

REPORTS OF CASES DETERMINED IN THE COURT
OF SUDDER DEWANNY ADAWLUT, CALCUTTA,
APPROVED BY THE COURT.

VOLUME VII.

CONTAINING

Select Cases from 1841 to 1848, inclusive.

BISHNO CHURN SINGH, *Appellant v.* DEGUMBEREE DOSSEA AND OTHERS,
Respondents. (1841. *January 14th.*)

A Zillah Court has jurisdiction in a suit between parties trading in Calcutta, but residing within the Zillah, the cause of action having arisen in Calcutta.

One of the defendants having taken the benefit of the Insolvent Act in Calcutta, is no bar to the Zillah Court's cognizance of the action against the rest of the defendants.

THIS was an action brought by the appellant in the Zillah Court of East Burdwan, for the recovery of 1,983 rupees, 11 annas, being the amount of principal and interest, on a balance of account between the parties. The plaintiff had a shop in Hautkollah, within the town of Calcutta, and it was there that the transactions had been carried on which gave rise to the present suit. The case was referred to the Principal Sudder Ameen, Cazeer Russool Buksh, who, on the 28th August, 1839, gave judgment against the plaintiff on the following grounds, amongst others :

First, that the cause of action originated in the town of Calcutta, and hence the jurisdiction of the Mofussil Court was barred ;

Secondly, that one of the defendants named Manik had taken the benefit of the Insolvent Act, and that notice from the Supreme Court had been served on the plaintiff as one of the creditors of the insolvent.

The decision of the Principal Sudder Ameen was confirmed in appeal by Zillah Judge, Mr. Dunbar.

The plaintiff then preferred an application, for the admission of a special appeal, to the Sudder Dewanny Adawlut, which was admitted.

The Court (present D.C. Smyth, Esq.) on the following grounds over-ruled the objections, urged by the lower Courts, to the investigation on its merits of the plaintiff's claim :

[2] First, that if, as appeared to have been the case, the parties at the period of the institution of the suit were residents of the district of Burdwan, the Zillah Court had jurisdiction ;

Secondly, that Manik alone of the defendants had taken the benefit of the Insolvent Act, and could not be prosecuted in the Zillah Court under Sec. 41, Cap. 73, Stat. 9, Geo. IV. This however was no bar to the suit as against the rest of the defendants.

The suit was accordingly remanded to the Zillah Court for investigation on its merits.

OMESCHÜNDER PAL CHOWDREE and MUSSÜMAUT OIJUL MUNNEE
DOSSEA, *Appellants* v. ISSUR CHÜNDER PAL CHOWDREE, JYNERAIN
PAL CHOWDREE AND GUNGANERAIN PAL CHOWDREE, *Respondents.*
(1841. January 18th.)

A suit to enforce execution of a summary decree for rent instituted upwards of 12 years from the date of the decree, dismissed.

THIS was an action instituted by the respondents, in the Zillah Court of Nuddea, against the appellants, for the execution of a decree, for certain sums due to them as rents, which they had obtained in the year 1823, under the provisions of Regulation VII, 1799, but were then unable to enforce in consequence of inability to discover any property which would meet the demand on the decree. Subsequently Omeschunder Pal Chowdree, (one of the defendants), brought an action for a considerable amount against the respondents, and obtained a decree, in execution of which the respondents' property was about to be sold. The respondents then produced the decree obtained under the provisions of Regulation VII, 1799, and prayed for a set off, which however was rejected, in consequence of the expiration of more than 12 years from the date of the summary decree. They consequently sued in a regular action, as above-mentioned, to enforce execution of the summary decree.

The defendants in that suit pleaded, among other grounds of defence, that more than 12 years had expired from the date of the summary decree, which could not consequently be enforced.

The Zillah Judge, Mr. R. P. Nisbet, pronounced judgment in favour of the plaintiffs. The defendant Omeschunder Chowdree then appealed to the Sudder Dewanny Adawlut.

[3] Mr. Rattray in the first instance confirmed the decision of the Zillah Court, but admitted a review of judgment on the application of the appellants, specially on the point of defence urged on the ground of the expiration of the period of limitation. On further consideration, Mr. Rattray was of opinion that, in consequence of more than 12 years having elapsed since the date of the summary decree, and in the absence of sufficient proof of demand and promise of payment, so as to bring the case within the exceptions laid down in Section 14, Regulation III, 1793, the action was barred, and proposed to reverse the decree of the Zillah Court.

Mr. D.C. Smyth concurred.