The 3rd January, 1855.

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

CASE NO. 523 OF 1853.

Special Appeal from the decision of Mirza Mahomed Sadiq Khan, Principal Sudder Ameen of Zillah Sarun, dated 16th May 1853, affirming a decree of Moulvee Mahomed Haneef, Moonsiff of Chuprah, dated 16th April 1852.

THAKOOR PANDEY (*Defendant*), *Appellant v.* RUGHOONATH AND OTHERS (*Plaintiffs*), *Respondents*.

[*Birtdaree tenure or office—Voluntary collections from* jujmans—*Object of suit not to enforce right against* jujmans—*Co-sharers, by right of inheritance, in office—Right of suit* inter se *for share of collections.*]

Held that the points raised on the admission of the special appeal did not lie, it was therefore dismissed with costs.

Vakeel of Appellant—Baboo Gobindchunder Mookerjea.

Vakeel of Respondents—Baboo Ramapersaud Roy.

THIS case was admitted to special appeal on the 20th December 1853, under the following certificates recorded by Messrs. A. J. M. Mills and H. T. Raikes:

Mr. A. J. M. MILLS.—"The plaintiff sued the defendants, their co-sharers, for possession of a share of the fees which the defendants received from the houses of *jujmans* of certain villages on the ground of right to the same, and prayed that the court would put [3] them in possession of the houses of the *jujmans*, that is, as I understand the tenor of the plaint, that the court would award to them the right to perform conjointly, with the defendants the rites attaching to the office, and to receive from the *jujmans* one-anna share of the fees.

"The lower court have given judgment in favor of the plaintiffs according to the prayer of the plaint.

"It has been ruled by numerous decisions of the court, that the *jujmans*, or parties who require the ceremonies to be performed, are at liberty to choose the priest by whom such ceremonies shall be performed, and I admit the special appeal to try whether the claim in this case be valid or not."

Mr. H. T. RAIKES.—"The precedents alluded to are not in my opinion quite in point. Those precedents rule that the *jujmans* cannot be compelled to employ any particular priest.

"This suit is not brought against the *jujmans* as unwilling to employ the plaintiffs but against the priests the *jujmans* do employ for a share in the fees received by them. As the decree is passed only against the plaintiffs, sharers, in receipt of the fees and is entirely inoperative against the *jujmans*, I do not see how the precedents apply, and would not, on this ground, admit the special appeal."

JUDGMENT.

Sir R. BARLOW and Mr. H. T. RAIKES.—This is purely a case in which the right of inheritance to Ajnassee Koer is claimed by the parties concerned. If the plaintiff got a decree, or if his plaint were dismissed, and judgment went in favor of the defendant, the rights of the *jujmans* would in no way be affected,

they are not parties to the suit; nor was it urged by the defendant that there is any defect of parties in consequence of the omission.

Plaintiff's ancestors and those of defendant were respectively two annas sharers of certain collections called *birt*, those who paid and are willing to pay on demand will do so, or otherwise as they please, notwithstanding any order that may now be passed.

The precedents cited by the special appellant, of 13th June 1850. and 13th May 1852, do not apply to this case, in both of them the rights of *purohits* to demand and recover from *jujmans* was the point at issue, and the court declared that no *purohit* could exercise such right without the consent of the *jujmans*.

In this case we would follow the decision of the court at page 405, Reports Sudder Dewanny Adawlut for 1852, on admission of a special appeal in the case of Sheonarain, petitioner.

That suit was not brought by a *purohit* in assertion of his rights, but by a claimant to a share in the incidents and profits of a *birt* tenure against the party in possession, a member of his own family; [4] and it was ruled that there was no reason why in such a suit for settlement of the right of the plaintiffs, as co-sharers in the *birtdaree* tenure or office, should not be adjudicated by the courts.

The case before us involves a similar right, the plaintiff sues a co-sharer, and the judgment as between them must rest on their rights as heirs to Ajnassee Koer. The points raised on the admission of the appeal do not apply. We dismiss the appeal with costs.

Mr. B. J. COLVIN.—I consider that the suit in this case was virtually to allot the houses of certain *jujmans* to the plaintiff instead of to the defendant. I think, therefore, that the decisions of the lower courts in favor of plaintiff militate against the principle of the court's decision of 13th May 1852, upholding the decision of 13th June 1850, which ruled that no *purohit* can, as of right, claim a share in the fees paid, either from the *jujmans* or payers, or from the *purohit* who received the fees. The judgments of the lower courts should, therefore, in my opinion, be reversed.

The 3rd January, 1855.

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

CASE NO. 15 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 Nemal, dated 17th August 1852.

GUNGAHURREE JANA (*Plaintiff*), *Appellant v.* RAMDHUR DOSS (*Defendant*), *Respondent*.

[*Limitation—Appeal—Discretionary power to extend period of appeal—Regulation XXIII of* 1814, *section* 46—*Regulation VII of* 1832.]

Held, that Regulation VII of 1832 supersedes section 46, Regulation XXIII of 1814, giving discretionary power to judges to extend the period of appeal.

Vakeel of Appellant—Baboo Jugdanund Mookerjea.

Vakeel of Respondent—Moulvee Murhamut Hossein.

THIS case was admitted to special appeal on the 16th January 1854, under the following certificates recorded by Sir R. Barlow and Mr. H. T. Raikes: