

he took his mortgage, it was still the property of his mortgagor? Clearly it would not.

The case must therefore go back to the lower Appellate Court, in order that the Judge may find on the evidence, whether the deed of sale propounded by the plaintiffs is a *bona fide* one; whether consideration for that sale passed; and whether possession followed the plaintiff's purchase. If he finds these three things in favour of the plaintiffs, of course his decree will stand. Costs to follow the result.

1871
GARHUI
BIHAR
v.
RANGLAL
SING.

Before Mr. Justice Loch and Mr. Justice Ainslie.

PRASANNA CHANDRA BOSE (DEFENDANT) v. PRASANNA CHANDRA ROY AND ANOTHER (PLAINTIFFS).*

1871
April 4.

Jurisdiction—Venue—Act X of 1859, s. 24.

The defendant was appointed a superintendent of two estates, one called Chalmari within the Sub-division of Diamond Harbour; and the other, Alipore, within the Sub-division of Alipore. By his *kabuliat* he agreed to make good any retrenchments his employer, the zemindar, might make in his accounts. Some retrenchments were made, and to recover the balance which appeared due, the zemindar brought this suit.

Held, that as the defendant had agreed by his *kabuliat* to make the principal kutcherry his place of business, and as both the plaintiff and defendant agreed that the cause of action arose in the principal kutcherry, and as it was the place to which all the moneys were remitted, and where all the accounts were prepared, and the money first came under the control of the defendant, and was by his order disbursed, the cause of action arose in the district within which the principal kutcherry lay.

Baboo *Chandra Madhab Ghose* and *Mahini Mohun Roy* for the appellant.

Baboo *Anand Chandra Ghosal* and *Abhai Charan Bose* for the respondents.

THE facts of the case are fully stated in the judgment of the Court, which was delivered by

LOCH, J.—The question before us in this case is in itself a simple one. It is—What is the place where the cause of action arose between the parties, and in what Court should the suit have been instituted?

The suit is clearly one under section 24, Act X of 1859. It is a suit by a zemindar against an agent for the recovery of money in the hands of the said agent. Whatever may be the allegation in the plaint, we see clearly that this is the nature of the suit.

It appears that in Aghran 1272 (November 15th to December 14th, 1865), the defendant executed a *kabuliat* in favour of the plaintiff, when he (defendant) was appointed superintendent of two estates, one called Chalmar, within

* Special Appeal, No. 1862 of 1850, from a decree of the Judge of the 24 Pergunnas, dated the 28th July 1870, reversing a decree of the Deputy Collector of that district, dated the 1st March 1870.

1871 the Sub-division of Diamond Harbour; and the other, Alipore, within the Sub-division of Alipore.

PRASANNA CHANDRA BOSE v. PRASANNA CHANDRA ROY

The defendant held the office of superintendent till Pash 1275 (December 14th, 1868, to January 12th, 1869) and then, for some reason or other which does not appear, he gave an ikrar to the plaintiff dated the 19th of Pash 1275 (January 1st, 1867) to the effect that he would make good any retrenchments which the plaintiff made in the accounts of the estates committed to his (defendant's) charge.

The plaintiff, after examining the accounts, did make retrenchments, refusing to admit certain items debited in the accounts aggregating to a sum of Rs. 3,400, to recover which this suit is instituted under section 24 of Act X of 1859 in the Sub-division of Alipore, apparently upon the ground that as one of the estates was in that sub-division, the plaintiff was entitled to bring his suit in that Court.

Subsequently, however, on the 28th January 1870, the plaintiff filed a petition before the Collector, praying that as the greater portion of the land to which the suit referred was situated in the Diamond Harbour Sub-division, the suit might be transferred to the officer in charge of that sub-division; and on the 29th of that same month the defendant filed a petition praying that the plaintiff might be dismissed, because it had been filed in the Alipore Court which had no jurisdiction to try the case.

