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FAJALEH ALI MIAH v. KAMAR-UDDIN BHUYA.

a decree upon such a compromise, granting, however, a decree modifying such terms:—

No one appeared on the reference for either party.

The opinion of the Court (WILSON and PORTER, JJ.) was as follows:—

The only compromise which a Court can in any case be bound under s. 375 of the Civil Procedure Code to enforce is one which adjusts the suit wholly or in part—not one which goes beyond the suit.

The compromise proposed in the present case embodies a new contract, much wider in its scope than the mere adjustment of the claim in suit. We think, therefore, that the Small Cause Court Judge is not bound to enforce it, and, if not so bound, he is certainly right to refuse.

He cannot, however, modify it. He must leave the parties to proceed with the case as they may choose.

T. A. P.

APPELLATE CIVIL.

Before Mr. Justice O'Kinealy and Mr. Justice Agnew.

CHAIRMAN OF THE NAIHATI MUNICIPALITY (1ST PARTY, CLAIMANT) *v.* KISHORI LAL GOSWAMI (2ND PARTY, CLAIMANT) AND THE COLLECTOR UNDER ACT X OF 1870.*

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Bengal Municipal Act (Beng. Act V of 1876,) *s.* 32—*Municipal Corporations—Commissioners—Right of way—Compensation—Land Acquisition Act, X of* 1870.

Section 32 of Act V of 1876, the Bengal Municipal Act, enacts that "all roads, bridges, embankments, tanks, ghats, wharves, jetties, wells, channels and drains in any Municipality (not being private property), and not being maintained by Government or at the public expense, now existing, or which shall hereafter be made, and the pavements, stones and other materials thereof, and all erections, materials, implements and other things provided therefor, shall vest in, and belong to, the Commissioners."

Held, that the word "roads" in this section does not include the soil beneath the roads.

* Appeal from Original Decree No. 292 of 1884, against the decree of H. Beveridge, Esq., Judge of 24-Pergunnahs, dated the 2nd of August 1884.

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CHAIRMAN OF THE NAIHATI MUNICIPALITY v. KISHORI LAL GOSWAMI.

THIS was an appeal from an order of reference made by Baboo Radha Binod Bisha, Special Deputy Collector, under s. 15 of Act X of 1870 to the Judge of the Court of the district of the 24-Pergunnahs in respect of certain lands acquired for the East Indian Railway Company, for purposes in connection with the Hooghly Bridge. The grounds of the reference are thus stated by the Deputy Collector: "The question for adjudication in this case is one of title to land. The Naihati Municipality, having acquired good title to the land both by adverse possession of more than twelve years, as also under s. 32 of Beng. Act V of 1876, claims, through its Chairman, the ownership of the land and the amount of compensation awarded for it. But the intervenor, Kishori Lal Goswami, opposes the claim, and demands the compensation for the land, on the allegation that the land being situated in Mouzah Garifa, appertaining to his revenue-paying estate Habilishahar, towzi No 1193, it forms part and parcel of his estate."

In giving judgment on the reference the District Judge said: "This is an apportionment case, the contest being between the zemindar of Garifa and the Naihati Municipality. It is admitted in the letter of reference and cannot be denied that the land in dispute is part of Kishori Lal Goswami's zemindari. It is included in his village of Garifa, and the plots are marked in the survey map of the village. The zemindar has also proved by his naib that the land is in his zemindari. The claim of the Naihati Municipality is based on the ground that the land in dispute forms part of a public road within the Municipality. The land taken up was over a road leading from the village to the river bank, and is known as the Senpara Bathing Ghat Road. The Municipality thereon found a claim to be the owner of the soil, and asserts that they have been holding the land for twelve years adversely to the zemindar. But it is plain that they have no right to the land, they have no grant for it, nor did they acquire it under the Land Acquisition Act or in any other way. The road-way was theirs, but the soil remained with the zemindar. It is only a very few years ago that they took possession of the road and repaired and widened it; no doubt the public used the road before that, and possibly the

public acquired a right of way, but this would not give the public or the Naihati Commissioners a right to the land."

The District Judge found that the Municipality had got Rs. 300 compensation in respect of their right of way over the road, and he held that the zemindar was entitled to the remainder, namely, Rs. 230. The Naihati Municipality appealed to the High Court.

Baboo *Unnoda Pershad Banerjee*, for the appellant.

Dr. *Troilokya Nath Mitter* for the respondent.

The judgment of the Court (O'KINEALY and AGNEW, JJ.) was as follows :—

This is an appeal from the decision of the Judge of 24-Pergunnahs on a reference under the Land Acquisition Act, X of 1870.

The Municipality claimed compensation for the whole soil, on the ground that they have a title to the property under s. 32 of Act V of 1876. The zemindar claims the money on the ground that the soil is his. Therefore what we have to decide is, whether, under s. 32 of Act V of 1876, the Municipality got all the sub-soil under the public way. Section 32 runs as follows: "All roads, bridges * * * * and the pavements, stones and other materials thereof, and all erections, materials, implements, and other things provided therefor, shall vest in and belong to the Commissioners."

If therefore the word "road" carried with it all the soil, all the materials, and all the erections on it, this enumeration, in express words, of "pavements," "stones," &c., would be unnecessary. Clearly then there must be some limitation to the word "road." It does not mean everything above and below the road; and we think, looking at the case of *The Vestry of St. Mary, Newington* v. *Jacobs* (1) that the sub-soil did not belong to the Municipality.

We therefore dismiss the appeal with costs.

P. O'K. *Appeal dismissed.*

(1) L. R., 7 Q. B., 47.