

Before Mr. Justice Glover and Mr. Justice Mitter.

MONMOHINEE DASSEE (PLAINTIFF) v. KHETTER GOPAUL DEY
(DEFENDANT).*

1875
August 20.

Appeal—Act XXVII of 1860—Deposit of Security by Person entitled to a Certificate.

No appeal lies under Act XXVII of 1860 on a question of the deposit of security by a person who has been declared entitled to a certificate under the Act (1).

A CERTIFICATE of administration of the estate of Boikuntanath Dey, under Act XXVII of 1860, was, on 22nd January 1875, granted to his widow Mussanut Monmohinee Dasse, in an application made by her for the purpose, which was opposed by one Khetter Gopaul Dey, on the deposit by her as security of a duly registered bond executed by her, pledging a house worth Rs. 800 and a Government promissory note for Rs. 1,000. Subsequently it was brought to the notice of the Court that the Government note deposited as security belonged to the estate of the deceased; and the Court thereupon made an order, setting aside the order of 22nd January 1875, and directing that Monmohinee Dasse should deposit security to the amount of Rs. 1,500 in the shape of property to which she had a legal title as owner.

From this order, Monmohinee Dasse appealed to the High Court.

Baboos *Mohesh Chunder Chowdhry, Abinash Chunder Banerjee, and Biprodoss Mookerjee* for the appellant.

* Miscellaneous Regular Appeal, No. 169 of 1875, against an order of the Judge of Zilla Patna, dated the 4th of June 1875.

(1) See *Mussanut Soonea v. Ram Suku*, 2 All. H. C. Rep., 146, where it was held that an appeal was held that an appeal would not lie under s. 6, Act XXVII of 1860, merely for the purpose of reducing the amount of security ordered to be deposited; but that when an appeal had been properly instituted under s. 6, the Court might vary the order as to the security.

1875

Baboo Bhowany Churn Dutt for the respondent.

MONMOHINEE
DASSEE
v.
KHETTER
GOPAUL DEY.

For the respondent a preliminary objection was taken that no appeal would lie under Act XXVII of 1860, on a question of taking security from a certificate-holder, and in support of the objection the cases of *Rajmohini Chowdhraïn v. Denobundhoo Chowdree* (1) and *Banee Madhub Mookerjee v. Nilumbur Banerjee* (2) were referred to.

For the appellant, the case of *Tarini Churn Brohmo v. Bama-soonduree Dossee* (3) was cited.

(1) *Miscellaneous Regular Appeal, No. 68 of 1872, from an order of the Judge of Dacca, heard before Kemp and Glover, JJ., on 24th April 1872.*—An order had been made by the Judge of Dacca, calling on Rajmohini Chowdrain to deposit Rs. 10,000 as security before granting her a certificate under Act XXVII of 1860, for the collection of debts due to the estate of her deceased husband. The High Court, on the grounds stated in the portion of their judgment cited (*post*, p. 129), held that there was no appeal from the Judge's order.

(2) 8 W. R., 376.

(3) *Miscellaneous Regular Appeal, No. 82 of 1873, from an order of the Judge of the 24-Pergunnahs, heard before Jackson and D. Miller, JJ., on 29th July 1873.*—An application was made by Tarini Churn Brohmo for the grant to him of a certificate under Act XXVII of 1860. The application was opposed by Bama-soonduree Dossee, who had also made an application for a certificate, but a question arose as to her identity, and an enquiry was commenced by the Judge, and the matter postponed for the examination of certain witnesses on commission. Before their evidence had been taken, the Judge, on reconsideration, being of opinion that he had sufficient evidence before him to

enable him to decide the case, gave his decision, refusing the certificate. From this decision Tarini Churn appealed to the High Court. Jackson, J., in delivering judgment, said:—"I have no doubt whatever that an appeal lies from the result of an enquiry or omission to make an enquiry under this Act. Section 6 declares that the granting of a certificate may be suspended by an appeal to the Sudder Court. I understand that to mean that there may be an appeal, and that, on such appeal, the Court may suspend the granting of the certificate, or may declare the party to whom the certificate should be granted, or may direct such further proceedings for the investigation of the title as it thinks fit. That it seems to me merely recognizes and declares the power of the Court to superintend the proceedings of the District Court, and enables parties to have the benefit of that superintendence by way of appeal. That being the case, I think it is impossible to doubt that we ought in this case to direct the completion of the enquiry. I think the proceedings must go back to the District Court, in order that the enquiry may be completed, and the Judge determine, after hearing evidence and the arguments of counsel, which party is entitled to the certificate."

