APPEAL FROM ORIGINAL CIVIL.

Before Mookerjee and Rankin JJ.

1923

May 3.

SATCHIDANANDA DUTT

v.

NRITYA NATH MITTER.*

Principal and Agent—Remuneration when due—Construction of contract—Authority to negotiate lease on terms specified—Remuneration to be paid after registration of lease—Condition not fulfilled—Default of principal not made out—Right of agent to remuneration—Quantum meruit.

Where parties have made an express contract for remuneration, the amount of the remuneration and the condition under which it becomes payable must be ascertained by a reference to the terms of that contract and no implied contract can be set up to add to or deviate from the original contract, though it can be interpreted by a reference to custom not inconsistent with it.

Beningfield v. *Kynaston* (1), *Broad* v. *Thomas* (2), *and L. French & Co.* v. *Leeston Shipping Co.* (3), referred to.

Where the remuneration of an agent is payable upon the performance by him of a definite undertaking, he is entitled to be paid that remuneration as soon as he has substantially done all that he undertook to do, even if the principal acquires no benefit from his services, and except where there is an express agreement or special custom to the contrary, even if the transaction in respect of which the remuneration is claimed falls through, provided that it does not fall through in consequence of any act or default of the agent.

Alder v. *Boyle* (4), *Beningfield* v. *Kynaston* (1), *Battamas* v. *Tompkins* (5), *Dideott* v. *Friesher* (6), *Howard Houlder* v. *Manx Isles Steamship Co.*, (7), and other cases referred to.

(1) (1887) 3 T. L. R. 279.
(2) (1831) 7 Bing. 99; 33 R. R. 399.
(3) [1922] 1 A. C. 451, 455.
(4) (1847) 4 C. B. 635.
(5) (1892) 8 T. L. R. 707.
(6) (1895) 11 T. L. R. 187.
(7) [1923] 1 K. B. 110.

* Appeal from Original Civil No. 147 of 1922, in Suit No. 2586 of 1919.

It is competent to the Court to allow the plaint to be amended even after the expiry of the period prescribed for the institution of a new suit.

Kisandas Rupchand v. *Bachappa* (1), *Sivugan Chetty* v. *Krishna Aiyanger* (2), *Muhammad Seedig* v. *Abdul Majid & another* (3), and *Weldon* v. *Neal* (4) referred to.

APPEAL by the defendant, Satchidananda Dutt, from the judgment of Pearson J.

This appeal arose out of a suit instituted by a broker for remuneration alleged to have been earned for procuring a lessee as authorised by the defendant in respect of certain properties belonging to the defendant. The plaintiff alleged that on the 5th November 1918 the defendant employed and authorised the plaintiff to negotiate a lease in respect of premises No. 31, Mirzapur Street, and 38 and 40, Harrison Road, Calcutta, belonging to the defendant which the defendant informed the plaintiff comprised an area of not less than 44 cottahs let out to tenants for terms not exceeding 3 years at a total rent of not less than Rs. 380 per month and on the same day wrote a letter to the plaintiff setting out certain terms and conditions (which are set out in the judgment) and he the defendant agreed to pay to the plaintiff Rs. 1,800 on the plaintiff procuring a lessee of the said properties on the said terms and conditions within 5 days from the date thereof. On the 6th November 1918 the defendant wrote a further letter to the plaintiff agreeing to pay the plaintiff an additional sum of Rs. 1,700 should the transaction be completed on the terms mentioned in the said letter of the 5th November 1918. The plaintiff stated that in pursuance of the said authority, he procured on the 8th November 1918

(1) (1909) I. L. R. 33 Bom. 644.
(2) (1911) I. L. R. 36 Mad. 378.
(3) (1911) I. L. R. 33 All. 616.
(4) (1887) 19 Q. B. D. 394.

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a lessee, named Krishna Chandra Dey, to whom the plaintiff delivered the said letter of the 5th November 1918 and who on the said 8th November 1918 accepted the offer of the defendant and agreed to take a lease of the said premises on the terms mentioned in the said letter of the 5th November 1918 but that the defendant wrongfully and unreasonably neglected and failed to complete the transaction of the said lease with the said Krishna Chandra Dey who thereupon filed a suit against the defendant for specific performance of the said agreement for lease (being suit No. 1478 of 1919 of this Honourable Court). The plaintiff accordingly claimed the sum of Rs. 3,500 as due and owing to him by the defendant by way of remuneration for procuring a lessee as authorised by the defendant. By an order, dated 9th August 1922, the plaint was ordered to be amended by the addition of the following paragraph:

"5A. In the alternative, the plaintiff claims the "said sum of Rs. 3,500 or such other amount as this "Honourable Court may award as damages sustained "by reason of the defendant's wrongful refusal to "complete the said transaction with the said Krishna "Chandra Dey and thus preventing the plaintiff from "earning his remuneration."

