

## ORIGINAL CIVIL.

Before Mr. Justice Sale.

IN THE MATTER OF SECTION 45 OF THE SPECIFIC RELIEF ACT (I OF 1877), AND IN THE MATTER OF BENGAL ACT II OF 1888, AND  
IN THE MATTER OF W. CORKHILL AND ANOTHER.

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April 2.

*Municipal election—Specific Relief Act (I of 1877), section 45—Election law—Calcutta Municipal Consolidation Act (Bengal Act II of 1888), sections 8, 14, 20, 21, 22, 23, 31, 32—Municipal Commissioner, Election of—List of voters—Chairman, Jurisdiction of—Quo Warranto.*

There is nothing in the Calcutta Municipal Act (Bengal Act II of 1888) or in the Local Government Rules issued under section 19 of the Act, which requires that the name of a candidate, or of the proposer, seconder, or approver of a candidate, at a municipal election, should be published in the revised list of voters.

Sections 20 and 23 of the Act only lay down rules applicable to voters ; they do not control the qualifications of proposers, seconds, or approvers.

Sections 8, 14, 20, 21, 22, 23, 31, 32 discussed.

*Sembla.*—The High Court has jurisdiction by a proceeding in the nature of a *quo warranto* to restrain a person who has not been duly elected from exercising the functions of a duly elected Commissioner.

The Chairman has no judicial discretion in preparing the list of candidates.

*In the matter of Mutty Lall Ghose* (1) approved.

Under section 31 of the Act, every candidate for election must send in his name to the Chairman not less than seven days before the day fixed for election, together with the names of his proposer, seconder, and approvers. The Chairman has no power to waive this rule. Where there is a *prima facie* compliance with section 31 of the Act, the Chairman has no power to go further and determine questions affecting the status of persons claiming to be candidates.

The Chairman can only revise the original list of voters in the manner laid down by section 22, or on applications made under sections 21, or in pursuance of an order from the Presidency Magistrate under section 23.

The issue of a supplementary list of voters is not sanctioned by the Act.

A definition of the term "elector" with necessary qualifications is given in section 8 of the Act. There is nothing in the Act preventing a person qualified to vote under section 8 from voting, although his name does not appear on the revised list of voters.

The only prohibition is that found in the Local Government Rules issued under section 19 of the Act.

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ON the 21st of March 1895 a rule was obtained by Rojoni Mohun Chatterji, calling upon Captain W. Corkhill, the Corporation of Calcutta, and the Chairman of the Corporation, to shew cause why the Chairman should not be directed to strike out Captain Corkhill's name from the list of candidates elected at a recent municipal election and to substitute in his place the name of Rojoni Mohun Chatterji, an unsuccessful candidate, and why Captain W. Corkhill should not cease to act as Commissioner for Ward No. 18 (Hastings' Ward).

At the election of Municipal Commissioners in March 1895, there were three candidates for Ward No. 18 : Captain W. Corkhill, Mr. C. F. Deefholts, and the petitioner Babu Rojoni Mohun Chatterji. Mr. Deefholts and Captain W. Corkhill were duly returned as Commissioners. On the 12th and 13th of March 1895, and previous to the election, the petitioner, by a letter to the Chairman, took exception to the candidature of Captain Corkhill, mainly on two grounds : (1) That one of the proposers at the election of Captain W. Corkhill, Mr. B. P. Quinan, was not an elector, his name not being on the list of voters, the only name resembling it being that of M. Quinan. (2) That the names of four out of the eight approvers required by the Municipal Act were not on the list of voters. The rule came on for hearing on 3rd April 1895.

Mr. *O'Kinealy* for Captain Corkhill.

Mr. *Phillips* and Mr. *Palit* for Rojoni Mohun Chatterji.

