

The Weekly Reporter.

APPELLATE HIGH COURT.

The 14th December 1867.

Present :

The Hon'ble Sir Barnes Peacock, *Kt.*, Chief Justice, and the Hon'ble H. V. Bayley, J. P. Norman, W. S. Seton-Karr, L. S. Jackson, and A. G. Macpherson, Judges.

Section 10, Regulation XIX. of 1793—Retirement of Judges before delivery of judgment.

Case No. 253 of 1863.

Special Appeal from a decision passed by the Principal Sudder Ameen of Rajshahye, dated the 21st November 1862, affirming a decision of the Sudder Ameen of that District, dated the 21st July 1862.

Mahomed Akil (Defendant), *Appellant*,

versus

Assadun-nissa Bibee (Plaintiff), *Respondent*.

Mr. J. S. Rochfort, Moulvie Murhummut Hossein, and Baboo Mohineee Mohun Roy for Appellant.

Baboo Mohendro Lall Shome and Mutty Lall Mookerjee for Respondent.

Case No. 1116 of 1862.

Special Appeal from a decision passed by the Judge of Sarun, dated the 17th February 1862, affirming a decision of the Collector of that District, dated the 27th June 1861.

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Mutty Lall Sen Gywal (Defendant),
Appellant,

versus

Deshkar Roy (Plaintiff), *Respondent*.

Baboo Tarucknauth Sein for Appellant.

Baboo Debendur Narain Bose for Respondent.

HELD by Peacock, C. J., and Jackson and Macpherson, JJ.—That the grant by a zemindar for valuable consideration of a piece of land to be held without payment of rent is valid as against the heir of the grantor or a purchaser from him by private sale of the zemindary; and that, under Section 10, Regulation XIX. of 1793, such heir or purchaser is not entitled to resume the land.

HELD by Bayley, Norman, and Seton-Karr, JJ.—Contra.

HELD nem. con.—That the opinions (reduced to writing) of Judges who heard the case, but who had ceased to be Judges of the High Court before judgment was pronounced, could not be treated as judgments in the case, but must be regarded as mere minutes or memoranda.

These cases were heard by a Full Bench of nine Judges in January 1866. The circumstances under which they were referred are fully set forth in the judgment of the Chief Justice. The first of the two cases was referred to a Full Bench under the following order recorded by L. S. Jackson and Campbell, JJ. :—

This special appeal raises the question how far the grant for valuable consideration by a zemindar of a specific portion of land to be held without payment of rent is valid as against the heirs of the grantor or purchaser by private sale of the estate.

We observe that there has been some conflict of decision upon the point, and we are informed that in two very recent cases, the learned Chief Justice and Mr. Justice Levinge have held one view, and Mr. Justice Norman and Mr. Justice Kemp, another.

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