The Weekly Reporter,

APPELLATE HIGH COURT.

The 4th January 1870.

Present :

The Hon'ble H. V. Bayley and Sir Charles Hobhouse, *Bart.*, *Judges.*

Appeal—Decree—Decision—Section 23, Act XXIII of 1861.

Case No. 2061 of 1869 under Act X of 1859.

Special Appeal from a decision passed by the Officiating Judge of Rungpore, dated the 31st May 1869, reversing a decision of the Deputy Collector of that district, dated the 28th December 1868.

Shama Soonduree Debia and another (Plaintiffs), *Appellants,*

versus

Digamburee Debia and others (Defendants), *Respondents.*

***Baboos Onookool Chunder Mookerjee, Issur Chunder Chuckerbutty* and *Kishen Dyal Roy* for Appellants.**

***Baboo Sreenath Doss* for Respondents.**

An appeal lies from the *decree* and not from the decision of the Court of original jurisdiction.

Where the decree was absolutely in the defendant's favor, but some of the issues were decided against him : HELD, that the defendant had no right of appeal against that portion of the *decision* of the Lower Court which was against him.

Hobhouse, J.—THE plaintiffs in this case sued for a kubooleut from the defendants, ryots, at enhanced rates.

The Court of first instance held, first of all, that the defendants were not protected from enhancement by the provisions of Section 4, Act X of 1859 ; but on the question of the kubooleut, the first Court held that the plaintiffs had failed to prove that they were entitled to a kubooleut at the exact rates they claimed, and therefore dismissed their case.

The plaintiffs rested contented with this decision, but the defendants appealed against that part of it which declared that they were not protected by the provisions of Section 4 of the Act, and the Judge, while he confirmed the decree of the first Court dismissing the plaintiffs' suit, set aside so much of the decision of that Court as held that the defendants were not protected by the provisions of the said Section 4, and declared that in his judgment upon the evidence they were protected.

The plaintiffs appeal specially against this decision of the Judge on several grounds, but the only ground which we think it necessary to consider and determine is the first ground, *viz.*, whether any appeal lay to the Judge against that part of the decision of the first Court to which the defendants objected when in fact the decree of that Court was in favor of the defendants.

We are not shewn any decisions of this Court either one way or the other, but we think, on the best interpretation that we can give to the wording of the law and its intention, that no appeal lay to the Lower Appellate Court on the part of the defendants in this instance. We observe that by the provisions of Section 23, Act XXIII of 1861 it is declared that the appeal which is preferable to the Court below shall in the words of the Act "lie from *the decree*" of

the Court of original jurisdiction ; and so again by the provisions of Section 350 of the Act the judgment which the Appellate Court has to give is to be for confirming or reversing or modifying " *the decree* " of the first Court,and though it is true that by the provisions of Section 334 of the Act the memorandum of appeal is to contain the grounds of objection to the " decision," still it seems to us that the object of that provision of the Legislature was to enable the Appellate Court to understand by the grounds given against the decision how it was that the decree of the first Court had been injurious to the appellant. In fact, it seems almost too obvious to require notice that the object of an appeal is to correct a something done which has been injurious to the appellant,and the law points out what that instrument is which must have been the cause of the injury in order to there being any appeal, and that instrument is declared to be the " decree." If, therefore, the decree of the first Court so far from being injurious to the appellant is actually in his favor, we fail to see how the decree can be the subject of an appeal on his part simply because there may have been some expression in the judgment which led to the decree which may be considered prejudicial.

As, therefore, the decision in this instance was favorable to the appellant, and as, in fact, it was not his object in any way to disturb the decree, we think that under the law, no appeal lay against it to the Lower Appellate Court.

In this view of the case, we think that the Lower Appellate Court had no jurisdiction to entertain the appeal in question ; and we therefore set aside the judgment of that Court and we confirm the decree of the first Court. We think that the special respondents must pay the costs of appeal in the Court below and in this Court.

The 4th January 1870.

Present :

The Hon'ble G. Loch and F. A. Glover, *Judges.*

Admission—Estoppel.

Case No. 1472 of 1869.

Special Appeal from a decision passed by the Subordinate Judge of Bhaugulpore, dated the 30th March 1869, *reversing a decision of the Moonsiff of that district, dated the* 10*th April* 1867.

Nunhoo Sahoo (Plaintiff), *Appellant,*

versus

Boodhoo Jummadar (Defendant), *Respondent.*

Baboo Lukhee Churn Bose for Appellant.

Baboo Oopendro Chunder Bose for Respondent.

The mere fact of a vendor declaring in her deed of sale of a moiety of a landed estate that she was the proprietor only of that moiety and that the other moiety belonged to her deceased sister's son, was held not to be conclusive evidence against her being proprietor of the other moiety nor to injure the right of a purchaser from her of such moiety.

Loch, J.—THE Lower Appellate Court appears to us to have made quite a new case in the judgment passed by him on remand. He states that from the three deeds of sale executed by Mussamut Sakran,—one dated 22nd December 1861 in favor of Rohim Bux ; and another, 15th December 1864 ; and the third, 25th February 1866, in favor of the plaintiff,—that the vendor Mussamut Sakran, did, as heir of her father, Khaja Noorudin, execute these several deeds ; and further that the plaintiff's witnesses have also stated that the property originally belonged to Noorudin, who left his widow Mussamut Tajan and two daughters Sakran and Mussamut Misrun ; that as the property belonged to the vendor's father, Noorudin, each of the daughters would obtain a 7 annas share and the mother 2 annas share ; that it was not of any importance whether it be proved that Misrun died before her mother, for that circumstance would only affect the two annas share ; but that as the vendor Sakran did in her deed of sale of 22nd December 1861, declare herself to be the proprietor only of a moiety of the property and that Ameer Hossein was the proprietor of the other moiety, she could not now be allowed to repudiate that statement and to claim the whole 16 annas as her own.