the same in all the cases, and the plots of land were contiguous to one another and formed part of one estate, although in the occupation of different tenants, who were however not parties to the appeals, the appeals should be consolidated and the Court-fee paid upon the value of the consolidated appeals under s. 17 of the Court Fees Act (VII of 1870) subject to the limitation under art 1, sch. 1 of the Act.**

THE petitioners, Kashi Prosad Singh and others, appealed to the High Court.

They were zemindars in the district of Monghyr and were the owners of certain lands, which had been acquired by the Government under the Land Acquisition Act (1 of 1894) for the requirements of the Tirhoot State Railway. The Land Acquisiton Deputy Collector, who conducted the proceedings relating to the acquisition of these lands, instituted 44 separate cases, which were numbered Nos. 1 to 44 of 1898, in respect of the 44 plots of lands sought to be acquired, although, as a matter of fact, all the plots were contiguous to one another and formed part of one estate, of which the appellants were the owners. The Deputy Collector made his award, which was not to the appellant's satisfaction,

* Appeals from Original Decree No. 172/1 to 175/43 of 1901.

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whereupon they applied, for a reference to the District Judge of Bhagulpur, and the matter eventually came before the 1st Subordinate Judge in the form of 44 references.

The appellants thereupon applied to the Subordinate Judge to have the 44 references consolidated, but this application was refused. An application was then made to have the references treated as analogous, and tried as such, and this was acceded to, and the Subordinate Judge proceeded to try and determine the [142] cases in the manner prayed for. On the 6th June 1900 the Subordinate Judge delivered one judgment in all the cases, dismissing the appellants' claim.

When the appeals to the High Court came on for hearing the appellants applied on the 31st August for an order directing "that all the said 44 references and the appeals arising therefrom be amalgamated and the Court fees be levied upon the value of the consolidated claims, or in the alternative that the appeal arising out of reference No. 132 be treated as a test appeal, and that all proceedings in respect of the appeals arising out of the other references be stayed pending the determination of the said test appeal."

Upon this application the following order was passed: "Let a rule issue calling upon the other side to show cause why the 44 references and the appeals arising out of them should not be amalgamated, and the Court fee levied on the consolidated claim, or why the appeal out of reference No. 132 should not be treated as a test case, and all proceedings in the appeal arising out of the other references stayed, until the decision of the said test appeal."

On this rule coming on for hearing on the 30th January 1900, the following order was passed: "We think, after hearing learned Counsel on the one side, and the senior Government pleader on the other, that the second part of the rule ought to succeed, and that is this, that the appeal out of reference No. 132 should be treated as a test case, and that the proceedings arising out of the other references should be stayed, until the decision of the said test appeal. It must be understood that we do not now deal with the question which, we understand, has been or will be raised, namely, whether the appeals arising out of the other references have been preferred to this Court upon proper and adequate Court fee stamps. That matter will be dealt with after the appeal in connection with reference No. 132 has been decided."

The test appeal was accordingly heard and decided on the 25th April 1901, but adversely to the appellants. The remaining 43 appeals subsequently came up for disposal on the 8th July, and the appellants and the Government pleader appeared on notice.

[143] *Mr. Donogh* (Babu *Joy Gopal Ghosh* with him) for the appellants. The order of the 30th January 1901 does not preclude the appellants from having the decision of the Court on the remaining 43 appeals, upon payment of the proper Court fees. This matter was expressly left open to be considered after the determination of the test appeal. The appellants are quite ready to pay the Court fees, which are leviable. The appeals should be consolidated as is constantly done in the case of appeals before the Privy Council for general convenience or to save multiplicity of costs. See Macpherson's "Practice of the Judicial Committee." If the appeals are consolidated the Court fee should be levied as provided in s. 8 of the Court Fees Act on the difference between the total amount awarded and the total amount of the claim.

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This is reasonable because the 44 plots of land, which are the subject of the 44 references, constitute but one estate, which is the property of the appellants. There are no other parties now before the Court, than the two appellants and the Secretary of State. The several plots may be in the occupation of different tenants, but they have not appealed S. 17 of the Court Fees Act has no application, for that is intended to provide for distinct subjects as constituting distinct causes of action. It relates only to multifarious suits. See *Mulchand* v. *Shib Charan Lal* (1) and *Amar Nath* v. *Thakur Das* (2). If s. 17 does apply it is subject to the limitation prescribed by schedule i, cl. 1 of Rs. 3,000; see *Raghobir Singh* v. *Dharam Kuar* (3) and the Court fee imposed should not exceed that sum.

The *Government Pleader* (Babu *Ram Charan Mitter*) for the Secretary of State for India. The appellants are bound by the decision of the test appeal on which they elected to have the judgment of the Court. The prayer of their petition was in the alternative. Inasmuch as the second part of the rule was confirmed it must be taken for granted that the first part was discharged, and the prayer for consolidation refused. The question cannot be opened up again. At all events s. 17 of the Court Fees Act is a bar to [144] consolidation for the purposes of Court fees. The lands are distinct and are occupied by separate tenants and cannot be considered as supporting a single claim. But, even if the appeals are consolidated, the Court fees must be leviable separately as the matters for decision are distinct within the meaning of s. 17.