In his written statement the defendant denied that he informed the plaintiff that the said properties comprised an area of not less than 44 cottahs or that they were let out to tenants for terms not exceeding 3 years or at a total rent of not less than Rs. 380 per month or that he agreed to pay the plaintiff on the latter procuring a lessee of the said properties and contended that there was no concluded agreement between him and the said Krishna Chandra Dey at any time and that the plaintiff was not entitled to receive any remuneration.

The suit came on for hearing before Pearson J. who held that the defendant was in default *vis-a-vis* the plaintiff and that the plaintiff was entitled to recover the sums claimed. From this judgment the defendant appealed.

Mr. S. C. Bose (with him *Sir B. C. Mitter and Mr. Sudhi R. Das*), for the appellant. The money was to be paid upon the happening of an event that had not occurred and the plaintiff was therefore not entitled to claim the stipulated amount. The primary question was what was the contract between the parties originally entered into. That was a question of fact varying according to circumstances: *Beningfield* v. *Kynaston* (1), *Broad* v. *Thomas* (2), *L. French & Co.* v. *Leeston Shipping Co.* (3). Then the next question would be whether the condition of the contract had been fulfilled: *Alder* v. *Boyle* (4). In *Beningfield* v. *Kynaston* (1), the plaintiff was held disentitled to recover the commission because he could not fulfil the condition on which he was to be entitled to commission. Referred also to *Battamas* v. *Tompkins* (5), *Didcott* v. *Friesher* (6). The cases on the subject were analysed and reviewed by McCardie J. in *Howard Houlder* v. *Manx Isles Steamship Co.* (7). In the present case there were conditions precedent before the commission became payable. The commission was not payable on the procuring of a lessee by the respondent as had been suggested, but depended upon there being a concluded contract between the appellant and the intending lessee and was payable on the execution and after registration of a lease

(1) (1887) 3 Times L. R. 279.
(2) (1831) 7 Bing. 99.
(3) [1922] 1 A. C. 451.
(4) (1847) 4 C. B. 635.
(5) (1892) 8 Times L. R. 707.
(6) (1895) 11 Times L. R. 187.
(7) [1923] 1 K. B. 110.

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in terms thereof. The alternative claim by way of damages for *quantum meruit* was not maintainable: *Howard Houlder* v. *Manx Isles Steamship Co.* (1). The learned Judge should not have allowed the plaintiff to amend the plaint at so late a stage, namely, after the suit had been called on for hearing and after the issues had been settled. The appellant was prejudiced by such amendment which was inconsistent with the plaint as originally framed and which completely changed the nature of the plaintiff's claim. Moreover, the period prescribed for the institution of a new suit had already expired: *Weldon* v. *Neal* (2).

Mr. J. N. Mitter (with him *Mr. A. N. Basu*), for the respondent. The learned Judge has found as a fact that the three representations alleged to have been made by the defendant as regards area, tenants and rent were in fact made by him to the plaintiff at the time the letter of the 5th November 1918, was written. There was therefore an unconditional acceptance of the terms offered by the defendant by the intending lessee in his letter of the 8th November 1918. The questions which might arise between the defendant and the party introduced by the plaintiff as lessee and which might result in the negotiations falling through as between them are neither material nor relevant to the issues in this case. The plaintiff earned his remuneration as soon as he had obtained a party who accepted the terms contained in the defendant's letter though there remained other matters not mentioned in the letter to be settled subsequently between them. The stipulation as to remuneration did not amount to this that the broker's commission was not to be considered as earned till after the lease had been signed and registered, but it only meant a promise on the part of the defendant to pay the

(1) [1923] 1 K. B. 110. (2) (1887) 19 Q. B. D. 394.

