

1837, no more than 30 days are allowed for appeals from moonsiffs, deducting period allowed by clause 10, section 8, Regulation XXVI of 1814.

The Construction No. 1048 was passed in no case or argument, while clause 4, section 2, Regulation VII of 1832, most strictly prohibits any enlargement of the 30 days laid down for appeal.

JUDGMENT.

We are of opinion that the Construction No. 1048 must not be allowed to be of any force in this case; first, because it was not passed by the court on argument, but on a reference, and again because it was passed in 1836, after the promulgation of Regulation VII of 1832, to which it is opposed, inasmuch as that law supersedes the discretionary power given to judges by section 46, Regulation XXIII of 1814, to extend the period of appeal. For the above reasons we reverse the judge's decision and confirm the *ex-parte* decision of the moonsiff with costs.

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The 3rd January, 1855.

PRESENT: SIR R. BARLOW, BART., AND H. T. RAIKES  
AND B. J. COLVIN., ESQRS., *Judges.*

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CASE NO. 16 OF 1854.

Special Appeal from the decision of Mr. W. Luke, Judge of Midnapore, dated 11th July 1853, reversing a decree of Russicklal Bose, Moonsiff of Nemat, dated 17th August 1852.

CHUNDEECHURN JANA (*Plaintiff*), *Appellant* v. RAMHURREE DOSS  
(*Defendant*), *Respondent.*

See above. [11 S.D.A.R. 4, *supra.*]

*Vakeel of Appellant*—Baboo Jugdanund Mookerjee.

*Vakeel of Respondent*—Moulvee Murhamut Hossein.

THIS case was admitted to special appeal on the 16th January 1854, on the same grounds as in case No. 15, recorded by Sir R. Barlow and Mr. H. T. Raikes.

[7] JUDGMENT.

For the decision in this case, see that passed in No. 15, by the court this day.

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The 8th January, 1855.

PRESENT: SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

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PETITION NO. 554 OF 1854.

[*Special appeal—Mistakes of fact—Remand—Co-sharers in undivided estate—Non-joinder of parties—Irregularity.*]

Order of remand as per certificate.

*Vakeel of Petitioners*—Baboo Ramapersaud Roy.

*Vakeel of the Opposite Party*—Mr. J. G. Waller.

IN THE MATTER OF THE PETITION OF SURUBJEET ROY AND OTHERS, filed in this court on the 29th May 1854, praying for the admission of a special appeal from the decision of Mr. G. D. Wilkins, officiating judge of zillah Tirhoot, under date the 7th March 1854, affirming that of Mr. John Weston, second principal sudder ameen of that district, under date 3rd September 1852, in the case of Omrao Roy and others, plaintiffs, *versus* Surubjeet Roy and others, defendants.

It is hereby certified that the said application is granted on the following grounds:

See Tirhoot Zillah Decisions, 7th March 1854.

The judge has decreed  $2\frac{3}{4}$  annas in favor of plaintiffs, special respondents, because he considered that the special appellants had not referred to the  $1\frac{3}{4}$  anna share in their appeal pleadings, and therefore that they had not advanced any objection regarding that portion, and because he considered the 1 anna share to have been proved to be Bhoiroo Roy's property by a decree of the judge, dated 13th May 1830.

The special appeal is on the ground that the appeal pleadings expressly referred to the  $3\frac{3}{4}$  annas share. This on reference to them we find to be the case, where it is stated that the appellants object to the award of that share by the court of first instance as Bhoiroo Roy had only a one pie share. A second ground is, that the decision of 13th May 1830 does not prove Bhoiroo's purchase of the one-anna share. This we also find to be the fact; for, on reference to the decision, we find that the statement to that effect is made in the recapitulation of the grounds of the pundit's decision in dismissal of the plaintiff's claim, which decision was reversed by the judge on the above date, and therefore the pundit's statement to the above effect was not adopted by the judge. A third ground is to the judge's dictum that it was not necessary that all the shareholders should be made defendants.

[8] We are of opinion that, according to the general rule, they should have been made defendants, as the suit was to prove what share Bhoiroo Roy held in the undivided estate.

The judge should therefore have nonsuited the plaintiff, unless it were shown that the whole body of the shareholders was not affected by the claim set up by plaintiff.

The case is therefore remanded for him to decide, in the first instance, regarding the propriety of nonsuit or not. If he decide against nonsuit, he will re-try the appeal, with regard to the above remarks, on the first two grounds of special appeal.

The special appellant's pleader has requested that, for the purposes of this appeal, his co-defendants and the third party, the farmer, who holds under him, may be excluded from the number of special respondents.

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The 9th January, 1855.

PRESENT: SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

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PETITION NO. 673 OF 1854.

[*Mortgage—Regulation XVII of 1806, section 8—Notice of foreclosure—Personal service not necessary.*]

Personal service of foreclosure is *not* required by section 8, Regulation XVII of 1806.

*Vakeel of Petitioner*—Mr. J. G. Waller.

*Vakeel of the Opposite Party*—Moonshee Alee Afsur.

IN THE MATTER OF THE PETITION OF ALEXANDER FORBES; filed in this court on the 20th June 1854, praying for the admission of a special appeal from the decision of Mr. H. V. Bayley, additional judge of Dacca, under date the 18th April 1854, reversing that of Moulvee Syud Abbas Alee Khan, principal sudder ameen of that district, under date 17th May 1853, in the case of Alexander Forbes, plaintiff, *versus* Chundercoomar Bose and others, defendants.

It is hereby certified that the said application is granted on the following grounds :

The petitioner applies for admission on the ground of the decision, page 281 of Sudder Dewanny Adawlut Decisions, 21st June last, by which it is ruled that personal service of foreclosure is *not* required by section 8, Regulation XVII of 1806.

The judge has nonsuited petitioner, stating that personal service is necessary. The case is remanded to the judge to be decided with reference to the above remarks.

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[2] *The 9th January, 1855.*

PRESENT: SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

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PETITION NO. 725 OF 1854.

[*Co-sharers—Potta by one—Invalidity* ]

Order of remand, that the counter-pleas might be determined.

*Vakeel of Petitioner*—Baboo Kishen Sukha Mookerjea.

*Vakeel of the Opposite Party*—Abool Munsoor.

IN THE MATTER OF THE PETITION OF RANEE HURSOONDREE DEBEA, filed in this court on the 1st July 1854, praying for the admission of a special appeal from the decision of Mr. W.T. Trotter, judge of zillah Mymensing, under date the 23rd March 1854, affirming that of Nurohuree Siromonee, principal sudder ameen of that district, under date 22nd June 1853, in the case of Biker Shah and others, plaintiffs, *versus* Ranee Hursoondree Debea and others, defendants.

It is hereby certified that the said application is granted on the following grounds :

The special appeal is on the ground that a potta by one of the shareholders is not binding upon others. The suit was that the land was out of the separate share of Raja Bishnath Singh; but the answer said that the special appellants claimed also a share. Neither of the lower courts has expressly decided upon the counter-pleas, although they say that the special appellants may claim rent from the plaintiff. This would imply that they recognized their joint property with that of Raja Bishnath Singh, and therefore they should have stated their reasons specifically for acknowledging his potta alone. We remand the case.