FULL BENCH.

Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Jackson, Mr. Justice Phear, Mr. Justice Markby, and Mr. Justice Birch,.

1874
March 4.

BROJO MISSER (DEFENDANT) *v.* AHLADI MISRANI AND OTHERS (REPRESENTATIVES OF THE PLAINTIFF.).*

Beng. Act VIII of 1869, *s.* 102—*Additional Judge—District Judge—Bengal Civil Court's Act* (*VI of* 1871)—*Appeal.*

Held, (JACKSON, J., dissenting) that an Additional Judge, invested with the powers given to him by Act VI of 1871, is a District Judge within the meaning of s. 102 of Beng. Act VIII of 1869, and no appeal lies from his decision in suits of the nature described in that section.

THE plaintiff brought this suit to recover certain arrears of rent with interest, the amount being below Rs. 100. The Munsif gave the plaintiff a decree for a portion of his claim, but disallowed the rest. On appeal by the plaintiff, the Officiating Additional Judge of Tirhoot decreed the entire claim in his favor. From this decision the defendant preferred a special appeal which came on to be heard before Phear and Ainslie, JJ The learned Judges held that, under the provisions of s. 102 of Beng. Act VIII of 1869, no appeal lay from the decision of the lower Appellate Court, inasmuch as the amount in suit was less than Rs. 100, and they accordingly dismissed the appeal.

Subsequently, the defendant applied for a review of Judgment, on the ground that the decision of the lower Appellate Court being by an Officiating Additional Judge, and not by a District Judge, the appeal would lie, and reference was made to *Moonshee Mahomed Mooneer Mea* v. *Sreemutty Jybunee* (1) and *Nobokisto Koondo* v. *Nazir Mahomed*

* Rule No. 508 of 1873, in Special Appeal No. 739 of 1872, from a decision passed by the Additional Judge of Zilla Tirhoot, dated the 23rd February 1872, reversing a decree of the Munsif of Durbangah, dated the 18th September 1871.

(1) 10 B. L. R., App., 29.

Sheikh (1). Thereupon the question raised was referred to a Full Bench by the following order :—

We think that this matter must stand over, and the further hearing be postponed in order that you may refer for the decision of a Full Bench the question whether or not an Additional Judge, invested with the powers given to him by Act VI of 1871, is a District Judge within the meaning of s. 102 of Beng. Act NIII of 1869.

Mr. *Rochfort* for the appellant.—By s. 102 of Beng. Act VIII of 1869, no right of appeal is withdrawn; the section only says that no right of appeal is conferred. The appellant's right to appeal under the circumstances of this case is wholly independent of that section, being conferred by s. 372 of Act VIII of 1859. S. 102 of Beng. Act VIII of 1869, being a prohibitory section, must be construed strictly, and confined within the strict limits assigned to it by the Legislature. It refers only to cases tried and decided by a District Judge, and not to suits tried by an Additional Judge as the present suit was—*Moonshee Mahomed Mooneer Mea* v. *Sreemutty Jybunee* (2) and *Nobdkisto Koondo v. Nazir Mahomed Sheikh* (1).

Baboo *Bhowani Churn Dutt* for the respondent.—S. 7 of Act VI of 1871, after providing for the appointment of Additional Judges, enacts that "such Additional Judges shall perform any of the duties of a District Judge under Chap. iii of this Act that the District Judge may, with the sanction of the High Court, assign to them, and, in the performance of such duties, they shall exercise the same powers as the District Judge." The Additional Judge therefore is for all intents and purposes a "District Judge" within the meaning of s. 102 of Beng. Act VIII of 1869. In such a case no appeal lies to this Court; see the decision in *Ishan Chunder Ghose* v. *Nobin Paul* (3).

(1) 10 B. L. R., App., 30.

(2) *Id.*, 29.

(3) *Ishan Chunder Ghosae* v. *Nobin Paul.* Special Appeal, No 768 of 1872, decided on the 28th February 1873. This was a suit to recover arrears of rent amounting to Rs. 76. The suit was dismissed by the Munsif whose decision was confirmed on appeal by the Additional Judge of Hooghly. On special appeal, the respondent took the objection that the appeal would not lie under s. 102 of Beng. Act VIII of 1869. The Court (COUCH, C. J., and GLOVER, J.) dismissed the appeal with costs.

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The following judgments were delivered by the Full Bench:—

BIRCH, J.—The local Legislature has, in s. 102 of Act VIII of 1869, substituted for the words "Zilla Judge," used in Act X of 1859, the term "District Judge." This, in the General Clauses' Act, I of 1868, passed by the Government of India, is defined to mean "the Judge of a principal Civil Court of original jurisdiction." If these words are strictly interpreted, it may be said that there being only one such Court of a district, it can refer only to the officer presiding in that Court, and that the bar to appeal contained in s. 102 refers only to cases tried by him originally or in appeal. I do not think that such was the intention of the framers of the Act. In some of the most important districts, appeals under Act X of 1859 had been for years disposed of by the Additional Judges. These officers were appointed under Regulation VIII of 1833, and were empowered to perform any part of the duties of the Judge of the zilla, and in performance of those duties were to exercise the same powers as the Zilla Judges.