Mr. *O'Kinealy* to shew cause.—The name B. P. Quinan does not appear on the list, it is true, but M. Quinan does. The initials are the initials of his wife, but there is no other Quinan in the ward, and there can be no mistake as to who is meant. The error arose through a correspondence, which took place between the Corporation and the proposer. The proposer's letters were written by his wife. The misspelling of a name by a clerk would, on the contention of the other side, disqualify a man from voting. On an objection being taken, another proposer, Mr. W. G. Hannay, was obtained, and his name inserted on the 12th of March. As to the second objection, it is true that the names of four approvers did not appear on the list, but no application was made under section

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31 of the Municipal Act to have them put on. They were subsequently put in a supplementary revised list. This is said to be an irregularity. It is absurd to contend that the Chairman had no power to add them afterwards to the list. He has absolute power, and it is no irregularity to add afterwards names omitted through an oversight of the officials. This Court has no jurisdiction to correct the irregularities of the Chairman, unless he exercises a jurisdiction which he does not possess, or exceeds a jurisdiction which he does possess. The Chairman has ample jurisdiction under section 45 of the Act. If there is any dispute between the parties and the Chairman, the proper tribunal is the Court of the Chief Presidency Magistrate, not the High Court. The Court is asked, not only to set the election aside, but to set it aside in favour of one who would never have a chance of being elected on his own merits, but who was trying to get in against the wishes of the electors by means of this rule. Orders under section 45 of the Specific Relief Act are in the nature of a *mandamus* or *certiorari*, and ought to issue only, where a Court or officer has exercised a jurisdiction not vested in it or him; not where the jurisdiction had been exceeded or exercised irregularly. *Reg. v. Overseers of Walsall* (1), *Nundo Lal Bose v. The Corporation of Calcutta* (2), *Reg. v. Collins* (3). In section 45 of the Specific Relief Act the words "right and justice" do not mean the legal aspect of a case, but right and justice in accordance with its real merits. [SALE, J.—Need a candidate be on the list of voters?] Not if he is otherwise qualified to vote. All objections as to the list of voters and the validity of the votes are to be heard after the election by the Chairman, whose decision is declared to be final.

Mr. *Phillips* in support of the rule.—It is the duty of the Chairman and the Corporation to see that the right man is elected. If they cannot say who is the right man, it does not displace this Court's power to do so. The proposer, seconder, and candidate must all be qualified to vote. These matters have under section 22 to be decided by the Chairman, but his decision is not final. The Chairman has no right to publish the name of any candidate,

(1) 3 Q. B. D., 457.

(2) I. L. R., 11 Calc., 275.

(3) 2 Q. B. D., 30.

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who has not complied, or whose nominators and approvers have not complied, with the requirements of the Act. Section 29 only provides that the incorrectness of the list should not of itself invalidate the election; it does not purport to interfere with the rights of the voters. Captain Corkhill was never a proper candidate. The Chairman felt that he was not, but seemed to think that by certain acts of his he had made him a proper candidate. The distinction between voter and elector is not well founded. An elector cannot be a person who cannot vote. Candidates must be voters themselves, before they can ask other people to vote. The candidate and his proposer must all be part of the constituency. An outsider cannot be a candidate. He must be a male person, residing and paying rates in Calcutta, and a person qualified to vote. According to the argument of the other side, a voter is subjected to a severe scrutiny, but a candidate and proposer are not. The rule as to seven days (section 31) is made in precise terms, and is not subject to the Chairman's convenience. He cannot waive it and say, "I do not want the time." The Chairman's functions are purely ministerial. B. P. Quinan is not the same person as M. Quinan. There was a difference of sex. M. Quinan is admittedly a woman, and therefore incapable of municipal functions. If his mother-in-law had written the letter and not his wife, and been put on the list, would he have been qualified? It is not a mere clerical mistake. [SALÉ, J.—Mr. Hannay's name was substituted.] That was only four days before the election, when it was too late. As regards the names of the four approvers, they were not in the list at all. The Chairman put them in of his own motion. He had no right to do so. It was *ultra vires*. This is really a motion in the nature of a *quo warranto* or a *mandamus* to compel the Chairman to recognise the claims of Rojoni Mohun Chatterji. The cases cited, by the other side are cases of judicial jurisdiction.

