

having jurisdiction in the matter to which the award relates. The word "Court" in this section cannot possibly refer to the then not existing Courts of Small Causes, but to the ordinary Civil Courts, which are empowered to entertain all suits not falling within the exclusive jurisdiction of the Small Cause Court, by section 6, Act XI. of 1865, or of any other Courts by special Acts.

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"From the circumstances stated above, it would appear that the matter is cognizable by the ordinary Civil Courts, and not by the Courts of Small Causes, which are not required to make any preliminary enquiries for bringing a case on their file, but to enter at once into the merits of cases made cognizable by section 6, Act XI. of 1865.

"I, therefore, beg most respectfully to submit the case for the decision of the Hon'ble Judges of the High Court, on the point, whether an application for giving effect to a private award is to be presented to the ordinary Civil Courts of local jurisdiction, or whether the Court of Small Causes constituted under Act XI. of 1865, is competent to entertain it."

The opinion of the Court was delivered by

PEACOCK, C. J.—If the award relate to a debt, not exceeding the amount cognizable by a Small Cause Court, we are of opinion that the Small Cause Court has jurisdiction under section 327, Act VIII. of 1859, to entertain an application to file the award, provided the defendant resides within the jurisdiction. In such a case, the Small Cause Court would have jurisdiction over the matter to which the award relates.

*Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Miller.*

IN RE SHASHI BHUSHAN BHADURY.

*Pleader—Act XX. of 1865, s. 12—Calcutta Court of Small Causes—Act IX. of 1850.*

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June 27.

A pleader, holding a certificate under section 12 of Act XX. of 1865, is not thereby entitled to be admitted to practice in the Court of Small Causes at Calcutta. *In re Tulsidas Seal* (1) distinguished.

(1) 2 Ind. Jur., N. S., 133; and 7 W. R., 228.

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SHASHI  
BHUSHAN  
BHADURY.

This was an application by Shashi Bhushan Bhadury, a pleader, for an order, to the Judges of the Small Cause Court of Calcutta, to admit him to practise in the Small Cause Court. The circumstances which led to the present application are given below.\*

\* Upon the decision of the High Court in the case of Tulsidas Seal, a letter to the following effect was written to the Registrar of the High Court, Appellate Jurisdiction, by the Clerk of the Calcutta Court of Small Causes, dated 13th May 1867:

- 3 Reference is made to section 38, Act IX of 1850, rule 49, passed under provisions of section 41. "Under this rule, since April 1856, a body of recognised agents, called pleaders, has been allowed to practise here and in 1864, the High Court unanimously held, that by 8 years of permission this body had acquired certain vested rights, of which it would now be unjust to deprive them."
4. "If the High Court is of opinion that Act XX. of 1855 in its entirety applies to this Court, all these arrangements and provisions must be considered as set aside, and new arrangements must be made in this Court.
5. "It does not appear that under Act XX. of 1865, the appointment of mooktears for this Court is anywhere rendered necessary. None have ever been legally appointed in the Calcutta Small Cause Court, and the first Judge is of opinion that the recognition of any such men as could be expected to take up the employment, would be a source of unmitigated evil."
2. Reasons are given for thinking that the whole Act does not apply, viz., the definition of the terms "Court" and "High Court," and the reference in the Secretary of State's letter, in regard to the establishment of the High Court, made to the Small Cause Court; and "the High Court, while it has made rules, as it
- Subsequent to the date of this letter, and before any reply was received to it, a petition was presented to the

The judgment of the Court was delivered by

PEACOCK, C. J.—This appears to us to be a very different case from *In re Tulsidas Seal* (1). That case was decided

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Judges of the Court of Small Causes at Calcutta, by one Shashi Bhushan Bhadury, praying to be enrolled as a pleader of the Small Cause Court. That petition was refused, but later, Shashi Bhushan Bhadury presented another petition, which was as follows, viz :

“ Your petitioner, a pleader of the junior grade, under the old rules ; and holding power as such to practise in the Small Cause Court, applied to your Honors to enroll him as a pleader of this Court.

“ The order passed on his petition was, that as he was not a pleader of the first grade, he could not be admitted.

