

(1866) 08 CAL CK 0004

Calcutta High Court

Case No: None

In Re: Docowri Kazi and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 27, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to me that the Collector had just as much jurisdiction to reverse his own order upon review as he had to make it, and that the case is now the same as if the order of the Collector had never been made. It is, therefore, unnecessary for the purpose of this case to decide whether the Collector was a Court subordinate to this Court within the meaning of s. 35, Act XXIII of 1861, or not; nor is it necessary to determine the last point submitted to us in argument, namely, what order this Court would think right to make in the case if the Collector had not set aside his order, and this Court had set it aside. The Collector, upon review, stated that the appeal from the order of the Deputy Collector lay to the Judge, and not to the Collector. But it was admitted in argument, and it is clear, that an appeal did not lie to the Judge. If an appeal lay to the Judge, and not to the Collector, this Court, upon setting aside the order of the Collector made on appeal without jurisdiction, might have thought it right to refer the appeal to the Judge. But the sale by the Deputy Collector was intended by Act X of 1859 to be final. That Act did not give an appeal to any Court, and therefore, even if the Collector, acting as a Court of Appeal, was a subordinate Court within the meaning of s. 35, Act XXIII of 1861, and if he had not set aside his order on review, I should not have thought it right for this Court, upon setting aside that order, to enter into the question of the merits for the purpose of determining whether the order of the Deputy Collector was correct or not. The mere circumstance of the Collector's having by mistake assumed jurisdiction on appeal did not make it right for this Court, in setting aside the order of the Collector for want of jurisdiction, to interfere with the order of the Deputy Collector which the law intended to be final, and with which this Court, but for the mistake of the Collector, could not have interfered.

Loch, Campbell and Macpherson, JJ.

Jackson, J.

2. I entirely concur in the judgment of the Chief Justice. It is to be understood that in this case no decision has been arrived at on the point whether the Court of the Collector is subordinate to the High Court in the sense of s. 35, Act XXIII of 1861. That is a point on which I entertain very great doubt, and I reserve the expression of my opinion upon it until the necessity for it should arise.

¹See In the matter of Subjan Ostagar, post, p. 531