SALÉ, J.—This is a rule in the nature of a *quo warranto* calling upon Captain William Corkhill, and the Chairman and Commissioners of the Corporation of Calcutta to show cause why an order should not be made directing the Chairman to remove the name of Captain William Corkhill from the list of elected Commissioners for Ward No. 18, and to substitute, in lieu thereof, the name of

Babu Rojoni Mohun Chatterji, the petitioner ; why the said Chairman should not be restrained from publishing the name of Captain Corkhill in the *Calcutta Gazette*, under section 19 of Bengal Act II of 1888, as an elected Commissioner for that Ward ; why the name of Babu Rojoni Mohun Chatterji should not be published in the *Calcutta Gazette*, as the duly elected Commissioner of that ward ; and why Captain Corkhill should not be restrained from acting as an elected Commissioner for the said Ward.

Cause has now been shown on the part of Captain Corkhill alone.

The relief which the petitioner seeks is based upon the ground that Captain William Corkhill, a candidate for election as Municipal Commissioner for Ward No. 18 at the recent municipal election, which was held on the 16th of March last, was not a duly qualified candidate, and that his election was invalid. It appears that during the election, to which I have referred, there were three candidates for Ward No. 18 : Captain William Corkhill, Mr. C. F. Deefholts, and the petitioner, Babu Rojoni Mohun Chatterji. The result of the election, as declared by the Chairman, was, that Captain William Corkhill obtained 52 votes, Mr. C. F. Deefholts 57, and the petitioner 27 votes. Accordingly Mr. Deefholts and Captain Corkhill were declared duly elected Commissioners for the ward.

Previous to the election, and on the 12th March 1895, the petitioner, by a letter to the Chairman of the Corporation, took exception to the candidature of Captain Corkhill, on the ground that his proposer's name, B. P. Quinan, did not appear in the revised list of voters. Subsequently further objection was taken, as appears from the petitioner's letter of the 13th of March 1895, that four of the approvers of Captain Corkhill's candidature were not persons whose names appeared on the revised list of voters. The persons against whom that objection was taken were Mr. Cantopher, Mr. Ben-Lyness, Mr. H. Espino and Mr. D. H. Smith. In order to explain these objections, it is necessary to state that by section 20 of the Municipal Act II of 1888, the Chairman is directed to prepare a list of all the persons qualified to vote at the election, and to publish such list sixty days before the date fixed for the election. The procedure is prescribed by sections 21

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and 22, and the latter section gives the Chairman the power to revise the list, and to publish the list so revised not less than fifteen days before the date of the election. Under section 14 a person who possesses the necessary qualifications to vote under section 8 of the Act is, subject to the provisions of section 32, qualified to be elected a Commissioner for any Ward in Calcutta, provided that his candidature is duly announced and his name duly proposed, seconded, and approved, in the manner provided for by the Act. Section 31 provides the manner in which the candidature of a candidate is to be proposed, seconded, and approved. It is enacted by that section that every person who is a candidate for election shall send in his name to the Chairman in writing not less than seven days before the day fixed for the election, together with the names of two electors in each Ward, in which he proposes to stand, who propose and second his candidature, and eight electors in each such Ward, who approve his nomination, and shall state the Ward or Wards for which he proposes to stand.

Now, it appears that the Chairman, in accordance with the procedure laid down for the preparation of the list of voters, published his first or original list in due course, and subsequently published a revised list. The petitioner's objection thereupon was, that, inasmuch as the name of the proposer and the names of the four approvers, whom I have mentioned, did not appear in the revised list, the conditions laid down by the Act for the due proposal and approval of the candidate had not been complied with. As regards the first objection, it was sought to be met by substituting for the name of B. P. Quinan, the name of W. G. Hannay, a voter who undoubtedly appears in the revised list; and as regards the second objection, it was sought to be met in two ways: in the first place the names of four approvers were sent in on some date subsequent to the 13th of March, which names also undoubtedly appeared in the revised list. At the same time the Chairman proceeded to issue the list, which he called the supplementary list, of voters, in which he included the four approvers who had been objected to, on the ground that their names had by inadvertence been omitted from the revised list, although they appeared in the revised list which had been pre-

pared for the election in 1892. In that state of facts the first question which arises is : Did the action of the Chairman remove or remedy the objections taken by the petitioner to the candidature of Captain Corkhill, assuming for the moment that the objections were well founded and amounted to a real disqualification? A person to be qualified to be elected a Commissioner for any Ward in Calcutta must, as I have pointed out, under section 14, duly announce his candidature, and his name must be duly proposed, seconded, and approved, in the way provided for by the Act, that is to say, his candidature must fulfil strictly the conditions laid down by section 31 of the Act. The question arises as to what meaning is to be applied to the term "electors" as used in section 31 of the Act. That question it will be necessary to consider presently. For the present purpose I will assume that the term "electors" as used in the section means, persons qualified to elect under section 8, and whose names appear in the revised list of voters prepared in the manner prescribed by sections 20 to 23 of the Act.

