

Khoblall Baboo Vs. Ramchunder Bose

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Court : Kolkata

Decided On : Jun-19-1877

Reported in : (1877)ILR2Cal435

Judge : Kennedy, J.

Appellant : Khoblall Baboo

Respondent : Ramchunder Bose

Judgement :

Kennedy, J.

1. I had this case set down for settlement of issues, because one of the Judges of this Court has expressed an opinion that a suit on a decree of the Small Cause Court cannot be maintained in this Court. I knew that there had been decisions in cases in which the question was not argued, allowing such suits to be brought in this Court; and I applied to the Chief Justice to allow the case to be referred to a Full Bench. I came, however, to the conclusion that the course which had been allowed to prevail in this Court was a right one, and the Chief Justice thought that, under those circumstances, a Full Bench could not be granted. The difficulty has been raised by the decision of the Court of Queen's Bench in *Berkeley v. Elderkin* 1 E. and B. 805 in which it was held that no action could be maintained in the Superior Courts on a judgment of a County Court in England, Lord Campbell, the Chief Justice, gave a judgment in that case, in which he went into several reasons

why such suits should not be allowed; the other Judges of the Court (Wightman, Erle, and Crompton, JJ.) did not go so far with him as to assent to all his reasons, but there was one point on which the Court was quite unanimous,--viz., that, by Section 100 of the English County Courts Act, 9 & 10 Vict., c. 95, a judgment of a County Court is in fact never final.[1]

2. That case, and a case in which it was followed, *Austin v. Mills* 9 Exch. 288 were brought to the notice of the Court in two cases in Ireland, where there is a system of County Courts long established under an Act, which does not contain precisely the same provisions as those in the English County Courts Act; and the Judges there were of opinion that they would be bound to follow the decision of the Court of Queen's Bench if applicable. The Court, however, finally held, in *Cary v. Grispi* 9 Ir. Com. Law Rep. 25 that, in consequence of the absence from the Irish Act of the particular provisions which were in the English Act, the ratio decidendi of the Court of Queen's Bench did not apply in Ireland, and I think the same would be the case here. There were two cases,--one *Moffatt v. Burrowes* 4 Ir. Com. Law Rep. 297 in which the Court was divided in opinion; and *Anr. Cary v. Grispi* 9 Ir. Com. Law Rep. 25 in which the entire Court of Common Pleas was unanimous in holding that the reasons given by Lord Campbell and the Ors. Judges in *Berkeley v. Elderkin* 1. E. and B. 805 did not apply to the Irish Act. I think I may adopt, and for the sake of avoiding prolixity I do adopt, the reasons which are put forward by Chief Justice Monahan, in *Moffatt v. Burrowes* 4 Ir. Com. Law Rep. 297 and in the judgment of Keogh and Christian, JJ. in *Cary v. Grispi* 9 Ir. Com. Law Rep. 25. I cannot add anything to those reasons, and I think I may safely adopt them.[2]

[1] Ed Note. The section quoted empowers the County Court Judge to rescind or alter any order as to payment by instalments or otherwise made against a defendant.

[2] The case came in for hearing as an undefended case on 23rd July, and a decree was given for the amount sued for, with costs after decree.