

(1897) 02 CAL CK 0019
In the Calcutta High Court

Dengu Kazi.

APPELLANT

Vs

Nobin Kissori Chowdhrani

RESPONDENT

Date of Decision : 05-02-1897

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 106, 108

Citation : (1897) ILR (Cal) 462

Hon'ble Judges : Knight, C.J.;Trevelyan, J;O''Kinealy, J;Macpherson, J;Francis William Maclean, J;Banerjee, J

Bench : Full Bench

Judgement

Maclean, C.J.—In this case I think that a second appeal lies to this Court u/s 108 of the Bengal Tenancy Act. I arrive at that conclusion upon the grounds stated by Mr. Justice Macpherson and Mr. Justice Hill in the reference. I do not propose to go over those grounds, but confine myself to saying that for the reasons they have given I arrive at the conclusion that this appeal lies.

O''Kinealy, J.

2. I concur in the judgment which has just been delivered. I think looking at the Act and the Rules made by the Bengal Government under the Act that an appeal docs lie

Macpherson, J.

3. I also concur.

Trevelyan, J.

4. I concur. I should like to add a few words to the judgments which have been pronounced, as one of the decisions which have given rise to this reference is a decision to which I was a party. In one case at least, if not in more, I decided that no appeal would lie. Having had the advantage of a further consideration, notably having had the advantage of seeing, the order of reference in this case, I think that I was wrong in the decision at which I before arrived. In my opinion

there is nothing in the Bengal Tenancy Act which ought to control the wide words of Section 106 of the Act. That section begins with the words "If at any time before the final publication of c the record," &c. According to the decisions which have been referred to there could be no appeal except in the case of an order made after the draft record had been published in accordance with the terms of Section 105 of the Act. It is perfectly true that the position of Section 106 might lead to the argument that the words of that section are controlled by the earlier section. The words being so wide, and giving, as they do, an important right, I think it would be wrong, in the absence of anything more express, to attempt to control the right thereby given. I therefore agree with the view taken by the other Judges of this Bench and hold that there is an appeal.

Banerjee, J.

5. I also am of the same opinion. I think the terms of Section 106 of the Bengal Tenancy Act are wide enough to include the case in which a dispute arises as to the correctness of any entry which the Revenue Officer proposes to make in the record that he is preparing. And, if that is so, the decision of the Special Judge on appeal from the decision of the Revenue Officer in this case was a decision that came within the scope of sub-Section 3 of Section 108 of the Act.

6. An appeal, therefore, in my opinion lies to this Court.