APPELLATE CIVIL.

Before Mitter and Akram JJ.

1939

Aug. 10, 11, 14, 15, 24.

CORPORATION OF CALCUTTA

v.

PROVINCE OF BENGAL.*

Municipality—*Assessment—Annual value of land or building—Principles of ascertainment—Return for, or accepted assessment of, neighbouring premises, if admissible in evidence—Principles of construction of statutes—Calcutta Municipal Act (Ben. III of 1923), s. 127, cls.* (a), (b)—*Indian Evidence Act (I of 1872), s. 1.*

If only a small portion of the ground floor of a building within the municipality of Calcutta is let out and the rest of it is in the occupation of the owner, then, for the purpose of imposing the consolidated rate, the annual value of entire building must be assessed under cl. (*b*) of s. 127 of the Calcutta Municipal Act, 1923; and it is erroneous to hold that the portion of the building let out is to be assessed on the annual value ascertained under s. 127, cl. (*a*), and the remainder under s. 127, cl. (*b*), of the Calcutta Municipal Act, 1923.

Corporation of Calcutta v. *Mati Chand Chaudhuri* (1) followed.

Section 127, cl. (*a*), deals with the ascertainment of annual value of land and building erected and ordinarily used for letting purposes whereas s. 127, cl. (*b*), provides for the determination of the annual value of building ordinarily in actual occupation of the owner and not erected for letting purposes.

The annual value of the land and building mentioned in s. 127, cl. (*a*), of the Act, is the annual rent less certain deductions. But in respect of a building mentioned in s. 127, cl. (*b*), of the Act it cannot be said that the legislature adopted the principle that the annual value of such building must be found out on the basis of beneficial occupation determined in terms of letting value. The word "value" in cl. (*b*) of s. 127 includes market value.

Corporation of the Town of Calcutta v. *Ashutosh De* (2) and *Corporation of Calcutta* v. *Jardine Skinner & Co.* (3) referred to.

Unlike English law vacant premises are liable for assessment under the Calcutta Municipal Act, 1923. Hence the basic English principle that assessibility depends upon whether the occupation is of value or not cannot be said to be the only principle underlying the provisions of Chapter X of the Calcutta Municipal Act, 1923.

*Appeal from Original Order, No. 205 of 1939, against the order of A. S. M. Latifur Rahman, Chief Judge of Calcutta Small Cause Court, dated April 8, 1939.

(1) I. L. R. [1939] 1 Cal. 277; L. R. 66 I. A. 42.

(2) (1927) 31 C. W. N. 864.

(3) I. L. R. [1937] 1 Cal. 576.

Port of London Authority v. *Assessment Committee Orsett Union* (1) referred to.

Section 127, cl. (*b*), of the Act uses the expression "present value of the land" and it is a well known principle in rating that property must be valued as it exists at the time when the rate is fixed with all the existing circumstances, *rebus sic stantibus*. Prospective appreciation or depreciation, therefore, cannot be taken into account by the rating authority nor can a hypothetical state of things be assumed. By using the phrase "lands valued with the building" in s. 127, cl. (*b*), of the Act, the legislature adopted the above principle and meant that the land is not to be regarded as bare land but is to be taken in its present condition with the building upon it and valued. The nature of the building may increase or reduce the value of the land.

In determining the annual value of any premises evidence relating to the accepted assessments or returns submitted in respect of neighbouring premises under s. 136 of the Calcutta Municipal Act, 1923, are admissible under s. 9 of the Indian Evidence Act, 1872. The value afforded by such evidence would depend upon the circumstances and degree of closeness with which the two sets of premises resemble one another.

Pointer v. *Norwich Assessment Committee* (2) and *Ladies Hosiery and Underwear, Limited* v. *West Middlesex Assessment Committee* (3) referred to.

No portion of a statutory enactment ought to be disregarded and every word used should, if possible, be given effect to. It is only when there is manifest absurdity or inconsistency that a contrary method may be applied.