amount on a future date. The defendant was in default so far as the plaintiff was concerned and the plaintiff was entitled to recover the sums claimed either on the contract or as damages for the wrongful act of the defendant in failing to carry out the contract with the lessee introduced by the plaintiff. When an agent had expended labour, time and trouble in and about endeavouring to procure a lessee he was entitled to reasonable remuneration for his work on the ground that he had done all he was employed to do and that it was only an act of withdrawal on the part of the principal which prevented the proposed transaction being carried out: *Green* v. *Bartlett* (1), *Prickett* v. *Badger* (2). In the latter case Willes J. held that the proper measure of damages would be the entire amount agreed for. Referred also to *Fisher* v. *Drewett* (3), *Green* v. *Lucas* (4), *Roberts* v. *Bernard* (5), *Martyrose* v. *Courjon* (6). In *Elias* v. *Govind Chunder* (7), the broker who negotiated the loan and found a lender was held entitled to brokerage although the transaction was not completed by reason of the inability of the principal to satisfy the intending lender as to his title to property. So in *Annaswami Iyer* v. *Zemindar Ayakudi* (8) the agent was held entitled to his commission although the sale had gone off. All these cases were reviewed in *Kishan Prasad Sinha* v. *Purnendu Narain Sinha* (9). In *Turner* v. *Goldsmith* (10) where there was a contract to employ the plaintiff for 5 years, the condition relating to remuneration was as follows "The "said company shall not be liable to pay commission

(1) (1863) 14 C. B. N. S. 681.
(2) (1856) 1 C. B. N. S. 296.
(3) (1873) 48 L. J. Ex. 32.
(4) (1875) 31 L. T. 731.
(5) (1884) 1 Cab. & El. 336.
(6) (1899) 15 C. L. J. 312.
(7) (1902) I. L. R. 30 Calc. 202.
(8) (1910) Mad. W. N. 199.
(9) (1911) 15 C. L. J. 40.
(10) [1891] 1 Q. B. 544.

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"on any sum not *actually* received by them." The defendants' manufactory was burnt down and they did not resume business and did not employ the plaintiff who brought an action for damages and it was held that the plaintiff was entitled to substantial damages. It was not material to enquire what operated on the mind of the principal, whether it was the advice of friends or the persuasion of the broker: *Municipal Corporation of Bombay* v. *Cuverji* (1), *Raghunandan Lal Sarma* v. *Madan Mohan Das* (2). The construction placed by the Court upon one contract was no authority for the construction to be placed upon another contract. The cases cited by the appellant were distinguishable having regard to their own varying facts. On the question of the amendment of the plaint, the Court was quite competent to allow the amendment even after the expiry of the period prescribed for the institution of a new suit: *Kisandas Rupchand* v. *Bachappa* (3), *Sivugan Chetty* v. *Krishna Aiyanger* (4), *Muhammad Seediq* v. *Abdul Majid* (5).

Sir B. C. Mitter, in reply.

MOOKERJEE J. This is an appeal against a judgment of Mr. Justice Pearson by the defendant in a suit instituted by a broker for commission alleged to have been earned in respect of the lease of premises belonging to the defendant. On the 23rd August, 1918, the defendant Satchidananda Dutt gave a letter of authority to Gosthabehari Saha to negotiate the lease of the properties in question. On the strength of this letter, apparently, one Kirtichandra Dawn, on the 26th August 1918, intimated to Dutt through his solicitor

(1) (1895) I. L. R. 20 Bom. 124.
(2) (1915) 38 C. L. J. 139.
(3) (1909) I. L. R. 33 Bom. 644.
(4) (1911) I. L. R. 36 Mad. 378.
(5) (1911) I. L. R. 33 All. 616.

that he was prepared to take the lease, provided the title was approved and the area of the land was not less than two bighas as had been assured by the agent. What followed on this has not transpired, but we find that on the 5th November, 1918, Satchidananda Dutt granted another authority to Nrityanath Mitter to negotiate the lease of the properties on terms specified. The terms were as follows:

1. Lease for ninety-one years.

2. Selami Rs. 25,000 (twenty-five thousand) only.

3. Rent Rs. 312 (three hundred and twelve) monthly, for the first five years *plus* taxes: Rs. 455 (four hundred and fifty-five) *plus* taxes for the next five years and thereafter Rs. 600 (six hundred) monthly *plus* taxes for the remaining period.