Appeals from the orders of the Additional Judges lay only to the Sudder, and subsequently the High Court. This law was in force when Act VIII of 1869 was passed by the Bengal Council, and I find nothing to indicate that the local Legislature had any intention (if it had the power) to reduce the status of the Additional Judges to that of the Subordinate Judges, as defined in Act XVI of 1868 then in force. By Act VI of 1871, Regulation VIII of 1833 was repealed, but its provisions as to the powers of the Additional Judges are re-enacted in s. 7, and since that enactment, Additional Judges are gazetted as Additional District Judges, and the officer against whose judgment the special appeal was in this case preferred was so gazetted.

There have been conflicting decisions of this Court upon the question submitted. One is *Nobokisto Koondo* v. *Nazir Mahomed Sheikh* (1). In that case it was held that s. 102 referred to cases tried by a District Judge, and not to those tried by an Additional Judge, and the objection that an appeal would not lie was overruled.

(1) 10 B. L. R., App., 30.

In *Ishan Chunder Ghose* v. *Nobin Paul* (1), decided on the 28th of February last by another Division Bench of this Court, and not reported, it appears that the appeals were dismissed upon the objection raised by the respondent that no appeal would, under the circumstances of the case, lie from the order of an Additional Judge.

It seems to me that there can be no appeal in cases decided by an Additional Judge, which would not be appealable had they been decided by the District Judge. I do not think that the local Legislature contemplated any distinction being made between the Courts of the District Judge and Additional District Judge, and I would hold that the words District Judge in s. 102 of Act VIII of 1869 include an Additiodal District Judge vested under Act VI of 1871 with the powers of a District Judge.

MARKBY, J.—I concur in the construction which has been put upon the statute by Birch, J.

PHEAR, J.—I concur in the view taken by Birch, J., and have but a few words to add. It seems to me that, under the provisions of Act VI of 1871, the Additional Judge is a District Judge, although, no doubt, not the district Judge; he is an Additional Judge attached to the Court of the District Judge. He has the same powers as the District Judge, although his cognizance of cases is in some degree limited. By Act VI of 1871 a great distinction is made between the status of the Additional and that of the Subordinate Judge; there are no appeals from the decision of the Additional Judge to the District Judge, whereas, on the other hand, the Additional Judge may, as the Additional Judge of the District Judge's Court, hear appeals from the Subordinate Judge. I think that, shortly, the effect of s. 102 of Act VIII of 1869 is to except the decrees of an Additional Judge from appeal under his character as a District Judge, or Additional Judge of the District Court.

JACKSON, J.—I regret very much to find myself under the necessity of dissenting from my learned colleagues on this

(1) *Ante*, p. 377 note (3).

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occasion. It is only the very strong conviction on my mind on a subject which I have frequently considered that induces me to express the different opinion which I entertain.

Whatever the status of an Additional Judge may have been at the time of the passing of Act VIII of 1869, and previous to the passing of Act VI of 1871, it seems to me quite clear that the District Judge of the Bengal Civil Courts's Act of 1871 was an entirely distinct person, and a person occupying a wholly different position in the judicial body from the Additional Judge. I think that when the effect of a provision of law is to abridge the ordinary right of appeal, that pessession must be construed with the utmost strictness, and that we ought not to take away the right of appeal, unless we are quite sure that the intention of the law was to take it away.

S. 102 of Act VIII of 1869 says that "nothing in this Act contained shall be deemed to confer any power of appeal in any suit tried and decided by a District Judge, originally or in appeal, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, in which suit a question of right to enhance or vary the rent of a ryot or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, had not been determined by the judgment." S. 3 of Act of VI 1871 provides that "the number of District Judges to be appointed under this Act shall be fixed, and may, from time to time, be altered by the Local Government;" and s. 5 says that whenever the Governor-General in Council has sanctioned an increase of the number of District Judges, the Local Government shall appoint Additional District Judges. That, as I understand it, contemplates the case of an addition to the number of districts, and so regulates the appointment of Additional District Judges to fill that office in such additional districts. After that has been provided for, the Legislature in s. 7 enables the Government in particular circumstances to appoint functionaries called "Additional Judges," and it is declared that "such Additional Judges shall perform any of the duties of a District Judge under Chap. iii of this Act that the District Judge may, with the sanction of the High Court, assign to them, and, in the performance of such