“ Your petitioner now most humbly submits, that the above rule is not absolute, it being quite discretionary with your Honors to grant the privilege to any person of good character who may have been well educated. In the exercise of this discretion, your Honors were kind enough to admit one Baboo Indra Chandra Mitter, very lately, as a pleader of this Court.

“ Your petitioner received a good education, having been a senior scholarship-holder in the late Hindoo College, and possesses a good character, and in addition holds a certificate under Act XX. of 1865, entitling him to practise as a pleader in the Small Cause Court.

“ And your petitioner, therefore, prays that your Honors will be so

kind as to grant him permission to practise as a pleader in this Court.”

On the petition, the following order was made, in June 15th, 1868, by Mr Thom on, Officiating first Judge :

“ The Judges of the Court do not think that it was intended by the provisions of Act XX. of 1865, that pleaders of the second grade should be admitted to plead in the Calcutta Small Cause Court.

“ A reference has been made to the High Court as to how far the Act referred to applies to this Court. Pending reply, the Court cannot entertain the petitioner's application.”

The Officiating fifth Judge of the Calcutta Court of Small Causes thereupon wrote, on the 17th June 1868, to the Registrar, High Court, Appellate Jurisdiction, as follows :

“ I am desired by the Judges of this Court to solicit the advice of the Judges of the High Court, with reference to the following matter :

2. “ Shashi Bhushan Bhadury, a pleader of the second grade, under the old rules, and holding a renewed certificate, dated the 7th April 1868, from Mr. F. Beaufort, Judge of the 24-Pergunnahs, under Clause C, section 10, Act XX. of 1865, and under section 4, Act XXIX. of the same year, entitling him to practise as a pleader in the Sudder Ameen's Court, Moonsiff's Court, Small Cause Court, and any Criminal Court,” recently applied to be enrolled as a

(1) 2 Ind. Jur., N. S., 133 ; and 7 W. R., 228.

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with reference to the construction to be put upon section 45 of Act XX. of 1865. By that section it is enacted, that every pleader of the Calcutta Court of Small Causes.

3. "His application having been rejected by the Judges of the Court, upon the ground that he was not a pleader of the first grade, he has again renewed his application, contending that under the provisions of Acts XX. and XXIX. of 1865, he is entitled, as of right, to be admitted a pleader of this Court.

4. "He urges that in the Acts referred to, no distinction is made between Mofussil Small Cause Courts and the Calcutta Small Cause Court, and that as by section 47 of Act XX. its provisions extended to all territories under the Bengal Government, he is entitled, under his certificate, to practise in any Small Cause Court within these territories, the Calcutta Small Cause Court not excepted.

5. "The Judges of this Court desire, in reference to this application, to be guided by the opinion of the Judges of the High Court, as to the interpretation of Act XX. of 1865, on which subject they have already had the honor to forward a letter to the Judges of the High Court, dated 13th May 1867. The Judges of the Small Cause Court desire me to bring to the notice of the Judges of the High Court, that in the judgment of the High Court, in the case of Tulsidas Seal, dated the 2nd, March 1867, the Chief Justice observed: 'The Small Cause Court of Calcutta was substituted for the Court of Requests, and is, as I understand the law, the same Court under a new

'name, and with a different procedure and jurisdiction.' The Judges of the Small Cause Court are inclined to think that on this view, their Court being the same as the old Court of Requests, which was established under the Charter of Justice of King George II., it must be considered to be a Court established by Royal Charter, within the meaning of section 12, Act XX. 1865; and, consequently, that that section and the preceding section of the Act do not apply to the Calcutta Small Cause Court."

The Registrar of the High Court, Appellate Jurisdiction, communicated the following expression of the High Court's opinion, to the Clerk of the Calcutta Court of Small Causes, on the 3rd July 1868:

2. "The term 'Court' in the 9th clause of the interpretation section, 2

Present:	of Act XX. of
Peacock, C. J.	1865, does not, in
Loch, J.	the opinion of the
Bayley, J.	High Court, in-
L. S. Jackson, J.	clude Courts of
Macpherson, J.	