If this construction of section 31 be correct, it requires that the proposer, seconder, and approvers of the candidate shall be persons whose names appear in the revised list of voters, and further that these names shall be sent to the Chairman not less than seven days before the day fixed for election. It has been contended, on behalf of Captain Corkhill, that the conditions as to the seven days' notice is one for the benefit of the Chairman, and may be waived by him. I cannot adopt this view, I do not think the Legislature intended to leave it to the discretion of the Chairman to insist upon or to waive this condition, as he might choose. In my opinion it was intended that the condition should be strictly complied with. The proposer, Mr. B. P. Quinan, is, it is admitted, a duly qualified elector under section 8, but his name has never appeared in the revised list of voters. The name of M. Quinan, which does appear, is admittedly not a clerical error for B. P. Quinan, but is the name of his wife, who, under the Act, is not a qualified elector at all. This objection is not removed by the substitution of the name of W. G. Hannay as proposer, because, though that gentleman is a duly qualified elector under section 8, and his name does appear in the

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revised list of voters, yet it was not submitted within the period of seven days before the day fixed for the election. A similar objection must hold good regarding four of the eight names originally submitted as Captain Corkhill's approvers, because the substitution within the period of seven days before the election of the four voters, whose names do appear in the revised list, did not cure the original defect, inasmuch as it did not amount to a compliance with the condition that the candidate should submit the names of eight electors, as approvers, within a period of not less than seven days before the date fixed for the election. It is contended, however, that this objection was remedied by the inclusion of the four names originally objected to in *the supplementary list of voters issued by the Chairman*. As regards this contention I must say that I see no sanction in the Act for the issue of any such supplementary list. The Chairman's duty is to publish the general or original list of voters sixty days before the day fixed for each general election, and, if required, to revise this list in the manner laid down by section 22. There, in my opinion, his power of dealing with the list of voters ends. He cannot even revise the original list on his own motion at any time. He can only do so upon an application made under section 21, or in pursuance of orders made by the Presidency Magistrate under section 23. Further it is to be observed that, under the rules issued by the Local Government, the election is to be made by the voters whose names appear in the revised list, that is to say, the list revised in the manner provided by the Act. Therefore, there is no sanction for the issue of any supplementary list to be found either in the Act or under the rules issued by the Local Government under section 19 of the Act. But, it is said, if the petitioner is aggrieved by the action of the Chairman, he has sufficient remedy under the Act, and therefore that this Court has no jurisdiction to interfere. I do not find that there is any procedure under the Act, which the petitioner might or could have adopted for the purpose of having Captain Corkhill's name removed from the list of candidates. In objecting to Captain Corkhill's candidature, the petitioner was not asking either to have any names removed from the revised list of voters or added thereto. He was not, therefore, a person who could make an application under section 21.



Now, what was the Chairman's power as regards an application made to him to remove from his list of candidates the name of any person who was said to be a candidate not duly qualified? Had the Chairman any power to reject the name or to exercise any judicial discretion at all as regards the preparation of the list of candidates? In a case entitled *In the matter of Mutty Lall Ghose* (1), Trevelyan, J., held that the Chairman had no such power or discretion. These are the learned Judge's words: "After a careful examination of the sections of the Municipal Act, the Counsel engaged in the case have failed, and I have also failed, to find out that there is any thing approaching to a duty incumbent upon Mr. Lee" (the then Chairman) "to exercise any judicial discretion or judicial action with regard to the list of candidates." The learned Judge proceeds: "I think that before I can make the rule absolute, I must see that it was clearly incumbent on Mr. Lee to exclude Mutty Lall Ghose's name from the list which is prepared under section 31 of the Municipal Act. There is an obligation upon the Chairman to publish a list of all persons who are candidates for election. If the Chairman declined to publish Mutty Lall Ghose's name, the latter might have come to Court and said that it was clearly incumbent upon the Chairman to publish his name. There is no more obligation upon the Chairman than upon any of the Municipal Commissioners to determine the right of a candidate. Looking carefully through the Act and the rules framed thereunder, I cannot find any trace of this obligation or duty anywhere, and no one engaged in the case has been able to show me that any such right or duty is given under the Act and rules." I do not think it is intended to be laid down here that, supposing a person had not submitted the name of any approver at all, or submitted a number less than eight, or submitted them within a period less than seven days before the day fixed for the election, the Chairman, in such a case, would be bound to accept the name of that person as a candidate. But what the case is a clear authority for is, that, assuming there has been a sufficient *prima facie* compliance with the condition laid down by section 31, the Chairman has no power to go further, and determine questions affecting the status of persons claiming