4. Three-storied building to be erected over the plot with first class materials.

5. Remuneration Rs. 1,800 (one thousand and eight hundred) only to be paid after the registration of this lease.

6. This letter will be void after five days from this date.

7. The party should be a respectable one.

On the day following, Dutt addressed another letter to Mitter in which he promised to pay an additional remuneration of Rs. 1,700 only provided the transaction was completed on the terms mentioned in the previous letter. The result of the letter to Mitter was that one Krishnachandra Dey intimated to Dutt his willingness to accept the terms of the lease. The letter, however, contained the following qualifications:

"It is of course distinctly understood from your "verbal representation to the broker (*a*) that the "existing rent realised from the tenants is not less "than Rs. 380 per month and (*b*) that no tenant holds

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"any lease for a period of more than three years yet "to run and (c) that the area of the leasehold premises "is not less than 44 cottahs."

Thereafter a notification was published on the 26th November by the solicitor of Krishnachandra Dey to give caution that as Dey had accepted a lease from Dutt anyone dealing with the owner in respect of the premises would do so at his own risk and peril. Later on Kirti Chandra Dawn appeared on the scene and contended that he had got a concluded contract in his favour. On the 9th December, 1918, Dutt took up the position that there was no concluded contract in fact either with Dawn or with Dey inasmuch as neither of them had accepted unconditionally an unqualified offer of the lease. On the 11th December, 1919, the present suit was instituted by the broker against Dutt for recovery of rupees three thousand and five hundred (3,500). The plaint was subsequently amended on the 8th August 1922 by the insertion of an alternative prayer in the following terms:

"In the alternative the plaintiff claims the said "sum of Rs. 3,500 or such other amount as this "Honourable Court may award as damages sustained "by reason of the defendant's wrongful refusal to "complete the said transaction with the said Krishna "Chandra Dey and thus preventing the plaintiff from "earning his remuneration."

We may state incidentally that Dey instituted a suit against Dutt, which was dismissed on the 13th February, 1923; and no foundation has been laid for a possible theory that the contract failed by reason of the wrongful conduct of the vendor-defendant. Dutt defended the present action substantially on the ground that on the terms of the agreement between him and Mitter the latter was not entitled to the remuneration as claimed in the plaint. Mr. Justice

Pearson has overruled this contention and has decreed the suit.

The principle applicable to cases of this description is well-established. Where the remuneration of an agent is payable upon the performance by him of a definite undertaking he is entitled to be paid that remuneration as soon as he has substantially done all that he undertook to do even if the principal acquires no benefit from his services, and except where there is an express agreement or special custom to the contrary, even if the transaction in respect of which the remuneration is claimed, falls through, provided that it does not fall through in consequence of any act or default of the agent.

On behalf of the appellant, reliance has been placed upon the decision in *Alder* v. *Boyle* (1) *Beningfield* v. *Kynaston* (2), *Battamas* v. *Tompkins* (3) *Didcott* v. *Friesher* (4), and *Howard Houlder* v. *Manx Isles Steamship Co.* (5). On behalf of the respondent reliance has been placed upon the decisions in *Greer* v. *Bartlett* (6), *Prickett* v. *Badger* (7), *Fisher* v. *Drewett* (8), *Green* v. *Lucas* (9), *Roberts* v. *Bernard* (10), *Martyrose* v. *Courjon* (11), *Elias* v. *Govind Chunder Khatick* (12) and *Annaswami Iyer* v. *Zemindar Ayakudi* (13). These cases were analysed and reviewed in the judgment of this Court in *Kishan Prashad Sinha* v. *Purnendu Narain Singha* (14). Our attention has been invited on behalf of the

(1) (1847) 4 C. B. 635.
(2) (1887) 3 T. L. R. 279.
(3) (1892) 8 T. L. R. 707.
(4) (1895) 11 T. L. R. 187.
(5) [1923] 1 K. B. 110.
(6) (1863) 14 C. B. N. 681.
(7) (1856) 1 C. B. N. S. 296.
(8) (1878) 48 L. J. Ex. 32.
(9) (1875) 31 L. T. 731; 33 L. T. 554.
(10) (1884) 1 Cab. & El. 336.
(11) (1899) 15 C. L. J. 312.
(12) (1902) I. L. R. 30 Calc. 202.
(13) (1910) Mad. W. N. 199.
(14) (1911) 15 C. L. J. 40.

