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IN THE GOODS OF PETER INNES

Court Fees' Act, 1870, is the value of that with which the Administrator is to deal, *viz*, the value of the entire property, less the amount of the encumbrance.

On the second question I think that the Government having received the *ad valorem* duty on a portion of the property under letters of administration which were valid until revoked, such *ad valorem* duty is not payable a second time. I think that the letters of administration to the Administrator-General should recite the former grant, and the fact of the payment of stamp duty thereon, and that credit should be taken for the payment of Rs. 200 *ad valorem* duty on the former letters in determining the stamp to be affixed to those now granted.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice L. S. Jackson

JARDINE (PLAINTIFF.) *v.* TARINI MOHAN SEN AND OTHERS (DEFENDANTS.)*

1872
Jany 18.

Practice—Right of Reply.

An application for a review of the judgment of the lower Appellate Court was made on behalf of the plaintiff, on the ground that the Judge had dismissed the plaintiff's appeal, without hearing his pleader's reply.

The order of the Judge rejecting the application was in these words:—"This application is rejected with costs. The appellant's vakeel did not reply to respondent's vakeel, nor did he press his right to do so before the Court. The Court, therefore, in proceeding to give judgment at once violated none of the rules of practice of the Court, and consequently afforded no ground for a review of judgment."

The plaintiff, on special appeal preferred by him, urged as the 6th ground of appeal that the lower Appellate Court should not have dismissed his appeal after hearing the respondent's vakeel, without giving the appellant's pleader an opportunity to reply.

Before the special appeal came on for argument for the last time, the High Court had called for a certificate from the pleaders who were engaged in the appeal before the Judge, stating the circumstances under which the reply was not heard.

The three pleaders engaged in the case on behalf of the appellant, gave a certificate to the following effect:—When the case was being argued for the appellant, the Judge was with the appellant. "When the respondent's pleader was adressing the Court, the Judge was still with the appellant As soon as the respondent's pleader finished his argument, the Judge, without hearing the reply, said he wouldgive his judgmentthe nextday. On this, the appellant's pleaders, being under the impression that the Judge's view was favorable to them, did not insist on being heard in reply."

*Special Appeal, No. 947 of 1870, from a decree of the Judge of Backergunge, dated the 7th April 1870, affirming a decree of the Subordinate Judge of that district, dated the 1st August 1868.

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JARDINE v. TARINI MOHAN SEN.

Mr. *Ghose* for the appellant.—The Judge delivered his judgment without hearing the reply. He was bound to hear the appellant's pleader before deciding against him. [JACKSON, J.—The Civil Procedure Code does not expressly say that you are entitled to be heard in reply as a matter of right.] The practice of all the English Courts is in favor of my contention, and it is a well-known rule of practice that the Judge must hear the appellant's reply if the respondent has satisfied him that the decision appealed from is correct. The certificate of the pleaders in the case showed under what circumstances the appellant's pleader was not heard in reply. It is impossible to say that the reply would not have made some impression on the Judge's mind favourable to the appellant, having regard to the circumstances of the case.

Baboo *Kali Mohan Das* for the respondent said that the vakeel for the appellant did not insist on being heard. It was his duty to do so. The certificate therefore does not go far enough.

The judgment was delivered by

COUCH, C.J.—On the ground stated in the 6th ground of the memorandum of appeal, the decree of the lower Appellate Court is set aside, and the case sent down to that Court for re-trial. The costs of this Court will be dealt with by the lower Court as costs in the cause.

Before Mr. Justice Bayley and Mr. Justice Ainslie.

L. G. CROWDEE (DEFENDANT, No. 1) *v.* BHEKDHARI SING AND OTHERS (PLAINTIFFS)*

1871
June. 9.

Ijmali Lands—Growing of Indigo—Co-sharers, Rights of.

See also 12 B.L.R.191

Several persons jointly held lands which were not divided by metes and bounds but in specified shares. One of the shareholders leased out his share or interest in the lands. The lessee sowed indigo in the joint lands. The other shareholders brought a suit to restrain the lessee of their co-sharer from growing indigo on the lands.

Held, that a co-sharer cannot use ijmali lands so as to alter the condition of the property as regards the other shareholders without their consent; that indigo as a crop being valueless for purposes of distraint, the lessee must be restrained from growing it without the consent of all the proprietors.

Baboos *Nilmadhab Sen* and *Khettranath Bose* for the appellant.

Baboo *Chandra Madhab Ghose* for the respondents.

THE facts of this case and the arguments are sufficiently stated in the judgment of the Court which was delivered by

*Special Appeal, No. 320 of 1871, from a decree of the Subordinate Judge of Bhagulpore, dated the 8th February 1871, modifying a decree of the Moonsiff of that district, dated the 28th November 1870.

(1) See *Sadabat Prasad Sahu* v. *Foolbash Koer*, 3 B. L. R., F. B., 31.