AMEER ALI and PRATT, JJ. These are several matters referred to us by the Deputy Registrar for the consideration of the question how the forty-three appeals preferred by the appellants in certain land acquisition cases decided by the Subordinate Judge of Bhagalpur should be dealt with under the circumstances which have happened.

It appears that a large area of land belonging to the appellants was taken up for public purposes. The proprietors, who are appellants, did not appear before the Land Acquisition Deputy Collector in time. The tenants appeared and accepted the award made by him, and so far as they are concerned the matter appears to have been concluded. But regarding the interest of the proprietors several references were made by the Deputy Collector to the Court, inasmuch as the lands acquired consisted of separate plots occupied not entirely by the same set of tenants, some, it is alleged, being held exclusively by the landlords. Those references came in due course before the Subordinate Judge; and on the 14th May 1900, the appellants put in a petition asking the Court to try them as analogous suits, inasmuch as the point in dispute in all of them was one and the same, and the evidence to be tendered was to be of one and the same nature. That prayer was acceded to, and the Court recorded the following order: "Petition filed. This case made analogous with case No. 1 of 1900. Statement of Government pleader made and preliminary issues framed in analogous case No. 1 of 1900." The cases seem to have been disposed of by the Subordinate Judge not satisfactorily to the appellants. Hence 44 appeals were preferred to this Court. The appellants then applied for and obtained from this Court a rule in these terms: "On the motion of Mr. Hill, let a rule issue calling upon the other side to show cause why the 44 references and the appeals

(1) (1880) I. L. R. 2 All. 676.
(2) (1880) I. L. R. 3 All. 131.
(3) (1880) I. L. R. 3 All. 108.

arising out of them should not be amalgamated and the court-fee levied on the consolidated claim, or why the [145] appeal out of reference No. 132 should not be treated as a test-case, and all proceedings in the appeals arising out of the other references stayed until the decision of the said test-appeal." That was on the 31st August 1900. By the word "amalgamated" we understand the learned Judges to mean consolidated.

The rule came on for hearing before a different Bench on the 31st January 1901, and the following order dealing with the subject of the rule was made by the learned Judges before whom the matter was discussed: "We think, after hearing learned Counsel on the one side and the senior Government pleader on the other, that the second part of the Rule ought to succeed, and that is this appeal out of reference No. 132 should be treated as a test-case, and the proceedings arising out of the other references should be stayed, until the decision of the said test-appeal. It must be understood that we do not now deal with the question, which we understand has been or will be raised, namely, whether the appeals arising out of the other references have been preferred to this Court upon proper and adequate Court-fee stamps. That matter will be dealt with after the appeal in connection with reference No. 132 has been decided." It is quite clear from the phraseology of that order that no definite order was made with regard to the other 43 appeals. They were allowed to stand over for the time, and the question as to the sufficiency of stamps upon which the appeals were preferred was to be considered later on. The appeal from reference No. 132 was made a test-case for the benefit apparently of the appellant, but reading the order as it stands, it does not seem to preclude the appellants from requiring the consideration of the Court with regard to the other appeals. The appeal out of reference No. 132 has been disposed of against the appellants, and they now apply that their other appeals should be taken up and heard, and that they should be allowed to make up any deficiency that there may be in the Court-fee stamps, upon which the appeals have been preferred.

Mr. Donogh, who appears for the appellants, asks that these appeals may be consolidated, and that his clients may be allowed to pay a Court-fee upon the consolidated amount, but if the Court is not inclined to grant that prayer he asks that after [146] consolidation his clients may be allowed to pay Court-fees as required under s. 17 of the Court Fees Act, subject to the maximum limit provided for by Article I, Schedule 1 of that Act.

We have also heard the Government Pleader on the other side. He contends that the application upon which the Rule was originally granted on the 31st August 1900 was in the alternative, namely, that, if the appeals should not be amalgamated and the Court-fee levied on the value of the consolidated claims, the appeal arising out of reference No. 132 may be treated as a test-case and as the order of the 30th January 1901 allowed the appeal out of reference No. 132 to be treated as a test-case, it must be taken that the other prayer was refused, and that, therefore, the present application for consolidation must be regarded as practically *res judicata*. He also contends, that the plots which have been taken up for public purposes being separate and being in the occupation of separate tenants were properly treated as subjects of separate references, and that therefore the references and the appeals therefrom fall properly under s. 17 of the Court Fees Act, and the fee leviable upon the appeal, or

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appeals, if they are all consolidated, should be covered by the provisions of that section.

