

The 4th June, 1857.

PRESENT: H. T. RAIKES, B. J. COLVIN AND J. H. PATTON, ESQRS., Judges.

CASE NO. 638 OF 1856.

Special Appeal from the decision of Mr. F. B. Kemp, Judge of Backergunge, dated 17th August 1855, reversing a decree of Baboo Sreenath Bydiabagish, Principal Sudder Ameen of that district, dated 14th February 1855.

SONATUN DASS AND GOOROOPERSHAD GOOHO (*Defendants*), *Appellants v.*  
KALACHUND DUTT AND OTHERS (*Plaintiffs*), *Respondents*.

[*Regulation VIII of 1819, section 18, clause 3—Ex parte hearing of summary suit by Collector—Simultaneous issue of process of arrest and proclamation for defendant's attendance—Technical informality—Act IX of 1854.*]

Case remanded for trial on its merits, as the technical informality relied upon by the judge was opposed to Act IX of 1854.

*Vakeels of Appellants*—Baboos Ramapersaud Roy and Sumbhoonath Pundit.

*Vakeel of the Respondent*, Baboo Nobokishen Dutt—Baboo Unonodapersaud Banerjea.

*Vakeel of the Respondents*, Baboos Moheschunder Mookerjea and Kasheechunder Bhuttacharj—Baboo Kishen Kishore Ghose.

THIS case was admitted to special appeal on the 12th December 1856, under the following certificate recorded by Messrs. A. Sconce and J. S. Torrens:—

“In disposing of the appeal now brought before us, the zillah judge has set aside a sale made in execution of a summary decree, on the ground that that decree was illegally passed. Referring to the provisions of clause 3, section 18, Regulation VIII of 1819, the judge presumes that previous to the hearing of a suit *ex parte*, first a process of arrest and subsequently a proclamation [972] for the attendance of the defendant should be taken out, and considering the consecutive and not the simultaneous issuing of these processes to be imperative, he finds that in the present case these processes were simultaneously issued, and that the decree was passed contrary to law.

“We admit this special appeal to try whether the decision of the judge should be maintained, or whether on the other hand the validity of the summary decree should be disposed of upon consideration of the merits of the pleas of non-liability taken by the (plaintiff) respondent.”

#### JUDGMENT.

The judge has held that previous to hearing a case *ex parte* under clause 3, section 18, Regulation VIII of 1819, process of arrest should be first issued, and if unsuccessful, proclamation must be subsequently published, but that the two processes cannot be simultaneously taken out by the plaintiff; that the adoption of this course of procedure must be held to have been injurious to the defendant, as it deprived him of time to meet the demand, and consequently the determination of the legality or otherwise of such a proceeding is not barred by the provisions of Act IX of 1854.

As the case before us was decided as above, in accordance with a judgment passed by the judge in case No. 29 of his file, dated 14th August 1855, copy of which judgment was placed on the record of this case as containing the grounds and reasons, which guided the judge in passing judgment in the present case; and as case No. 29 has been already remanded by this court on petition

No. 1641 of 1855 determined 1st May 1856, on the ground that Act IX of 1854 barred the consideration of the technical informality relied upon by the judge in both of these judgments; we, for the reasons given in the order of remand, reverse the decision passed in this case also, and remand it for trial on the merits.

[973] *The 4th June, 1857.*

PRESENT: H. T. RAIKES, B. J. COLVIN AND J. H. PATTON, ESQRS., *Judges.*

Special Appeals from the decision of Mr. O. W. Malet, Judge of Jessore, dated 2nd January 1856, reversing a decree of Baboo Anundchunder Banerjea, Sudder Ameen of that district, dated 22nd February 1855.

CASE NO. 654 OF 1856.

RAJA PROSHUNNONATH ROY BAHADOOR (*Plaintiff*), *Appellant v.*  
BUNGSEEBUDUN DASS AND OTHERS (*Defendants*), *Respondents.*

*Vakeel of Appellant*—Baboo Ramapersaud Roy.

*Vakeel of Respondents*—None.

CASE NO 655 OF 1856.

RAJA PROSHUNNONATH ROY BAHADOOR (*Plaintiff*), *Appellant v.* RAMDHONE MUJOOMDAR AND OTHERS (*Defendants*), *Respondents.*

[*Rent—Zamindar's inherent power to sue for enhancement—Regulation V of 1812, sections 9, 11, effect of.*]

Case remanded for trial on its merits, as the power to sue for enhancement of rent is inherent in zamindars and was only extended to others than them by sections 9 and 11, Regulation V of 1812.

*Vakeel of Appellant*—Baboo Ramapersaud Roy.

*Vakeels of the Respondent, Ramdhone Mujoomdar*—Baboos Unnodapersaud Banerjea, Sreenath Dass and Dwarkanath Mitter.

THESE cases were admitted to special appeal on the 18th December 1856, under the following certificate recorded by Messrs. B. J. Colvin and J. S. Torrens:—

“This was a suit for enhancement of rent by a zamindar. The judge on trial of the case finding that plaintiff was the heir of the original settler with Government, and not an auction-purchaser as denoted in section 9, Regulation V of 1812, or manager or farmer, as denoted in section 11, and conceiving that the law meant that power of enhancement of rent was limited to auction-purchasers, managers or farmers, &c., has dismissed the suit without going into the merits. The special appeal is preferred merely in objection to this view of the law adopted by the judge, and as there appears little doubt that it is erroneous, and that the sections in question are not worded so as to take away the inherent power of [974] the zamindars, under their settlement with Government, over their ryots, but simply to extend such power to auction-purchasers, managers, &c., as their representatives, we admit the special appeal to try whether the case should not be remanded for trial on the merits.”

#### JUDGMENT.

We consider that the judge is in error in thinking that the right to enhance rents is confined to auction-purchasers and others, named in sections 9 and