Small Causes in the Presidency Towns, constituted under Act IX. of 1850, as amended by Acts XX. of 1857 and XXVI. of 1864. In this view, it will be unnecessary that pleaders who intend to practise in the Calcutta Small Cause Court, should have been enrolled in the High Court, in order to qualify them so to practise; nor is it requisite that the High Court should make rules for the admission of such pleaders.

3. "The point decided in the case of Tulsidas Seal is distinct."

advocate or vakeel, on the roll of any High Court, shall be entitled as such to practise in any Court in British India other than a High Court in which he is not enrolled. An advocate or vakeel of one High Court is not entitled as such to practise in any other High Court in which he is not enrolled, but, with that exception, he is entitled to practise in any Court in British India. We thought that the Small Cause Court in Calcutta was not a High Court, but that it was a Court in British India, and consequently that an advocate or vakeel of any High Court was entitled to practise there.

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The present applicant's right does not depend upon that section. His right depends upon section 12, which states that every person who shall have been admitted to practise as a pleader or mooktear under the Act, may, subject to the conditions of his certificate as to the class of Courts in which he is authorized to practise, apply to be enrolled in the Court in which he shall desire ordinarily to practise ; and on such application, he shall be enrolled in a book to be kept for that purpose in such Court. It is only by the terms of his certificate that he is entitled to practise in a Small Cause Court at all. There is no express direction in the law to that effect. The certificate is in the form of certificate set out in the 2nd Schedule to the Act, in which the words " Small Cause Courts" are used. The question then is, what is the meaning of the words " Small Cause Courts" as used in that form of certificate ? Do those words extend to the Small Cause Court in Calcutta, or are they confined to the Small Cause Courts in the Mofussil ? It appears to us that the words refer to the Small Cause Courts in the Mofussil, and not to the Small Cause Court in Calcutta.

By the 4th section of the Pleaders' Act, the High Court is authorized and required to make rules for the qualification, admission, and enrolment of proper persons to be pleaders and mooktears of the Courts in the territories to which the Act extends ; and the word " Court" is defined to mean " all Courts subordinate to the High Court, including Courts of Small Causes," which, we understand to mean " including Courts of Small Causes subordinate to the High Court."

We pointed out, in the case to which reference has been made,

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the reasons for thinking that the Small Cause Court of Calcutta was subject to have a writ of *mandamus* issued to it by the High Court; but we do not think that the Small Cause Court of Calcutta was, therefore, intended by the Legislature to be included as a Court of Small Causes subordinate to the High Court. In fact, that has been the construction hitherto put upon the Act, inasmuch as this Court has never considered that section 4 authorized the High Court to make rules for the admission of pleaders in the Calcutta Small Cause Court. We are of opinion that the Small Cause Courts intended to be included in Act XX. of 1865 were the Small Courts established under Act XI. of 1865, which, according to section 4 of that Act, are like the Mofussil Courts, made subject to the general control and orders of the High Court.

For these reasons, it appears to us, that the Small Cause Court should be informed that we do not think that pleaders of the Mofussil Courts are, as such, entitled to practise in the Small Cause Court at Calcutta.

*Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.*

R. E. BELL v. GURUDAS ROY.\*

*Form of Decree on Appeal.*

1868  
 June 29.

In reversing a decree on appeal, the Court should state the relief which they consider the appellant entitled to.

A. purchased a Government revenue-paying estate from B., but on going to take possession he found C. who claimed under a putnee-grant also from B., in possession. A case was therefore instituted by B., under Act IV of 1840, but it was ordered that C. should be retained in possession. A then brought a suit against B. and C., to recover his purchase money. No relief was asked against C., nor had C. any thing to do with the sale from B. to A. The suit was dismissed. On appeal it was ordered merely, "that the decree be reversed, and the appeal decreed with costs." Nothing was asked against C. in the grounds of appeal. In execution of this decree, C.'s property was seized and sold. C. petitioned the Principal Sudder Ameen, who held that he was not liable, but on appeal the Judge held that he was liable for the purchase-money, and his property had been rightly sold in execution for it. *Held*, on special appeal, that C. was not liable to refund the purchase-money.

\* Miscellaneous Appeal, No. 131 of 1868, from a decree of the Judge of Dacca, reversing a decree of the Principal Sudder Ameen of that district.