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respondent also to the decision in *Turner* v. *Goldsmith* (1) and *Municipal Corporation of Bombay* v. *Cuverji Hirji* (2) which was explained in *Stokes* v. *Soondernath* (3). We have been finally pressed with the decision of Mr. Justice Chaudhuri in *Raghu Nandan Lal Sarma* v. *Madan Mohan Das* (4).

No useful purpose will be served by an analysis of the facts of each of the decisions cited before us. It cannot be disputed that where the parties have made an express contract for remuneration, the amount of the remuneration and the condition under which it becomes payable must be ascertained by a reference to the terms of that contract and no implied contract can be set up to add to, or deviate from the original contract though it can be interpreted by a reference to custom, not inconsistent with it. [See observations of Lord Justice Bowen in *Beningfield* v. *Kynaston* (5), *Broad* v. *Thomas* (6), *French & Co.* v. *Leeston Shiping Co* (7).]

The general principle is thus explained in *Howard Houlder and Partners Ltd.* v. *Manx Isles Steamship Co.* (8).

"It is a settled rule for the construction of commis-
"sion notes and the like documents which refer to
"the remuneration of an agent that a plaintiff can-
"not recover unless he shows that the conditions
"of the written bargain have been fulfilled. If he
"proves fulfilment he recovers. If not, he fails.
"There appears to be no halfway house, and it
"matters not that the plaintiff proves expenditure of

(1) [1891] 1 Q. B. 544.
(2) (1895) I. L. R. 20 Bom. 124.
(3) (1898) I. L. R. 22 Bom. 540.
(4) (1915) 38 C. L. J. 139.
(5) (1887) 3 T. L. R. 279.
(6) (1831) 7 Bing. 99. 33 R. R 399.
(7) [1922] 1 App. Cas. 451, 455.
(8) [1923] 1 K. B. 110, 113.

"time, money and skill. This rule is well illustrated by *Alder* v. *Boyle* (1) (where commission was "not payable until an abstract of conveyance was "drawn out); *Bull* v. *Price* (2) (where the commission "was only payable on money actually 'obtained'); *Battamas* v. *Tompkins* (3) (commission payable on "'completion' of purchase); *Clack* v. *Wood* (4) (commission payable 'subject to the title being approved "by my solicitor'); and by such illustrative decisions "as *Mason* v. *Clifton* (5) (commission to be paid if "money is raised on specified terms) and *Martin* v. "*Tucker* (6) (commission to be paid on 'the "amount of the capital brought into the "business')."

We have consequently to consider the actual terms of the contract between the parties in the present case. As we have already pointed out, the letter of authority, dated the 5th November 1918, states in specific terms that the remuneration of Rs. 1,800 is to be paid after the registration of the lease. The letter of the 6th November 1918, emphasises this and states that an additional remuneration of Rs. 1,700 will be paid provided that the broker completes the transaction on the terms mentioned in the previous letter. We are of opinion that the contract could not have been expressed in clearer terms and that on the true construction thereof, the plaintiff cannot possibly succeed in this litigation.

We have been finally pressed by the respondent to hold that the plaintiff ought to have a decree in his favour on the basis of *quantum meruit*. We are of opinion that this contention cannot possibly be sustained, and in support of this view, reference may

(1) (1847) 4 C. B. 635.
(2) (1831) 7 Bing. 237.
(3) (1892) 8 T. L. R. 707.
(4) (1882) 9 Q. B. D. 276.
(5) (1863) 3 F. & F. 899, 901.
(6) (1885) 1 T. L. R. 655.

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be made to the decision in *Howard Houlder and Partners Ld.* v. *Manx Isles Steamship Co., Ld.* (1), where McCardie J. deals with the question in these terms—

