

(1878) 01 CAL CK 0022

Calcutta High Court

Case No: None

Chunder Sekhur
Mookerjee and Others

APPELLANT

Vs

The Collector of
Midnapore on the
part of the
Government

RESPONDENT

Date of Decision: Jan. 7, 1878

Hon'ble Judges: L.S. Jackson, J; Kennedy, J

Bench: Division Bench

Judgement

L.S. Jackson, J.

We do not think it necessary to call upon the Government vakeel in this case, because we are of opinion that the judgment of the Court below is substantially correct. The terms of the kabooleut, which were read to us from page 7 of the paper-book, and which, it may be admitted, are binding on the Government as well as the zemindar, are extremely vague, and it would be dangerous to impose upon the Government, on the strength of such terms as "the excavation of the silt of khals, the closing of the mouth of Khalsai," so extremely onerous an obligation as the plaintiffs seek to impose in the present case. But in addition to that there is an objection on principle, to requiring the Government, or any person whom it is sought to bind by such words, not to do that which may, upon a proper consideration of the whole subject, carry out the purpose obviously intended, but to do a particular thing, because that particular thing was once done in view of that same object. The Government, no doubt, undertook in this agreement between it and the zemindar to retain in its own hands the construction of certain khals and other things, and partly in consideration of that, agreement, and partly in consideration of its duty as paramount power, the Government would, no doubt, be desirous of taking all steps that may be necessary for the object with a view to the comfort and health of the population. But it is a very different thing to seek to

compel Government by a plaint filed in Court to maintain a particular khal in a certain position. Nor has the Court before it, as it seems to me, any materials upon which it could make any specific order such as it would have to make in order to be of use to the plaintiffs, because the Court has no means of ascertaining at what depth and width it would be necessary to maintain this khal for the purpose of effectual drainage of the plaintiffs' estate. These are general observations which appear to me necessary to be made; but it also seems to me, that the policy of the law, even before the Specific Relief Act, was against the enforcement of specific performance of contracts of this nature. It is not necessary for us to say what relief, if any, the plaintiffs would be entitled to. Under the circumstances, I think it quite clear that they could not succeed in the present suit, and that the suit was properly dismissed by the Court below. The appeal is dismissed with costs.