

the sepoy's of the guard: and as it appeared in evidence, that the *gomashtas* of both the defendants had keys of the locks on the treasure chests and outer door of the treasury, and had equally free access to the treasury, he held them jointly and severally answerable. He accordingly passed a judgment in favour of the Collector, and decreed that defendants should pay into the public treasury the sum of 5,717 rupees. The costs of suit were charged to the defendants.

The defendants preferred separate appeals from this decision to the Sudder Dewanny Adawlut, and on the death of Baboo Mukund Lal, Baboo Ram Das, his son and heir, appeared to carry on the appeal. The pleas of appeal were similar to those urged by the appellants in the Provincial Court.

On mature consideration of the proceedings, the Court, (present C. Smith, Second Judge) seeing no sufficient reason for altering the decision of the Provincial Court of Benares, confirmed it, on the 5th of January 1825, and dismissed both the appeals with costs.

[4] PRAN KISHEN DUTT, *Appellant v.* THE COLLECTOR OF THE TWENTY-FOUR PERGUNNAS, *Respondent.* (1825. Jan. 6th.)

A case of land confiscated, on account of a serious affray between two claimants, under section 6, regulation 49, 1793.

THE Collector of the Twenty-four Pergunnas instituted this action in the Zillah Court of the same district, against Pran Kishen Dutt and Shunkuree Dossea, a neighbouring zemindar, under the provisions of regulation 49, 1793, to obtain an order for the confiscation of a parcel of land situated in Chuk Narayun-Khatta, containing about 100 beegas of land. The land in question being claimed by both the defendants, had been the occasion of disputes, which ended in breaches of the peace. A serious affray, in which some persons were wounded, having taken place regarding the possession of the said land on the 17th of November 1815, the Magistrate committed the actual rioters, and held the defendants to bail, to stand their trial as instigators before the Court of Circuit, and directed the Collector to take proper measures for the confiscation of the land which had been the occasion of the affray. He accordingly instituted this suit under the provisions of section 6, regulation 49, and the concluding part of section 7, regulation 5, 1798, laying his suit at 1,000 rupees, at the rate of 10 rupees *per beega*.

Mussumaut Shunkuree Dossea appointed a *vakeel*, but took no further steps towards defending the suit.

Pran Kishen Dutt pleaded that the land in question belonged to Chuk Narayan Khatta, situated in his talook of Bahir Milanea, Turuf Baneyra, Pergunna Mandregh, and that he had obtained frequent decrees of Court, awarding to him the right thereto. With regard to the affray, which was the ground of the present action, he stated that the dependants of Mussumaut Shunkuree Dossea had cut the rice which his ryots had cultivated on three beegas of the land in question he not being present, and his people being perfectly passive: that the Circuit Judge, who tried the case, did not think his people guilty of affray, as, while he severely punished the opposite party, he sentenced his

(defendant's) dependants to the trifling punishment of three months' imprisonment [5].only, because they were present. He further pleaded, that if a forfeiture had been incurred in consequence of the affray, justice demanded no more than the confiscation only of that portion (three beegas), which was the actual cause of the affray. He filed several decrees and documents to prove his right to the land in question, and to establish the fact that he actually had possession when the affray took place.

After maturely considering the proceedings held in the Civil Court, as well as those held by the Foujdaree Court and Court of Circuit, the Zillah Judge observed, that although it was clearly established by the evidence, that the land did really belong to Pran Kishen Dutt, yet that the ultimate decision of the case, as regarded forfeiture, was not affected thereby; and as it was proved that an affray had taken place for the possession, he passed a judgment on the 9th of December 1819, declaring the said parcel of land containing about 100 beegas, duly forfeited to Government, under the provisions of section 6, regulation 49, 1793, and decreeing possession thereof to Government. The costs of suit were charged to the defendants.

Pran Kishen Dutt having appealed from this decision to the Provincial Court of Calcutta, that Court confirmed the decision on the 21st January 1821, and dismissed the appeal with costs.

Pran Kishen being still dissatisfied, moved the Court of Sudder Dewanny Adawlut for the admission of a special appeal. As it appeared from the documents filed by the petitioner that he was the rightful owner of the land, and that the opposite party were the aggressors in the affray, the dependants of the petitioner being declared by the law officer of the Circuit Court liable only to *Tadeeb*, or admonition, for having opposed the adverse party while carrying off their grain, instead of applying for redress to the ruling power: and as the Zillah Judge had decreed the forfeiture in the vague terms of a parcel of land, "containing about 100 beegas," the Court (present S. T. Goad and J. Shakespear, Third and Fourth Judges, in opposition to the opinion of the Second Judge, C. Smith) admitted a special appeal.

The respondent contended, that as it was proved that a serious affray had actually taken place regarding a disputed claim to the possession of the said land, the whole of the 100 beegas, which was the real cause of the contention, was liable to forfeiture, and prayed that the decisions of the lower Courts might be confirmed.

[6] After mature deliberation of the whole of the proceedings, the Court (present W. B. Martin, Fifth Judge) were of opinion, that it was clearly proved that an affray had taken place, in which the dependants of the appellant were concerned; and that the land, which was the cause of the said affray, was duly forfeited, under section 6, regulation 49, 1793: and that it was highly expedient that the said provisions should be carried into effect for the purpose of removing the cause of contention. A final judgment was therefore passed on the 6th of January 1825, confirming the decisions of the lower Courts, and dismissing the appeal with costs.