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(1) I. L. R., 19 Calc., 192.

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to be candidates duly qualified under the Act. It is clear, however, that the Act gives the petitioner no remedy as regards the action of the Chairman in declining to remove the name of Captain Corkhill from the list of candidates. The petitioner having no other adequate or suitable remedy, it seems to me that this Court has jurisdiction, corresponding to the jurisdiction exercised by the Superior Courts in England, to give the relief sought, assuming it to be made out that Captain Corkhill was not a duly qualified candidate, and that the election was invalid on that ground. But, as to the latter question, it seems to me that section 31 creates a serious difficulty in the way of the petitioner. Is there anything in the Act which specifically or by implication requires that the names of either the candidate or his proposer, seconder, or approvers should appear in the list of voters prepared under sections 20 to 23 of the Act? I can find nothing. Section 31 provides that a candidate for election shall, within the time mentioned, send in his own name, together with the names of two electors in each Ward in which he proposes to stand, who propose and second his candidature, and eight electors in each such Ward who approve his nomination. The word used in the section is, "electors." I may take it, I presume, that "elector" and "person qualified to elect" are synonymous expressions. The qualifications necessary to constitute a person qualified to elect are given in section 8. He must be a male person, residing or paying rates in Calcutta, who has attained the age of twenty-one years, and shall be qualified to elect in one of the ways mentioned in clauses (a), (b), (c), (d), and (e). It is not necessary specifically to mention these qualifications, because there is no doubt that Captain Corkhill's original proposers and approvers fulfilled all the conditions of section 8. No subsequent section creates or superadds any further qualification to constitute a person an elector or person qualified to elect, nor do the terms of section 8 indicate that the Legislature intended that any new or additional qualification should be required for such person. But, it is said, the elaborate machinery provided by sections 20 to 23 would be rendered futile and nugatory, unless it be considered that it was the intention of the Legislature that the revised list of voters should furnish

the class of persons entitled, not only to vote, but also to become candidates or to propose or approve them. It is a remarkable circumstance that even as regards voters, I mean persons qualified to vote, there is nothing specific in the Act which prevents or disentitles a person, who is qualified to vote under section 8, from exercising his right in the event of his name not appearing in the revised list of voters. The only prohibition of this nature which exists is that found in the rules of the Local Government issued under section 19. There is no similar prohibition to be found in the rules, which would disentitle or disqualify a person qualified to vote under section 8 from exercising his right of either becoming a candidate or proposing or approving the candidature of some other person. Even assuming that the Legislature intended that the appearance of the name of a voter in the revised list was to be a condition precedent to his exercising the right of voting, it by no means necessarily follows that the Legislature intended to restrict, in a similar way, persons qualified to vote, from becoming candidates or approving the candidature of others. It is conceivable that it should be considered desirable, that the right of voting should be confined to the voters appearing in the revised list, so as to afford to the polling officers an easy and ready method of checking the right of persons claiming to vote during an election. There would not be the same necessity for requiring that the names of candidates and approvers should appear in the revised list, because there would be more time and more convenient opportunity for testing the claims of persons desiring to exercise those rights.