APPEAL FROM ORIGINAL ORDER preferred by the defendant.

The material facts of the case appear from the judgment.

Santosh Kumar Basu, Krishna Lal Banerjee and *Balaram Basu* for the appellant. The Court below has adopted a wrong method in valuing the premises partly under cl. (*a*) and partly under cl. (*b*) of s. 127 of the Calcutta Municipal Act, 1923, relying upon the decision of this Court in *Corporation of Calcutta* v. *Mati Chand Chaudhuri* (4). That decision has been set aside by the Judicial Committee in *Corporation of Calcutta* v. *Mati Chand Chaudhuri* (5). As the portion let out formed only a very small part of the entire premises, the valuation should have

(1) [1920] A. C. 273.
(2) [1922] 2 K. B. 471.
(3) [1932] 2 K. B. 679.
(4) (1936) I. L. R. 63 Cal. 1215.
(5) I. L. R. [1939] 1 Cal. 277; L. R. 66 I. A. 42.

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been made entirely under cl. (*b*) of s. 127 of the Act. On the evidence in the case the valuation ought to be Rs. 23,000 per *cottâ*.

P. B. Mukharji and *Satyendra Nath Banerji* for the respondent. The real contention between the Government and the Corporation in this appeal is one of principle. The controversy centres round the question of valuation of land under s. 127, cl. (*b*), of the Calcutta Municipal Act, 1923.

Two fundamental and basic principles of the law of rating which ought to be recognised are: (i) that all properties for the purposes of rating must be valued *rebus sic stantibus* and (ii) that rates are based on beneficial user of properties. I rely on Lord Birkenhead's statement of the law in *Port of London Authority* v. *Assessment Committee Orsett Union* (1) and on the case *Corporation of the Town of Calcutta* v. *Ashutosh De* (2). Section 127, cl. (*b*), of the Act is at its highest only a method or mode for determining the annual value, and does not embody any principle of Rating Law. I rely on the case of *Corporation of Calcutta* v. *Mati Chand Chaudhuri* (3). In England this method is followed side by side with statutory method of rating and is known as contractor's principle. It will, therefore, be wrong to hold that s. 127, cl. (*b*), introduces a novel method, which is antagonistic to the rental method. The principle behind all these methods is to find out the value of beneficial user, for that is the foundation of rate. Therefore no method of finding the annual value should be so construed or applied as does violence to the basic principles of rating. The only reasonable and scientific way by which one can value land under s. 127, cl. (*b*), of the Calcutta Municipal Act, 1923, without violating the basic principles of rating law is to take the beneficial value of the entire premises and then deduct from it the present costs of

(1) [1920] A. C. 273. (2) (1927) 31 C. W. N. 864.
(3) I. L. R. 63 Cal. 1215.

erecting the building. It is only in that way that one really gets anything like an accurate and scientific estimate of the "value of land valued with the "building as part of the same premises." With great respect for the learned Judges who decided the case of *Corporation of Calcutta* v. *Jardine Skinner & Co.* (1) I submit that decision failed to decide this real point in issue, and is quite inconclusive on the question of the particular method of valuation to be followed under s. 127, cl. (*b*), having regard to the principles of the law of rating.

I submit that all properties for the purpose of rating must be valued *rebus sic stantibus*. The value of land which can be obtained on sale should not be considered in this connection. One cannot eliminate the consideration of future or potential users which consideration is foreign to the law of rating.

As to admission of evidence of other assessments relating to neighbouring premises, I submit that an assessment is nothing more than an opinion of a Rating Authority or the Corporation in this case and unless the person who has given the opinion is produced for cross-examination such assessment is not admissible. Even if it is admissible its value is negligible unless the properties compared are exactly similar in user. I rely also on s. 60, sub-para. (*5*) of the Indian Evidence Act.