The judgment of the Court was delivered by

1875

MONMOHINEE
DASSEE
v.
KHETTER
GOPAUL DEY.

GLOVER, J.—In *Rajmohini Chowdrain v. Denobundhoo Chowdree* it is decided that “s. 6, which is the only section which refers to the right of appeal, limits it to the question of the grant of the certificate. This Court would be able to decide on appeal whether the Judge had selected the proper person to give the certificate to, but there is no section which gives any appeal with reference to the amount of security which the Judge may think it right to demand from the applicant for a certificate, and there is no general section as there is in the cognate Act XL of 1858 with regard to appeals.” And in *Banee Madhub Mookerjee v. Nilambur Banerjee* (1) it is said with reference to s. 6,—“the intention of the section was to enable a person aggrieved by the granting of a certificate to some other person to come before the Sudder Court and appeal against such grant.” And the gist of the decision is that, except with reference to the grant of a certificate, there is no appeal allowed by the Act.

Reference however was made to a case which is said to maintain a contrary view—*Tarini Churn Brohmo v. Bama-soonduree Dossee*. In this case it is laid down that, under Act XXVII of 1860, an appeal lies from the result of an enquiry or omission to make such enquiry. But this enquiry or omission to make enquiry seems to me to refer exclusively to the grant of certificates.

The learned Judges say, speaking of s. 6, “it recognizes and declares the power of this Court to superintend the proceedings of the District Court, and enable parties to have the benefits of that superintendence by way of appeal.”

This was with reference to an enquiry into the title to a certificate which the District Judge had not completed, having delivered his judgment without taking all the evidence adduced by the parties; and this, I have no doubt, would be a matter binding the proper person to whom a certificate should be granted, which would allow of an appeal under s. 6.

(1) 8 W. R., 376.

1875

MONMOHINER
DASSER
v.
KHETTER
GOPAUL DEY.

But I find nothing in the judgment which affirms this Court's power to hear an appeal as to any other matter than those which are connected with the propriety or otherwise of an order made granting a certificate, and there is nothing as it seems to me in the decision that in any way conflicts with the two previously quoted.

I think therefore that we must dismiss this appeal. I should have been willing to interfere if we could have done so, for the Judge's order seems to make it impossible for the widow ever to be able to take out the certificate, and without it she cannot draw the interest on the Government promissory note, which is said to be and probably is her sole means of living.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Phear.

1876

Jany. 12.

REMFRY AND ANOTHER v. SHILLINGFORD AND ANOTHER.

Bills of Exchange Act (V of 1866)--Suit on Promissory Note payable by Instalments.

Where a promissory note is payable by instalments, and contains a stipulation that, on default in payment of the first instalment, the whole amount is to become due, a suit to recover the whole amount on default made in payment of the first instalment cannot be brought under Act V of 1866 (1).

SUIT to recover the principal amount with interest on a promissory note made by the defendants in favor of the plaintiffs in the following form :

“ We jointly and severally promise to pay Messrs. Hamilton and Co. at their office in Calcutta the sum of Rs. 1,778-6-9, with interest thereon at the rate of 12 per cent. per annum, by two equal instalments, on 1st July 1875 and 1st September 1875,

(1) See on the similar point arising 2 B. L. R., O. C., 151 ; *In the matter of Ganpat Manihji*, 6 Bom. H. C. R., registered agreement, under s. 53 of O. C., 64 ; and *Venithithan Chetty v. the Indian Registration Act, 1866*, *Moothiroolandi Chetty*, 6 Mad. H. C. R., 4. *In the matter of Lachmipat Singh*,