But, even supposing that the Legislature had the intention which the petitioner contends that it had, I am not prepared to say that there is any thing in the language of the Act which would justify me in assuming or implying that intention. The absence of language in the Act giving expression to that intention, either specifically or by necessary implication, is, if such was the intention, a defect which can only be cured by fresh legislation, or by appropriate rules to be made under section 19. I do not think it is open to me to supply any such defect, by what in my opinion would be a forced interpretation, which would have the

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effect of adding something to the Act which is not now there. I am fortified in the conclusion to which I have arrived by what appears in section 14 as to the qualification of candidates. That section provides : " Any person qualified to vote under any of the *preceding* sections shall, subject to the provisions of section 32, be qualified to be elected a Commissioner for any Ward in Calcutta. The qualification, it is to be observed, of a candidate is here defined as a qualification to vote under any of the three *preceding* sections. The express reference to a qualification created by the preceding sections makes it at least doubtful whether the Legislature intended that a new qualification or condition should be imposed by the subsequent sections 20 to 23.

In the case I have referred to, Trovelyan, J., seemed to be disposed to take the same view of section 14. At page 196 of the Report, the learned Judge says : " The point in this case is this : Mutty Lall Ghose, who is also a candidate, is on the revised list of voters of Ward No. 1 for the municipal elections to be held to-morrow, for himself and other co-sharers. He is not in the list separately. The portion of the Municipal Act, which deals with persons qualified to be elected, is to be found in section 14 of the Act. Now the right of a Hindu joint-family to empower a person to vote on their behalf is given by section 24, which does not precede section 14. Therefore Mr. Hill contends that a person empowered to vote under section 24 is not a person qualified to be elected under section 14. I am bound to say that there is a great deal to be said with regard to that objection, but I do not think that it would be safe, unless it is absolutely necessary, for me to lay down, on such a short consideration, an absolute rule, which might have a serious effect on the exercise of the franchise."

For these reasons I must hold that there is nothing in the Act which requires the names of Captain Corkhill's proposer, seconder, or approvers, to appear in the revised list of voters, and that, as they were all persons duly qualified to elect under section 8, it follows that Captain Corkhill's candidature was duly proposed, seconded, and approved, in the manner required by the Act. Captain Corkhill was, therefore, a qualified candidate,

The petitioner having, therefore, failed to make out any ground for the relief sought, the rule must be discharged, and he must pay Captain Corkhill's costs.

Attorneys for applicant: Messrs. *Morgan & Co.*

Attorney for Captain W. Corkhill: Mr. *Farr.*

C. E. G.

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### PRIVY COUNCIL.

ASHARFI LAL (PLAINTIFF) *v.* DEPUTY COMMISSIONER OF BARA  
 BANKI FOR THE COURT OF WARDS (DEFENDANT.)

P. C. \*  
 1895  
 February 5.

[On appeal from the Court of the Judicial Commissioner of  
 Oudh.]

*Right of suit—Suit against the Collector as Agent for the Court of Wards—  
 Disqualified owner—Act XXXV of 1858 (Care of the Estates of Lunatics),  
 section 11—Act XVII of 1876 (Oudh Land Revenue), sections 175 and  
 176—Civil Procedure Code, sections 440, 464.*

A decree was made against a Deputy Commissioner, as Agent for the Court of Wards, for a debt due from a proprietor, whose estate had come under the charge of that officer in virtue of an order made by the District Court under Act XXXV of 1858, the debtor having been found to be of unsound mind and incapable of managing his affairs.

The Judicial Commissioner, having called for the record under section 622 of the Civil Procedure Code, set aside the decree, which had been affirmed on appeal. He was of opinion that the suit should not have been brought against the Deputy Commissioner in the above character, but would only lie against a manager appointed as Act XXXV of 1858 directed, or else against a guardian. This judgment having gone upon a technicality, not well founded, was reversed, and the original decree was restored.

APPEAL from a decree (8th July 1889) of the Judicial Commissioner, setting aside, under section 622 of the Civil Procedure Code, a decree (7th March 1889) of the District Judge of Lucknow, which affirmed a decree (31st August 1888) of the Subordinate Judge of Bara Banki.

The appellant claimed upon eleven money bonds executed to him by Ehsan Husain Khan, proprietor of Tanda Mauza in the pergunna and tehsil of Fattehpur, district Bara Banki, for principal and interest at 24 per cent. between the 18th May

\* *Present:* LORDS WATSON, HOBHOUSE, MACNAGHTEN, SHAND and DAVEY and SIR R. COUCH.