

## [FULL BENCH.]

Before Mr. Justice Norman, Offg. Chief Justice, Mr. Justice Kemp, Mr. Justice Phear, Mr. Justice Mitter, and Mr. Justice Ainslie.

THE COLLECTOR OF SYLHET ON BEHALF OF GOVERNMENT (ONE OF THE DEFENDANTS) v. KALI KUMAR DUTT AND OTHERS PLAINTIFFS.\*

1871  
July 18.

Act XXVI of 1867 (1), Schedule B, Article 11, Note—Act VIII of 1859, ss. 30 & 36—Appeal—Jurisdiction—Stamp.

Where a plaint is rejected under section 30 of Act VIII of 1859 by the first Court on the ground that it is undervalued, an appeal lies from such order under section 36 of Act VIII of 1859, and this appeal was not taken away by the note to Article 11, Schedule B to Act XXVI of 1867, the object of which was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint. see also  
12 B L R 216

THIS case was submitted, for the opinion of the Full Bench, by Mr. Justice E. Jackson and Mr. Justice Mookerjee, under

\* Special Appeal, No. 94 of 1871, from a decree of the Subordinate Judge of Sylhet, dated the 22nd November 1870, reversing a decree of the Moonsiff of that district, dated the 18th August 1870.

(1) Act XXVI of 1867, Schedule B, Article 11, note b.—“In order to ascertain the market value or the annual net profits of any such property as is described in note (a) and in note (b), the Court may, either of its own motion or on application of any party to the suit, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court, and the decision of the Court, as to the market value or annual net profits, shall be final. If in the result of any such investigation the Court shall find that the market value or net profits has or have been erroneously estimated for the purpose of computing the stamp duty, the Court shall either (as the case may be) refund the excess paid as such duty, or

require the plaintiff to pay so much additional stamp duty as would have been payable, had the said market value or net profits been correctly estimated, and in such case the suit shall be stayed until the additional duty shall have been paid.”  
Act VII of 1870, Sec. 9.—“If the Court sees reason to think that the annual net profits or the market value of any such land, house, or garden, as is mentioned in Section 7, paragraphs 5 and 6, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.”

Sec 10.—“If in the result of any

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the following circumstances :—the suit was instituted in the Court of the Moonsiff of Lashkerpore for some land valued (for the purpose of the stamp duty) at Rs. 82-1-4.

A preliminary objection was raised before the Moonsiff that the claim had been undervalued, and that the plaint, if properly valued, should have been filed before the Subordinate Judge of the district. The Moonsiff inquired into the question of valuation, and came to the decision that the claim was undervalued; and that, had it been properly valued, he could have no jurisdiction to try the suit; and he accordingly returned the plaint to the plaintiff. The plaintiff appealed to the Subordinate Judge, who came to a different conclusion upon the evidence, and thinking that the Moonsiff had jurisdiction, reversed the decision of the Moonsiff, and directed him to try the case.

A special appeal was then preferred by the defendant, and the point was raised that the Moonsiff's orders on the subject of valuation were final under the note attached to Article 11, Schedule B., Act XXVI of 1867, and that his decision on the question of jurisdiction was consequently final also. In support of this view, the defendant's pleaders cited *Uma Sankar Roy Chowdhry v. Syed Mansur Ali Khan Bahadur* (1) *Madhusudan Chuckerbutty v. Rymani Dasi* (2), *Mafizuddin, alias Arshad* such investigation the Court finds that (2) *Defore Mr. Justice Loch and Mr. Justice Hobhouse.*

*The 29th April 1870.*

if the estimation has been excessive, may in its discretion, refund the excess paid as such fee; but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market value or net profits been rightly estimated. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed."

MADHUSUDAN CHUCKERBUTTY  
 (PLAINTIFF) v. RYMANI DAS AND  
 ANOTHER (TWO OF THE DEFENDANTS).\*

Baboo Durga Das Dutt for the appellant.

Baboo Bansi Dhar Sein for the Respondents.

The facts are fully stated in the judgment of the Court which was delivered by.

HOBHOUSE, J.—We think that the Judge was right in this instance. The plaintiff sued, averring that the value of

(1) 5 B. L. R., App., 6,

\* Special Appeal, No. 2665 of 1869, from a decree of the Judge of West Burdwas, dated the 16th August 1869, affirming a decree of the Moonsiff of that district, dated the 14th June 1869.