

1869

May 31.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

BRAJAKISOR SEN (PLAINTIFF) v. KASIMALI AND OTHERS (DEFENDANTS).*

*Jurisdiction of Collector—Standard of Measurement—Act VI. of 1862
(B. C.) ss. 9 & 10.*

The Collector has no jurisdiction in an application by the zemindar under section 9, Act VI. of 1862, B. C., for assistance to measure the holding of his ryot, to fix the standard of the pole with which the land is to be measured.

Semle.—If the application had been under section 10 of the Act, the Collector would have had jurisdiction to declare the length of the standard pole.

Baboos Chandra Madhab Ghose and Srinath Banerjee for appellant.

Baboo Purna Chandra Shome for respondents.

THE judgment of the Court was delivered by.

HOBHOUSE, J.—This was an application for measurement under the provisions of section 9, Act VI of 1862, B. C. In answer to the application the ryots put in two objections. Firstly they said they had not opposed the measurement, and then they said that if the measurement was to be made it was to be made with a pole of 18 inches to a cubic foot, being the standard pole of measurement of the pergunna in which the lands were situate.

The first Court held as matters of fact, firstly that the defendants had opposed the measurement, and secondly that the standard pole was one of 18 inches, and the Court thereupon gave the plaintiff a decree, authorizing him to measure the lands, restricting his measurement to a pole of 18 inches.

The plaintiff appealed to the Judge solely (as the Judge says) "with regard to the length of the measuring pole to be used in effecting the "measurement." The Judge held that he had no jurisdiction to go into this question of the measuring pole, and he therefore dismissed the appeal.

In special appeal it is contended that either the Judge's decision was wrong and he had jurisdiction to enquire into this question of the measuring pole and should be directed therefore to try this question, or else that the Collector's decision was wrong in going into and determining the question, and should be therefore set aside for want of jurisdiction. We think that the Judge's decision is right, and that the Collector's decision is wrong, and passed without jurisdiction. By the provisions of sections 9 and 11 of Act VI. of 1862, the plaintiff in this case had certainly the right to measure the lands comprised in his estate, and that right was clearly subject to this restriction, *viz.*, that the measurement should be made according to the standard pole of the pergunna; and possibly had this been a case of application for measurement under section 10 of the Act, the Collector might have had jurisdiction to declare the length of the standard rod, and the Judge might have had jurisdiction to entertain and determine an

* Special Appeal, No. 70 of 1869, from a decree of the Judge of Tipperah, dated the 22nd October 1868, affirming a decree of the Deputy Collector of that district, dated the 29th July 1868.

appeal from the Collector's decision on this point. But the application here was an application under the provisions of section 9, and in the words of the law the Collector was bound to proceed to enquire into such application and to pass a decision either allowing or disallowing the measurement. The point therefore, and the sole point before the Collector under the provisions of section 9, was whether the measurement should be allowed or not; and there was not and could not be before the Collector the point as to the length of the measurement rod, because until the zamindar had been permitted to measure and had proceeded to measure, there could be no issue as to the measurement rod that he was to be permitted to use. In the cases of *Tur-rucknath Mookerjee v. Meydee Biswas* (1) and *Rakhaldas Mookerjee v. Tunnoo Puramanick* (2), there are judgments of Division Benches of this Court, which, on other grounds, support this view of the law, and there is an unreported judgment of a Division Bench of this Court, which is directly with us, *Ramanath Rakhit v. Muchiram Paramanik* (3). Following these judgments we direct that so much of the Collector's decision as allows the plaintiff's to measure should stand, but that so much of the decision as declares what is the standard pole of measurement of the pergunna by which the plaintiff is to measure shall be set aside as passed without jurisdiction. The special appellant will get his costs of this Court.

1869
BEJ KISHOR
SEN
v.
KASIM ALI.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

LAKHIKANT DUTT AND OTHERS (PLAINTIFFS) v. JAGABANDHU
CHUCKERBUTY AND OTHERS (DEFENDANTS).*

1869
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Majority—Act XL. of 1858.

The age of majority fixed by Act XL. of 1858 is not only for proprietors of land paying revenue to Government, but for all persons not being British subjects.

Baboo Nalit Chandra Sen and Purna Chandra Shome for appellants.

Baboo Girish Chandra Ghose for respondents.

BAYLEY, J.—We are of opinion that this case is governed by the decision in *Madhusudan Manji v. Debigobinda Newgi* (4).

We read that decision as laying down that every person not being a European subject, who has not attained the age of 18 years, is a minor. It is urged that the Full Bench Decision goes on to state that such a person is a minor "for the purposes of the Act" of 1858, which means that the 18th year is the age of majority in regard to proprietors of land paying revenue to Government, who have been taken under the Court of Wards. It is further argued that section 28,

*Special Appeal, No. 140 of 1869 from a decree of the Subordinate Judge of Dacca, dated the 3rd November 1868, reversing a decree of the Moonsiff of that district, dated the 31st December 1867.

(1) 5 W. R., Act X. Rul., 17.

(3) See *ante* p. 63.

(2) 7 W. R., 239.

(4) 1 B. L. R., F. B., 49