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duties, they shall exercise the same powers as the District Judge." Therefore, the functions of an Additional Judge are restricted to performing, under deputation as it were from the District Judge, any of the duties of that officer under Chap. iii of that Act, and no further. The words "exercise the same powers," I understand to mean that he shall exercise only such powers as are necessary to the efficient performance of his duties, and not as conferring any attribute such as immunity from appeal on the decisions of Additional Judges when passed. And throughout Act VI of 1871, whether grades of Courts are enumerated, Munsifs, Subordinate Judges, Additional Judges, and District Judges are all mentioned *seriatim* as officers of distinct status, holding separate positions and exercising different powers. If, indeed, s. 102 of Beng. Act VIII of 1869 had contained the words "decided by a District Judge or Additional Judge," I should have readily admitted that the finality so given to the decisions of Additional Judges might be conceded to the officer with the same title, though holding a slightly different status, created by Act VI of 1871. But there are no such words in the section, and there appears to be quite sufficient reason why the Legislature should have intended to confer particular powers and particular finality of jurisdiction upon the District Judge in like manner as it confers certain special powers on the Collector of the district, although there may be other officers in the same district exercising the general powers of a Collector. The District Judge is usually an officer of greater experience, higher status, and longer connexion with the district, and the Legislature might well have thought fit to say that in particular cases, usually of minor importance, the decision of such an officer might be allowed to be final. No such reason, it seems to me, exists in the case of the Additional Judge, and the Legislature, therefore, as I presume, did not include the Additional Judge in the terms of s. 102.

For these reasons I think that whatever exemption from appeal is conferred by that section is limited to the decisions of District Judges.

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COUCH, C.J.—I am of opinion in this case that the appeal is barred. The question referred to us appears to have been decided by myself and Glover, J., about a year ago in *Ishan Chunder Ghose* v. *Nobin Paul* (1). From my note of the case the question does not appear to have been argued (certainly at no length) before us; but after the argument which we have now heard, I retain the opinion which I had expressed in that case.

S, 102 of Act VIII of 1869 says :—"Nothing in this Act contained shall be deemed to confer any power of appeal in any suit tried and decided by a District Judge, originally or in appeal, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, in which suit a question of right to enhance or vary the rent of a ryot or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, had not been determined by the judgment."

It appears to me on reading this section that the Legislature, in deciding whether there should be an appeal or not in the case there described, looked quite as much, probably more to the value of the property claimed and the question in dispute between the parties, than to the position of the Judge who was to decide the suit. It is not a proper way of ascertaining what was the intention to look at the case merely as an appeal from a Judge having a particular status, or holding a particular rank or position among the Judges appointed under the Civil Court's Act.

Then we find that in s. 7 of the Civil Court's Act, provision is made for the appointment of Additional Judges, when the business pending before any District Judge requires the appointment of an Additional Judge for its speedy disposal ; and the Additional Judge so appointed is to exercise the same powers as the district Judge. I think we may assume that the gentleman appointed to exercise the same powers as the District Judge will be equally competent to exercise them, and that there

(1) *Ante*, p. 377, note (3).

is not a greater reason that his decision should be subject to appeal than the decision of the District Judge. We also find in s. 21 of the same Act that his decisions are put by the Legislature on the same footing as the decision of the District Judge, for it says that appeals from the decrees and orders of District Judges and Additional Judges shall, when such appeals are allowed by law, lie to the High Court.

I think (as I have already said) that what should be looked at in considering the intention of the Legislature as to the right of appeal are the powers which are to be exercised by the Judge, and the nature of the suit, rather than whether he holds the office, or possesses the dignity, of a District Judge, or has only the name of Additional Judge. It appears to me, although differing as I do from a learned Judge of so much experience as Jackson, J., I cannot but have some hesitation on the subject, that an Additional Judge comes within the meaning of s. 102 of Beng. Act VIII of 1869, and that an appeal does not lie from his decision any more than from that of a District Judge. The application for review will therefore be rejected.

ORIGINAL CIVIL.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Macpherson.

G. PETERS (PLAINTIFF) v. T. Z. MANUK AND OTHERS (DEFENDANTS).

1874
May 21 & June 2.

Husband and Wife—Married Woman, Liability of—Separate Estate—Restarint on Anticipation—Indian Succession Act (X of 1865), s. 4—Married Women's Property Act (III of 1874), s. 8—Costs of Trustees.

In a suit against a husband and wife, and the trustees of the wife's marriage settlement on two joint and several promissory notes given by the husband and wife after their marriage, but before the passing of the Married Women's Property Act (III of 1874), the plaintiff sought to render liable property settled on the marriage upon the wife for her separate use without power of anticipation. The marriage was contracted after the passing of the Indian Succession Act,