

*Before Mr. Justice Norman and Mr. Justice E. Jackson.*

THE QUEEN *v.* RAMGOBIND CHUCKERBUTTY.

*Certificate Tax—Fine—Neglect.*

1869  
March 2.

The fine imposed under section 17, Act IX. of 1868, for neglect to take out a certificate, must not be less than twice the amount for which such certificate should be taken out.

THE judgment of the Court was delivered by

NORMAN, J.—This was a proceeding under section 17 of Act IX. of 1868, for penalties to which the defendant was alleged to be liable for not taking out a certificate and paying for the same within seven days after the service upon him of a notice by the Collector requiring him to do so.

The Deputy Magistrate of Mymensingh, Mr. Andrew, says, defendant could have told a servant to pay the assessment. He was guilty of a pardonable neglect for not doing so. Accordingly, he ordered him to pay the assessment, Rs. 16, and a fine of one rupee.

The Collector of License Tax brought the matter to the notice of the Magistrate, Mr. Alexander, and eventually an application was made to this Court on behalf of the Government of Bengal, praying that the record might be sent for, under section 404 of the Code of Criminal Procedure, on the ground that the conviction was illegal, inasmuch as the Magistrate had no power to remit any portion of the fine, being bound, under the 17th section, to impose on every offender, on conviction, a fine equal to twice the sum mentioned on such notice. We have sent for the record. We are of opinion that the contention of the Government pleader is correct. We should not have had any hesitation in quashing the conviction, and remitting the case to the Magistrate for a fresh trial, but that Baboo Anukul Chandra Mookerjee, on the part of the Government, states, that the Government does not desire to press the case further as against the party convicted.

*Before Mr. Justice Norman and Mr. Justice E. Jackson.*

RAMSAHAYA SING AND OTHERS (PLAINTIFFS) *v.* SYUD MUZHAR ALI  
AND OTHERS (DEFENDANTS).\*

*Partition—Regulation XIX. of 1814—Civil Suit.*

1869  
March 4.

Where a partition of an estate under regulation XIX, of 1814 has been carried out, and confirmed by the Revenue authorities, it seems that one shareholder cannot maintain a suit in the Civil Court to have it declared that he is entitled to a share larger than he claimed in the partition proceedings.

\* Special Appeal, No. 1698 of 1868, from a decree of the Principal Sudder Ameen of Bhagulpore, dated the 13th April 1868, reversing a decree of the Moonsiff of Tegra, dated the 27th, of August 1867.

Baboo *Budh Sen Sing* for appellants.

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Baboo *Girish Chandra Ghose, Ni'madhab Sen, and Dwarakanath Sen* for respondents.

RAMSAHAY  
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SYUD MUZHA  
ALL.

The judgment of the Court was delivered by

NORMAN, J.—We are strongly inclined to think that this suit is not maintainable at all. The facts are, that in the year 1274 a batwara, or partition, of two estates paying revenue to the Government, called Ibrahim-pore and Doulut-pore, took place. The several shareholders received allotments equal to 3 annas 10 gandas, 9 annas 4 gandas, and 3 annas 5 gandas and odd cowries. The present plaintiffs obtained a share of 3 annas 5 gandas.

By Regulation XIX. of 1814, section 4, clause 3, it is enacted that, if one, or two, or more proprietors of joint estate shall be desirous to have separate possession of his or their respective share or shares, "or if two or more of them shall be desirous to have their shares separated, and to hold them as a joint estate, they are to make a written application for that purpose to the Collector, or, &c. The Collector, on receipt of the application, shall publish an advertisement, notifying the same to all parties concerned, and specifying that he shall proceed to make the division applied for in fifteen days from the date of the publication of the advertisement, unless any person or persons in possession of the estate, or any part thereof, shall, before the expiration of that time, deny, by a writing under his or their seals and signatures, and attested by two credible witnesses, the right of such claimant or claimants to the share or shares so claimed by him or them. In case of any such objection, the Collector is not to proceed to the division, until the disputed title be established in a Court of Justice, or admitted by the party or parties so disputing it, by a writing to that effect under his or their seals and signatures, and attested by four credible witnesses." Two objections were taken to the partition, but the objections now raised were not then taken. The partition was eventually confirmed by the Commissioner under the powers conferred by section 20 of Regulation XIX. of 1814, as modified by Regulation I. of 1829, section 4. The Collector put the parties in possession of the estates respectively allotted to them, as provided for by sections 19 and 20 of Regulations XIX. of 1814. In the present suit the plaintiffs seek to re-open the questions which were then decided. They allege that the shares to which they are entitled are larger than those alleged on the one side, and admitted by them to have been their shares at the time of the partition. We entertain great doubt as to whether the suit is maintainable at all, and the doubt is strengthened by the rulings of this Court in *Shaiikh Zakur Ali Chowdhry v. Jugdessures* (1), *Rughobur Sing v. Huree Pershad* (2). *Prima facie*, the decision of the Commissioner on the question of partition is final, and we cannot see that any ground for re-opening the question

(1) 1 W. R., 323.

(2) 6 W. R., 75.

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is even suggested. We need not go into that question and decide it because we are of opinion that the special appellants have wholly failed to show that the Principal Sudder Ameen was wrong in any points in which it is suggested in the grounds of special appeal that he has committed errors in law. It appears to us that there is no ground for supposing that the Principal Sudder Ameen did not consider the report of the amin. The report of the amin does not shew that the defendants were in actual possession of the shares now claimed by them previous to the date of the batwara.

The Principal Sudder Ameen is quite right in saying that 7 cowries awarded by the Moonsiff, out of the 9 annas pati in Ibrahimpore, were not claimed in the plaint, and he was quite justified in rejecting the copy of the hissanama; the original not having been produced or proved in any way.

It is very difficult in this special appeal, owing to the great confusion in the case, to form a satisfactory opinion as to the real merits of it. We can only say that we see no reason to conclude that the decision of the Principal Sudder Ameen is not right. The appeal will be dismissed with separate sets of costs payable to the different respondents who have appeared.

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*Before Mr. Justice L. S. Jackson and Mr. Justice Markby.*

1869  
 March, 5.

MOHAMMED HOSSEIN (DEFENDANT) v. RAJA AKHAYA NARAYAN PAL  
 (PLAINTIFF.)

*Jurisdiction—Objection—Appellate Court.*

The defendant objected to the jurisdiction in first Court, but took no objection to the jurisdiction before the lower Appellate Court.

*Held*, that objection to the jurisdiction was waived.

Mr. R. E. Twidale for appellant.

Baboo Mahendra Lal Shome for respondent.

The judgment of the Court was delivered by

MARKBY, J.—In this case the plaintiff, having borrowed money from the defendant, gave his zemindari in farm to the defendant, who was to reimburse himself from the proceeds, paying to the plaintiff rupees 300 a year as malikana. This suit is brought to recover some arrears of that allowance.

\* Special Appeal, No. 581 of 1868, from a decree of the Officiating Judge of Midnapore, dated the 18th December 1867, affirming a decree of the Principal Sudder Ameen of that district, dated the 18th June 1867.