Basu, in reply. In the case of *Corporation of Calcutta* v. *Jardine Skinner & Co.* (1) the law was correctly laid down. The method of valuation there adopted was based on a correct interpretation of s. 127, cl. (*b*). The principle of beneficial user as the basis of valuation might be good law in England where "no occupation, no taxation" seemed to be the basis of assessment. But under the Calcutta Municipal Act, s. 151 laid down the limits within which

(1) I. L. R. [1937] 1 Cal. 576.

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remission of taxes for vacancy could be granted under circumstances mentioned therein. So the English principles and English decisions will hardly be of any assistance in the interpretation of s. 127, cl. (*b*).

The expression "land valued with the building" should not be isolated from the words which follow, *viz.*, "as part of the same premises." If the whole of this phrase is taken together, as it should be, it only indicates the extent or area of the land which should be valued together according to the same method as the building under cl. (*b*) of s. 127 of the Act. The intention of the legislature was that the vacant land in the premises far removed from the building which cannot in any sense be considered to be "affected by the building" should not be valued as vacant land as laid down in cl. (*a*); but according to cl. (*b*) "as part of the same premises" with the building. An average valuation for all the land in one premises should be fixed. As regards the method urged by the respondents, it proceeds on the rental basis, and therefore, comes under cl. (*a*) which is inapplicable to a building falling under cl. (*b*). I rely on *Corporation of Calcutta* v. *Mati Chand Chaudhuri* (1). Besides in calculating the valuation on the basis of the rental for the next twenty years, the rate of future rent has to be taken as the basis of valuation, which would be wholly inconsistent with the words "present value", which is to be the basis of assessment under cl. (*b*). The word "expected" which finds place in cl. (*a*) does not occur in cl. (*b*). The valuer is to "estimate" the "present value" and in making the estimate he is to take into account different factors, *e.g.*, recent sales of neighbouring lands, admitted valuations, *etc.*, and also the extent to which the existence of a building thereon has affected, if at all, the value of the land. The word "estimate" shows that the valuer has been to a large extent left unhampered by any statutory method of

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valuation in arriving at the "present value" of the land beyond what has been expressly laid down in the earlier part of cl. (*b*).

Cur. adv. vult.

MITTER J. This appeal is by the Corporation of Calcutta and is directed against the order of the Chief Judge of the Court of Small Causes, Calcutta, dated April 8, 1938, in an appeal filed before him by the assessee, the respondent, under the provisions of s. 141 of the Calcutta Municipal Act (Bengal Act III of 1923).

The case relates to the assessment of premises No. 16, Dalhousie Square, North, commonly known as the Writers Buildings, made by the Corporation of Calcutta in 1934 under s. 127(*b*) of the said Act. The immediately previous assessment was in force from 1928 to 1934. At that assessment the annual value was taken at Rs. 3,13,480. That figure was arrived thus:—

	Rs.
Land, 240 *cottás* at Rs. 21,000 per *cottá*	50,40,000
Building less depreciation	12,29,615
	62,69,615
5 per cent. of do.	3,13,480

At the revaluation in 1934 the assessor made the calculation thus:—

	Rs.
Land, 240 *cottás* at Rs. 23,000 per *cottá*	55,20,000
Building less depreciation	11,92,727
	67,12,727
5 per cent. of do.	3,35,636
	(annual value for rating)

The respondent filed objections to the said valuation under s. 139. Those objections were heard by the Second Executive Officer who restored the valuation of 1928. The respondent then filed an appeal to the

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Chief Judge of the Court of Small Causes, Calcutta, who further reduced the annual value from Rs. 3,13,480 to Rs. 2,95,536.