"I must point out that the commission note before "me represented the result of discussion between the "plaintiffs and the defendants. It embodied their "bargain. They reduced their agreement to writing. "There was no collateral arrangement whatsoever. The "rights of the plaintiffs are to be found in the commis-"sion note alone, and so the parties intended. If "this be so, then it follows as Mr. Neilson so forcibly "indicated for the defendants that the rule *Expressum* "*facit cessare tacitum* here applies. There is no scope "on the present facts for the operation of the *quantum* "*meruit* principle. If I were to rule in the plaintiffs' "favour, I should ignore the well-established rule "and a substantial body of authoritative decisions. "In *Mason* v. *Clifton* (2), Cockburn C. J., when sum-"ming up to the Jury said, "If . . . . B is employ-"ed to procure money upon certain terms, and does "not procure it upon those terms, but upon other "and different terms, then A will not be liable "to him for commission. Nor can B in such "case claim to recover a reasonable remuneration for "trouble and labour, for he has not done what he was "employed to do". So too in *Green* v. *Mules* (3), "Willes J. in speaking of the commission agreement "there in question said: "The substance of the "matter was, 'If the letter is effectual, I (the defen-"dant) will pay you £ 100 though not liable; if it is "not effectual, I will pay you nothing." The matter "was clearly put in *Martin* v. *Tucker* (4) in the judg-"ment of Lord Coleridge, C. J., when he said that the "plaintiffs "could not claim on a *quantum meruit*

(1) [1923] 1 K. B. 110, 114.
(2) (1863) 3 F. & F. 899.
(3) (1861) 30 L. J. (C.P.) 343, 345.
(4) (1885) 1 T. L. R. 655.

"because they had chosen to tie themselves down by "the express terms of the agreement." Much the "same view was expressed by the Court of appeal in "*Barnett* v. *Isaackson* (1), where Lord Esher, M. R., "said that the plaintiff was only to be paid in case of "success, no matter what labour and trouble he had "devoted to the matter. Finally, I may mention "*Lott* v. *Outhwaite* (2) where Lord Lindley L. J. "stated: 'It was said that there was an implied "contract to pay the agent a *quantum meruit* for his "services. The answer was that there could be no im-"plied contract where there was an express contract."

This was precisely the position adopted by this Court in the case of *Kishen Prosad Sinha* v. *Purnendu Narayan Sinha* (3). We are consequently of opinion that in either aspect of the case the plaintiff cannot possibly succeed.

We may add finally that the appellant urged before us that the plaint was allowed to be amended at too late a stage and in support of this argument relied upon the decision of *Weldon* v. *Neal* (4). We must not be taken to accept this contention of the appellant as well founded because as pointed out in *Kisandas Rupchand* v. *Bachappa Vithoba Shilwant* (5), *Sivugan Chetty* v. *Krishna Aiyanger* (6), and *Muhammad Seedi* v. *Abdul Majed and Mussamat Hakiman* (7), it is competent to the Court to allow the plaint to be amended even after the expiry of the period prescribed for the institution of a new suit.

The result is that this appeal is allowed, the judgment of Mr. Justice Pearson set aside, and the suit dismissed with costs throughout.

(1) (1888) 4 T. L. R. 645.
(2) (1893) 10 T. L. R. 76.
(3) (1911) 15 C. L. J. 40.
(4) (1887) 19 Q. B. D. 394.
(5) (1909) I. L. R. 33 Bom. 644.
(6) (1911) I. L. R. 36 Mad 378.
(7) (1911) I. L. R. 33 All. 616.

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RANKIN J. I agree.

A. P. B.

Attorney for the appellant: *Ramesh Chandra Basu.*

Attorney for the respondent: *Jogendra Krishna Dutt.*

APPELLATE CIVIL.

Before Walmsley and Suhrawardy JJ.

1923

May 3.

PRAN KRISHNA GHARAI

v.

NITYA GOPAL MAITI.*

Valuation of Suit—Suit by a co-sharer to set aside sale—Jurisdiction.

A suit by one of several co-sharers to recover possession of his share in properties sold under certificates under the Public Demands Recovery Act by setting aside the sale ought to be valued for purposes both of jurisdiction and court-fee at the value of the entire property.

Unnoda Persad Roy v. *Erskine* (1) applied.

SECOND APPEALS by Pran Krishna Gharai, the defendant.

These two appeals arose out of two suits to set aside a sale held for arrears of rent for 1317 to 1326 on the 9th November, 1914, in execution of a certificate under the Public Demands Recovery Act, for declaration of their title to specific shares of properties sold under the said certificate and for recovery of khas possession thereof. The ground on which the sale was

* Appeals from Appellate Decrees, Nos. 1428 and 1440 of 1920, against the decrees of Banwari Lal Banerjee, Subordinate Judge of Midnapore, dated Feb. 13, 1920, reversing the decree of Girja Bhusan Sen, Munsif of that place, dated March 13, 1918.

(1) (1873) 12 B. L. R. 370.