Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.

SRIRAM GHATAK (PLAINTIFF) *v.* BRAJAMOHAN GHOSAL AND OTHERS (DEFENDANTS.)*

Bond—Appeal—Act VIII. of 1859, s. 337.—Decree.

In a suit for recovery of rupees 300 due on a bond, the defendants denied the execution of the bond and the receipt of the consideration. The Court of first instance decreed the suit which, on appeal by one of the defendants, was dismissed.

Held that under section 337, Act. VIII. of 1859, the Judge had no power, on appeal by one defendant, to set aside a decree against the other.

THIS was a suit for the recovery of the sum of rupees 300, being the amount secured by a bond executed by the defendants, Kasinath and Brajamohan.

The defendants denied the execution of the bond and the receipt of the consideration.

The Sudder Ameen decreed the suit.

On appeal by Brajamohan alone, the Judge reversed the judgment of the lower Court, and dismissed the suit.

The plaintiff appealed to the High Court.

Baboo *Naba Krishna Mookerjee* for appellant.

Baboos *Prasanna Kumar Roy* and *Bhawani Charan Dutt* for respondents.

JACKSON, J.—I am now of opinion that the decision of the lower Appellate Court, in so far as it discharges the defendant Kasinath Roy from liability in this suit, cannot be supported. Section 337 of the Code of Civil Procedure is one of a peculiar character, and requires to be carefully considered as to its application. The words are :—" If there be two or more plaintiffs, or two or more defendants in a suit, and the decision of the lower Court proceed on any ground common to all, any one of the plaintiffs or defendants may appeal against the whole decree, and the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or Defendants." I think it now quite clear that the decree which may be the subject of such an appeal, must be one affecting in the same manner the whole of the plaintiffs or defendants, that is to say, a decree incapable of division, and upon which it would be impossible for a Court to find in one sense for some of the plaintiffs or defendants, and in the opposite sense for the other plaintiffs or defendants ; for instance, where the suit relates to property in which all the plaintiffs or all the defendants are co-sharers or joint owners.

A case of the kind lately arose before my learned colleague Mr. Justice Markby and myself, in which the party had set up a claim to certain lands as lying within a certain estate, and he commenced the suit against the party whom he described as being the owner of another estate in which those lands were said to be situated, as opposed to the plaintiff's statement. After the

* Special Appeal, No. 236 of 1868, from a decree of the Judge of Zilla Midnapore, dated the 28th November 1867, reversing the decree of the Sudder Ameen of that district, dated the 4th of June 1867.

suit had been commenced, certain other parties came in representing them-
selves to be co-shares of the original defendants, and they were made parties
to the suit under section 73 of the Code of Civil Procedure; and it so
happened that the Court made a decree for the plaintiff as against some of
the defendants, but dismissed the suit as against others; so that as the find-
ing stood, it resulted that, as against certain of the parties, the land was
found to be within a certain estate, and against other parties, not to be with-
in that same estate. That was a decree which was capable of being brought
as a whole on appeal before the Appellate Court, and it was accordingly ap-
pealed by some of the defendants, and the whole decree was reversed. In the-
case before us, on the other hand, the claim of the plaintiff is such that it
was quite susceptible of being decreed against one, and dismissed as against
another. If judgment were given for the plaintiff against both, their
liability would be joint and separate, so that it would be at the option of the
plaintiff to proceed separately in execution against either of the defendants.
It would also be quite open to either Original or Appellate Court to find that
one of the two defendants had, and the other had not executed the bond, and
in that case the party found to have executed would be solely liable.

I think, therefore, that an appeal on the part of one of the defendants, so
as to set aside the judgment of the Court imposing a separate liability to the
whole demand upon another defendant could not be made, and also that the
Court could not, on the appeal of one defendant, set aside the separate and
sole liability of the other defendant. which remained in force under a judg-
ment against which he had not appealed. I think therefore, that the Judge
had not before him any question regarding the liability of Kasinnath Roy,
and all that he could have done on Brajamohan's appeal was to declare that
Brajamohan was not jointly or separately liable to the plaintiff.

I come to this conclusion upon the question before us simply as one of
law. It is not necessary here to advert to the grounds upon which the Judge
held that Brajamohan at any rate was not liable. It may be that, if we had
to deal with those grounds, adverting to the evidence in the cause, we
might have come to a very different conclusion from that to which the Judge
has come. I think therefore that the special appeal must be allowed, and
the judgment of the lower Appellate Court, as regards the defendant
Kasinath, be set aside with costs.

MITTER, J.—I entirely concur in the decree pronounced by my learned
colleague. I do not think that the Judge had the power to reverse the decree
of the Moonsiff in favour of the defendant Kasinath, on the appeal of Braja-
mohan alone. I also think, that even if he had the power, he has not exercised
it in this case in a proper and legal manner. The reasons in support of the
first proposition have been so fully gone into by my learned colleague, that it
is unnecessary for me to repeat them. The reasons in support of the second
proposition were recorded by me at full length in my judgment of August
last, and to those reasons I still adhere.