

(1867) 02 CAL CK 0008**Calcutta High Court****Case No:** Special Appeal No. 893 of 1864

Gobind Chunder Mookerjee

APPELLANT

Vs

Kalla Gajee and Others

RESPONDENT

Date of Decision: Feb. 22, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

We quite agree with the two learned Judges who have referred this case to us. The summary suit is found by them to have been commenced before the passing of Act X of 1859, although the decision in the summary suit was given after the Act came into operation. The two learned Judges refer to the case of Jankee Ram Misser v. Ludhira Panday 2 W.R., Act X Rul., 27 as in conflict with the view they took. By s. 1 of Act X of 1859, certain Regulations were repealed, except as to proceedings commenced before the date when that Act came into force. As the summary suit was pending when that Act was passed, it was governed by Regulation VIII of 1831, and it had all the incidents of such a suit before Act X, including the right of the unsuccessful party to contest its justice by a regular suit. S. 4 of Regulation VIII of 1831 is as follows:-- "Summary claims connected with arrears or exactions of rent shall be preferred in the first instance to the several Collectors of land revenue, whose decisions in such cases shall be final, subject to a regular suit, unless the ground of appeal be the irrelevancy of the Regulation to the case appealed, on which ground only the Commissioner of Revenue for the division is authorized to receive an appeal, if preferred to him within one month of the date of the summary decision." That suit must, under s. 6, be brought within one year from the date of the delivery, or of the tender to the party against whom the award is made of the Collector's decision.

2. The case will be sent back to the Court which referred it to us, with that expression of our opinion.