It appears to us, however, that the appellants are not precluded by the order of the 30th January from asking this Court again to consolidate the appeals pending in this Court. The learned judges then do not seem to have expressly refused the prayer for amalgamation. They say that, after hearing Counsel on both sides, the second part of the Rule ought to succeed, and one case treated as a test-case, leaving the other cases to be dealt with subsequently. It would follow from the phraseology of the order in question that it was left open to the judges, before whom the other matters would come, to exercise their discretion in dealing with any question, which may be raised, regarding those appeals. Had they intended to make the result of that test-case binding on the appellants with respect to all the appeals, they would have expressed themselves in that way. Apparently what was present in the minds of the learned judges was that one case should be taken as a test-case ; if it was favourable for the appellants, the matter might possibly be concluded [147] without putting the parties to the expense of a trial in the other cases. But there is nothing to show that the intention was to preclude the appellants from having a determination of the other appeals, or from asking that those appeals, having regard to the nature and circumstances of the case, may be consolidated. There seems to be no reason in principle why we should not in these cases make an order consolidating them, so as to enable the appellants to have any benefit to which they may be entitled under s. 17 coupled with the proviso of Art. 1, Schedule I, to which we have already referred. S. 17 declares that, if there are distinct subjects involved in a plaint or in an appeal, the Court-fee payable was to be calculated on "the aggregate amount of the fees to which the plaints or memorandum of appeal in suits embracing separately each of such subjects would be liable under this Act." Mr. Donogh on behalf of the appellants contends that the subject matter of these different references are parctically one and the same. We are not prepared to give effect to that contention. The plots are different ; they are occupied by different tenants, the references were separate, and no application was made in the Court below for consolidation. The Application to the Subordinate Judge was simply for the purpose of treating the cases as similar in their nature, and therefore we think that we ought not to treat them as all referring to one subject matter. So far we are at one with the learned Government Pleader.

But we also think that the maximum Court-fee payable by the appellants upon the consolidated appeals should not exceed the sum of Rs. 3,000. This view was taken in the case of *Roghobir Singh* v. *Dharam Kuar* (1), unanimously by a Full Bench of the Allahabad High Court where the very question which the learned Government Pleader has put before us presented itself to the mind of the learned Chief Justice and was disposed of by him. The learned Government Pleader said that the proviso refers to the subject matter of a single plaint or memorandum of appeal, and that where there were different subjects contained in one plaint or in one memorandum of appeal there should be no such limitation as is contained in [148] the proviso referred to. The Chief Justice first of all puts forward the contention and then says : "But

(1) (1880) I. L. R. 3 All. 108.

this view of the Court Fees Act would in many cases work so extravagantly as to make the Court-fee payable under it rather in the nature of a penalty as remarked by STRAIGHT, J., than as reasonable stamp duty, and I therefore willingly support the opinion of my colleagues on the point"; and Mr. Justice STRAIGHT'S judgment which deals with the question at length, clearly shows the principle upon which Courts of Justice should act in these matters.

The parties in these cases are the same, the evidence is the same, only the plots happen to be different and the tenants, owing to whom separate references were made in the Court below are not parties to these appeals. No provision of the Civil Procedure Code has been brought to our notice precluding us from making the order for consolidation, and we think that in the interests of justice it is expedient that we should make such an order. We accordingly direct that the appeals be consolidated, and that the appellants to pay Court-fees upon the value of the consolidated appeals under s. 17 of the Court Fees Act, subject to the limitation under Article 1, Schedule I of that Act, namely, Rs. 3,000. The references will be confined to the landlord's interests, that is two-thirds of the value of the land. We allow the appellants time until Monday, the 15th instant, to put in the requisite Court-fee.

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29 C. 148.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

GOPAL MONDAL *v.* ESHAN CHANDER BANERJEE.*
[10th and 17th May, 1901.]

Bengal Tenancy Act (VIII of 1885,) s. 85—Subletting, restrictions on Validity of sub-lease granted by raiyat for more than nine years—Sublease registered before the commencement of the Bengal Tenancy Act.

[149] Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of the Bengal Tenancy Act, the sub-lease shall not be valid for more than nine years from the commencement of the Act, as against the landlord, but not as against the raiyat.

THE defendants, Gopal Mondal and others, Nos. 6, 7, 11, 12, 13, 14, 15, and 16 appealed to the High Court.

The plainfiff, Eshan Chunder Banerjee, also filed a memorandum of objection under s. 56 of the Civil Procedure Code.

This appeal arose out of an action for *khas* possession of the disputed land on ejectment of the defendants after notice to quit. The plaintiff alleged that the defendants Nos. 1 to 10 held the disputed land under a korfa settlement made by the predecessors in interest of the plaintiff; that the defendants Nos. 11 to 16 were in possession of the land under a mortgage executed in their favour by the other defendants; that the tenant-defendants were under-raiyats, and that therefore the korfa lease under which they held was legally ineffective and not binding on the plaintiff; that the Bengal Tenancy Act having come into operation, and the defendants' term of occupation of nine years having expired, they had no longer any right to hold the land; and that whatever right the

* Appeal from Appellate Decree No. 1118 of 1899, against the decree of K. N. Roy, Esq., District Judge of Bankura, dated the 22nd of March 1899, modifying the decree of Babu Satya Charan Ganguli, Munsif of Bankura, dated the 13th of September 1897.