(1867) 05 CAL CK 0007

Calcutta High Court

Case No: No. 888 of 1867 connected with Special Appeal No. 336 of 1866

Ranee Surnomoyee		APPELLANT
	Vs	
Luchmeeput Doogur and Others		RESPONDENT

Date of Decision: May 30, 1867

Judgement

Sir Barnes Peacock, Kt., C.J., Loch, Norman, Kemp, Macpherson and Markby, JJ.
When this rule was moved for I expressed my views at length, not as binding upon me, in case I should be satisfied upon argument that I was wrong, but merely that Counsel might know the views which I took in order that they might point out, if they could, in what respect they were erroneous. No arguments have been adduced, and Mr. Allan (who appears for the opposite party) says that he does not think he can show on behalf of his client that the reasoning in that judgment is unsound. Under these circumstances I think it unnecessary to go through that judgment again. I could not add anything to it. All that it is necessary for me to say is that I adhere to the opinion which I then expressed, that an appeal will lie. All my learned colleagues agree in this opinion, except Jackson, J. who has some little doubt in the matter. The rule is made absolute, and the petitioner will be at liberty to file an appeal within a month.

L.S. Jackson, J.

2. I need hardly say that it is with very strong diffidence as to the correctness of my own judgment, or of my own sentiments in this matter, that I venture to express even the slight degree of hesitation which remains on my mind in respect of the right decision of this point, I confess that some residuum of doubt remains in my mind, for this reason, that it seems to me that the whole subject of appeals from decisions of this Court, whether in its appellate or its original jurisdiction, is not contained in cl. 15 of the Letters Patent, but is contained in the two cls. 15 and 39 taken together. In the conclusion of cl. 15 are these words "but that the right of appeal from other judgments of the said High Court, or of such Division Court, shall lie to us, our heirs or successors, in our or their Privy Council, as hereinafter provided." Those words appear to me to make it indispensably necessary that

the two clauses should be considered together so as to afford a consistent interpretation. I am still inclined to think, with very great deference, that cl. 39 appears to divide appeals from judgments of this Court delivered on the appellate side, and appeals from judgments of this Court in its original jurisdiction; and that cl. 15 ought to be construed so as to be in accordance with the meaning of cl. 39. But with the weight of the unanimous judgment of six of my learned colleagues, including His Lordship the Chief Justice, against me, I do not think I shall be justified either in taking up the time of the Court or of the public, or in suggesting to the parties the taking possibly of still further proceedings in this case, by doing more than to throw out this expression of the slight hesitation which I still feel. I do not wish formally to dissent from the judgment of the Court. I therefore concur in it.