

The Judge, in his summing up, draws the attention of the jury to this judgment and to the Munsif's opinion contained in it, and uses the following words: "The Munsif believed that one of the brothers, Dharani, executed the document, and that the other names were added afterwards by the prisoner, or with his knowledge, and with a dishonest intent. Whether this or whether all three names are forgeries, the offence is the same." It is true that the Judge, later on, says to the jury—"You are not in any way bound by the finding of the Munsif;" and that he also, still later on, draws their attention to the fact that in the civil suit the *onus probandi* was on the prisoner, whereas at the trial of forgery the onus was on the prosecution. But inasmuch as neither the judgment nor the Munsif's opinion were evidence, the Judge, if he referred to them at all, ought to have told the jury not merely that they were not bound by them, but that it was their duty to dismiss them altogether from their mind. We have next to consider whether, independently of the objectionable evidence, there is sufficient evidence to justify the verdict of the jury.

[The learned Judge then proceeded to consider the other evidence in the case, and ultimately arrived at the opinion that, independently of the Munsif's judgment, there was not sufficient evidence which, even if believed, pointed with reasonable certainty to the guilt of the accused, and therefore made an order of acquittal.]

*Conviction set aside.*

## APPELLATE CIVIL.

*Before Mr. Justice Pontifex and Mr. Justice McDonell.*

AJOODHYA PERSHAD AND OTHERS (PLAINTIFFS) *v.* GUNGA PERSHAD AND ANOTHER (DEFENDANTS).\*

1880  
June 10.

*Appeal against order rejecting Plaintiff—Plaint insufficiently Stamped—Court Fees Act (VII of 1870), s. 12, para. 1; sched. ii, div. ii, art. 17, part iii—Civil Procedure Code (Act X of 1877), s. 1, tit. "Decree."*

An appeal lies against an order rejecting a plaintiff on the ground of its being insufficiently stamped.

\* Appeal from order, No. 64 of 1880, against the order of Roy Matadeen, Bahadur, Subordinate Judge of Gya, dated the 21st November 1879

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GOGUN  
CHUNDER  
GHOSE  
v.  
THE  
EMPRESS.

1880  
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 PERSHAD  
 v.  
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 PERSHAD.

THE plaint in this case was declared by the Court to be insufficiently stamped under sched. ii, div. ii, art. 17, part iii of the Court Fees Act, and the plaintiffs failing to affix the additional stamps, the plaint was rejected.

From this decision the plaintiffs appealed.

Baboo *Taruck Nath Sen* for the appellants.

Baboo *Hury Mohun Chuckerbutty* for the respondents.

The judgment of the Court (PONTIFEX and McDONELL, JJ.) was delivered by

PONTIFEX, J.—We agree with the Court below that the plaint was insufficiently stamped under art. 17 of the Court Fees Act, cl. 3.

Preliminary objections were taken to the appeal, on the ground that the order of the lower Court was final under s. 12 of the Court Fees Act, which enacts, that “every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.”

But of s. 588 of the Civil Procedure Code, as it originally stood, cl. (c) provided that an order under s. 54, cl. (b)—being such an order as the present is—should be appealable, thereby removing the finality declared by s. 12 of the Court Fees Act.

A second preliminary objection taken was, that although by s. 588, cl. (b), an appeal was given in respect of rejection of plaints under s. 54, cl. (b), yet, under s. 588 as amended, no appeal is now given. But then, on behalf of the appellants it was urged, that, under the definition of “decree” in the amended Code, an order rejecting a plaint is within the definition. Similarly, the new definition of “decree” also includes questions under s. 244, which were made appealable by cl. (j) of s. 588 as it originally stood, but which are omitted in s. 588 as amended.

We think though the amended s. 588 applies only to appeals from orders directing that the plaint shall be amended, and not to rejection of a plaint, yet the amended definition of the word

“decree” shows that an appeal lies in the present case. But although an appeal lies, we are of opinion that the decision of the lower Court is correct. The appeal will, therefore, be dismissed with costs.

1880

AJODHYA  
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PERSHAD.

*Appeal dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Maclean.*

KHEMNA GOWALA (DEFENDANT) v. BUDOLOO KHAN (PLAINTIFF).\*

1880  
July 8.

*Arbitration—Civil Procedure Code (Act X of 1877), Chap. xxxvii—  
Kabuliat, Suit for—Suit under Act X of 1859.*

Notwithstanding that chap. xxxvii of Act X of 1877 (in reference to arbitration) does not refer specially to suits brought under Act X of 1859, yet if both parties to a suit for a kabuliat brought under the latter Act agree to refer the matters in dispute between them to certain arbitrators named by them, and file a joint petition in the Court of the Deputy Collector, stating that they had so agreed, and praying that the case may be referred to such arbitrators, neither of them will be afterwards at liberty to object to a decree made, embodying the award of the arbitrators, on the ground that the reference to arbitration was irregular, and not warranted by any of the provisions of Act X of 1877.

When a case has been so referred, the arbitrators are at liberty to determine what appears to them to be a fair and equitable rate of rent, and notwithstanding the amount so found is less than that demanded by the plaintiff in his plaint, the Court out of which the reference issued is not at liberty on that ground to dismiss the suit, but is bound to order the defendant (with the alternative of eviction) to execute a kabuliat in favour of the plaintiff, engaging himself to pay rent to the plaintiff at the rate determined by the arbitrators to be fair and equitable.

THE plaintiff in this case, Budoloo Khan, sued the defendant, Khemna Gowala, who was his tenant, in the Court of the Deputy Collector of Chatra, to obtain a kabuliat at an enhanced rate of rent for the land held under him. It appeared that the defendant had been previously paying rent at the rate of Rs. 8 per annum. The rent demanded by the plaintiff in his plaint was

\* Appeal from Appellate Decree, No. 2055 of 1879, against the decree of R. Towers, Esq., Officiating Judicial Commissioner of Chota Nagpore, dated the 13th June 1879, reversing the decree of Baboo Hurihur Churn Lall, Deputy Collector of Chatra, dated the 8th November 1878.