

Privy Council decision quoted above that the lower Courts have erred in relieving the plaintiff from the burthen of proof which ordinarily falls upon him. How far has the plaintiff been able to discharge that burthen it is not for us in special appeal to decide. We must, therefore, reverse the decree of the lower Appellate Court so far as it is favorable to the plaintiff, and remand the case to that Court for re-trial as regards the particular portion of the claim which was decreed in his favor. Costs to abide the result.

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 ARFUNNESSA  
 v.  
 PEARY MOHUN  
 MOOKERJEE.

GLOVER, J.—I concur in this judgment, and, in doing so, I do not forget that I at one time held a different opinion.

*Appeal allowed.*

*Before Mr. Justice Birch and Mr. Justice Morris.*

IN THE MATTER OF THE PETITION OF SOORJA KANT ACHARJ  
 CHOWDRY.\*

1876  
 April 4.

*Appeal—Reg. VIII of 1819, s. 6—24 & 25 Vict., c. 104, s. 15.*

There is no appeal from an order made by the Civil Court under s. 6 of Regulation VIII of 1819.

*Per BIRCH, J.*—A party who has preferred an appeal to the High Court when the law gave him no right of appeal, is not entitled upon the hearing to ask the Court to treat it as an application for the exercise of its extraordinary jurisdiction under s. 15 of 24 & 25 Vict., c. 104.

THE appellants in this case were the owners and zemindars of an estate called Shershabad. The respondent, having acquired by purchase a putni tenure within this estate, applied to the zemindars to give effect to the transfer by registration of his name in the zemindari serishta or office, but being refused made an application to the Civil Court of the district where the property was situated, under the provisions of s. 6, Regulation VIII of 1819. The District Judge, upon such application, issued the order, from which the present appeal was brought, directing the zemindars to give effect to the

\* Miscellaneous Regular Appeal, No. 367 of 1875, against the order of the Officiating Judge of Zilla Dinagepore, dated the 14th of August 1875.

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transfer without delay in accordance with the law. The Judge's order was drawn as follows:—"For the above reasons this case is decreed in favor of applicant. An injunction will issue on the zemindar under s. 6, Regulation VIII of 1819, to accept the security tendered, and give effect to the transfer without delay."

The zemindars appealed to the High Court from the above order.

*Baboo Jadub Chunder Seal* for the appellants.

*Baboo Mohinee Mohun Roy* and *Golap Chunder Sircar* for the respondent.

The arguments are sufficiently set forth in the judgment of the Court, which was delivered by

**BIRCH, J.**—This appeal is preferred against a summary order of the District Judge passed under s. 6 of Regulation VIII of 1819, directing the zemindar to accept the security tendered, and to give effect to the transfer without delay.

A preliminary objection has been raised that no appeal lies to this Court from such an order; and we are of opinion that the objection must prevail. The pleader for the appellant has been unable to show us any law which authorizes an appeal from an order under s. 6. His argument is that an appeal lies, because the Judge has used the word 'decreed,' and has drawn up an order in the form of a decree directing that an injunction should issue. We think that the fact of the Judge having dealt with the application in this manner does not entitle the appellant to come up here in appeal when the law does not provide for an appeal from an order passed under s. 6 of Regulation VIII of 1819.

It is then urged by the appellant's pleader that if we are against him on this point, we should still, under the circumstances of this case, exercise the extraordinary powers vested in this Court by s. 15 of the Charter Act.

Speaking for myself I must say that it is not in my opinion open to parties, when they find that they have adopted a wrong

course and filed an appeal when no appeal is allowed by law, to turn round and say that the Court is bound to exercise its extraordinary jurisdiction. Upon this application, as to whether there may be grounds for interference under s. 15 or not, I pronounce no opinion. All that I say is that I decline to treat this petition of appeal as an application to us to exercise our extraordinary powers under s. 15.

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*Appeal dismissed.*

*Before Mr. Justice Markby and Mr. Justice Mitter.*

FUTEEK PAROOEE (ONE OF THE DEFENDANTS) v. MOHENDER  
NATH MOZOOMDAR (PLAINTIFF).\*

1876

*April 10.*

*Costs—Special Appeal—Order in Discretion of Lower Court.*

Where, in a suit for defamation, a decree was given for the plaintiff for nominal damages, but he was ordered to pay the defendant's costs, *held* that the order as to costs was in the discretion of the Court below, and therefore no special appeal would lie from such order: the rule as laid down in *Gridhari Lal Roy v. Sundar Bibi* (1) being that an order as to costs cannot be interfered with in special appeal unless it is illegal.

*Semble*—When the Court is of opinion that the plaintiff is not entitled to any substantial damages, it is not bound to award him nominal damages.

SUIT for Rs. 100 as damages for defamation. The plaintiff had previously instituted proceedings for criminal trespass in respect of the same matter in the Criminal Court against the defendants, which led to their being convicted and fined Rs. 5 each. The Munsif found that, under the circumstances, the plaintiff was entitled to damages, and assessed the amount at Rs. 15. He gave the plaintiff a decree for this amount with costs. On appeal by the defendants the Judge was of opinion that "as the plaintiff had already prosecuted the defendants criminally, and they had been fined to such an extent as the Magistrate thought proper, the present suit, although not contrary to law, was clearly a vexatious one, and the plaintiff ought not to

\* Appeal under s. 15 of the Letters Patent of 1875, against decree of Birch, J., dated the 20th of August 1875, in Special Appeal No. 2756 of 1874.