On the 8th February 1870, the plaintiff put in a petition saying that it was by mistake that he had made the application to transfer the suit to the Deputy Collector of Diamond Harbour; and he prayed therefore that it might be tried in the Court in which it was instituted.

On the first of these applications the Collector appears to have directed the Deputy Collector to report whether he had jurisdiction to try the case; and on the subsequent petition presented by the plaintiff, he held that no action need be taken then.

The Deputy Collector of the Sub-division of Alipore tried the question of jurisdiction, and he held that as the *mokami* or principal kutcherry where the zemindar's treasury was, and to which all remittances were sent, and where the accounts of both the estates were kept, was situated in Mauza Barih-gola or Naraintola, in the Diamond Harbour Sub-division, the suit should have been instituted in the Sub-division of Diamond Harbour, as the cause of action must be considered to have arisen in the *mokami* kutcherry.

The Judge, on appeal, appears to consider that the suit being one against a gomashtha under section 24, as the estates in his charge lie in different sub-divisions, the zemindar was entitled to bring his suit in either Court within the jurisdiction of which any of the lands was situated; and he did not determine where the *mokami* kutcherry was situated, as he seemed to think that it was not necessary to decide this point in determining the question of jurisdiction. The law is silent on the subject; and the latter part of section 20, Act VI of 1862, B. C., will not assist us in determining the question of jurisdiction; but looking to the purport of the pleadings as stated to us, it would

appear that both parties consider it necessary to have it determined where the *mokami* kutcherry is situated, as both parties say that the cause of action arose there. The plaintiff alleges that the *mokami* kutcherry is in Bardowla, within the Alipore Sub-division, and the defendant alleges that it is in Barehola or Narahtola, within the Diamond Harbour Sub-division; and we think, looking to the terms of the kabuliat given by the defendant, which required him to make the principal kutcherry his place of business, that must be considered to be the place where the cause of action arose. It was to the *mokami* kutcherry that all moneys were remitted, it was there that all the accounts were prepared, and it was there that the money first came under the control of the defendant, where by his order it would be disbursed, and where in fact according to his accounts, the money was disbursed.

We therefore do not agree in the opinion expressed by the Judge, that the plaintiff was at liberty to institute his suit in either one or the other sub-division, for he ought to have instituted it in that sub-division where the defendant had his place of business; we therefore remand the case to the Judge to determine whether the *mokami* kutcherry is, as is stated by the plaintiff, in the Alipore Sub-division, or whether it is in the Diamond Harbour Sub-division as is alleged by the defendant, and to dispose of the case accordingly.

Costs will follow the result.

Before Mr. Justice Norman, Offg. Chief Justice, and Mr. Justice Loch.

THE QUEEN v. DURGA DAS BHUTTACHARJEE.*

Surety—Recognizance.

A surety who was bail for an accused person, having failed to produce him on the day appointed, the Deputy Magistrate ordered that the bail bond be forfeited, and a warrant be issued for the attachment and sale of the moveable property, first, of the accused, and, secondly, of the surety. No recognizance had been signed by the accused, and no notice had been given to the surety to show cause. On a reference by the Magistrate, the Deputy Magistrate's order was set aside as being illegal.

ONE Durga Das Buttacharjee was sent up by the police for trial under section 448 of the Penal Code. It seems that the accused was sent up on bail, one surety in the sum of Rs. 100 having been required by the police and found. The surety was bound over to cause the accused to appear before the Joint Magistrate on the 10th November 1870. The case was made over for trial to the Deputy Magistrate. The accused was not present on the 10th. On the 11th, the Deputy Magistrate recorded a "proceeding" ordering that the bail-bond should be forfeited, and that "a warrant be issued for attachment and sale of the moveable property belonging to (1st) Durga Das Bhuttacharjee, and (2nd) to his surety, Jadab Chandra Sarnokar, to the extent of Rs. 20 each."

* Reference, under section 434 of the Code of Criminal Procedure, by the Officiating Magistrate of Nuddea.

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CHANDRA ROY

1871
May 12.