

These observations of a great authority on the Law of Crimes are such as may fitly be considered by the Legislature, while they show the present undetermined state of the law of England on questions of abetments there of criminal acts in foreign States.

We may express a hope that our judgment following the principles of two judgments of full Benches (about which we may add we have consulted our learned Chief Justice) will help to make clear the law of British India. The subject is, in our opinion, one of interest to the Government, which, if it took the matter into consideration, would be able, among other matters of expediency, to form an opinion as to the means possessed by our Courts of obtaining evidence of acts done in territories outside of British India, and of finding out the position, character and motives of witnesses.

For the above reasons the Court quashes the commitment to the Court of Session under section 215 of the Code of Criminal Procedure.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

BADARICHÁRYA (ORIGINAL PLAINTIFF), APPLICANT, v. RÁMCHANDRA GOPA'L SA'VANT AND OTHERS (ORIGINAL DEFENDANTS), OPPONENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), Secs. 73, 74—Review of first Court's order—Finding that a party to a suit is an agriculturist—District Judge—Assistant Judge.

An Assistant Judge having found that the defendants in a suit pending before him were not agriculturists, the defendants presented a petition of review of that finding, and in review the Assistant Judge came to a contrary conclusion.

Held, that as section 74† of the Dekkhan Agriculturists' Relief Act (XVII of 1879) only makes the Civil Procedure Code (Act XIV of 1882) applicable to suits before the Subordinate Judge, the conduct of proceedings before a District or Assistant Judge when sitting in revision under section 53 of Act XVII of 1879 is within his own discretion, and the granting of a review on the ground of mistake as to the nature of a defendant's income is a reasonable exercise of such discretion.

* Application No. 130 of 1892 under Extraordinary Jurisdiction.

† Sections 73 and 74 of the Dekkhan Agriculturists' Relief Act (XVII of 1879):—

73. The decision of any Court of first instance that any person is or is not an agriculturist shall for the purposes of this Act be final.

74. Except in so far as it is inconsistent with this Act, the Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act.

1893.

QUEEN-
EMPRESS

v.

GANPATRÁO
RÁM-
CHANDRA.

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January, 23.

1893.

BADARI-
CHARYA
v.
RA'M-
CHANDRA

THIS was an application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against an order in review passed by J. Fitzmaurice, Acting Assistant Judge of Sátará.

The plaintiff brought this suit in the Court of the Assistant Judge of Sátará to recover Rs. 824-8-7. Two of the defendants were minors and were represented by their guardian the Collector of Sátará. The defendants claimed the benefit of the Dekkhan Agriculturists' Relief Act (XVII of 1879), alleging that they were agriculturists.

The Assistant Judge (T. Walker) held that they were not agriculturists, on the ground that the income derived by them by agriculture was less than the income they derived by other sources.

The defendants applied for a review of the said finding, and the then Acting Assistant Judge decided that they were agriculturists within the meaning of the Act.

The plaintiff then applied to the High Court in its extraordinary jurisdiction and obtained a rule *nisi*, calling on the defendants to show cause why the above order of the Assistant Judge made in review should not be set aside.

Ráõ Sáheb Vásudeo-Jagannáth Kirtikar (Government Pleader) for the defendants showed cause:—The Collector being a party to the present suit in his capacity as guardian of the minor defendants, the suit was filed in the District Court at Sátará as the Court of first instance, and under section 73 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) its decision on the question whether the defendants are agriculturists or not, is final. There is no appeal, and, therefore, the Judge was right in allowing the application for a review of the order which was first made. Section 74 of the Act is applicable to a case tried by a Subordinate Judge's Court as the Court of first instance. Similarly, it would apply to the District Court trying a case as the Court of first instance. The expression "Subordinate Judges" in section 74 of the Act indicates Courts of first instance. Therefore, the provisions of the Civil Procedure Code are applicable to cases tried by the District Court as the Court of first instance, and the granting of review is within its jurisdiction.

Mahádev Chimnáji Apte for the applicant (plaintiff) in support of the rule:—All the provisions of the Civil Procedure Code are not applicable to cases governed by the Dekkhan Agriculturists' Relief Act. Section 74 lays down that certain provisions of the Code are applicable to cases tried by Subordinate Judges. Therefore a suit brought in the District Court is excluded from the Code. A Court has the inherent power of reviewing its judgment, provided the rules of the Code are applicable to the case and not otherwise. Under the Dekkhan Agriculturists' Relief Act the jurisdiction of the District Judge is co-extensive with that of the Special Judge appointed under the Act, and it has been held that the proceedings before the Special Judge are not governed by the provisions of the Civil Procedure Code—*Bábáji bin Pátloji v. Bábáji bin Mahádu*⁽¹⁾; *Vishvanáth v. Aba*⁽²⁾. Section 73 of the Act makes the decision final, and, therefore, there can be no review of such decision. The power of review is specially granted by the Civil Procedure Code. There are English cases which have laid down that a Court cannot review its own decision.

SARGENT, C. J.:—The only question in this case calling for decision in the exercise of the Court's extraordinary jurisdiction is whether the Assistant Judge could grant a review of his decision that the defendants were not agriculturists. This Court has already in the case of *Vishvanáth v. Aba*⁽²⁾ held that as section 74 of the Dekkhan Agriculturists' Relief Act only makes the Civil Procedure Code applicable to suits before the Subordinate Judge, the conduct of the proceedings before the Special Judge must be deemed to be in his own discretion. Having regard to the language of section 74, the same ruling must, we think, also apply to the District or Assistant Judge when sitting in revision. The granting a review in the present case on the ground of mistake, as to the nature of the defendant's income from the *inám*, was a most reasonable exercise of such discretion.

We must, therefore, discharge the rule with costs on the applicants.

(1) I. L. R., 15 Bom., 650.

(2) P. J. for 1886, p. 11.

1893.

BADAM-
CHÁRYA

RÁM-
CHANDRA