It was admitted before the said learned Judge and before us also that only a small portion of the ground floor, consisting of a few rooms, had been let out by the respondent to a co-operative bank and two co-operative societies at a total monthly rent of Rs. 200-14 and the rest of the building was in the direct occupation of the respondent. The learned Chief Judge following the decision of this Court in *Corporation of Calcutta* v. *Mati Chand Chaudhuri* (1), now reversed by the Judicial Committee, held that the portions in occupation of the said tenants ought to be valued under s. 127(*a*) and the remaining portion under s. 127(*b*). The annual value of the rented portion was thus found by him to be Rs. 2,386 and the rest which was assessed under s. 127(*b*) was valued thus:—

	Rs.
Land 240 *cottâs* at Rs. 19,500 per *cottâ* ..	.. 46,80,000
Building	.. 11,82,108
	58,62,108
5 per cent. of do.	.. 2,93,105

The first point urged by the appellant is that this method is wrong and the assessment cannot be made partly under s. 127(*a*) and partly under s. 127(*b*) but must be made under s. 127(*b*) only. This contention must be given effect to in view of the decision of the Judicial Committee in *Corporation of Calcutta* v. *Mati Chand Chaudhuri* (2).

The second point has been raised by the appellant in a simple form. It says that the land ought to be valued at Rs. 21,000 per *cottâ*, because that is the effect of the evidence. The respondent's counsel, however, raises complications by asking us to lay

(1) (1936) I. L. R. 63 Cal. 1215. (2) I. L. R. [1939] 1 Cal. 277; L. R. 66 I. A. 42.

down a definite method of valuing land on which a building stands. He goes further and says that in view of the language employed in s. 127(*b*) there is only one legitimate method, and that is that the annual rent of the whole premises must be estimated and capitalised in the first instance. Then from the capitalised amount, the present cost of erecting the building, after allowing for reasonable depreciation, is to be deducted. The balance is, according to him, the estimated "present value of the land valued with "the building as part of the same premises". Any other method, says he, would not give due effect to the phrase "valued with the building" used by the legislature. This method, however, was not accepted by a Division Bench in *Corporation of Calcutta* v. *Jardine Skinner & Co.* (1).

Section 124 of the Act empowers the Corporation of Calcutta to impose consolidated rates on land and building on the basis of annual value as determined under Chapter X of the Act. Sections 127 and 128 are the sections in that chapter which deal with the mode of determining annual value. Broadly speaking two distinct methods are provided for in s. 127 based upon the nature of the property. Section 128 furnishes the third method, where the property to be assessed belongs to the Board of Trustees for the Improvement of Calcutta. If the subject be bare land or building erected for letting purposes or ordinarily let the annual value is to be what a hypothetical tenant would pay as rent from year to year less a certain deduction. This is cl. (*a*) of s. 127. Clause (*b*) deals with what may, for brevity's sake, be called residential buildings, buildings erected for the use of and actually used by the owner. The yearly rent which a hypothetical tenant would pay is not to be the basis. That is to say, the owner in occupation is not to be considered as a tenant, as in England, for the purpose of determining the rateable value. This is a fundamental difference. Leaving

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out matters of detail by which the rateable value is arrived at in England by making specified deductions from the gross value, the fundamental and only basis of rating in England, according to statutory enactments in respect of all classes of property, is the yearly rent which a hypothetical tenant would reasonably pay. The methods employed and the calculations made, no doubt, vary according to the nature of the rateable property, *e.g.*, (a) house let out or occupied by the owner, (b) railways and dockyards, *etc.*, but they have one and same object in view, namely, the determination of the annual rent which a hypothetical tenant would pay. The contractor's method, as it is called, is applied when having regard to the nature of the property, such annual rent cannot be satisfactorily ascertained directly. By this method the total cost, *i.e.*, price of land and the costs of construction, is determined and a certain percentage thereof usually 5 per cent. is taken and the figure so arrived at *is taken* as the hypothetical yearly rent. But the Calcutta Municipal Act, in our judgment, provides in s. 127 (*b*) an independent method, a method independent of the method prescribed in cl. (*a*) of that section, for if the legislature had intended beneficial occupation determined in terms of letting value to be the sole criterion for determining the annual value no distinction would have been made by it between classes of rateable properties based on user by the owner and user by a tenant. The contractor's principle as applied in England would have been equally available in India in determining the hypothetical annual rent, in regard to properties in respect of which an estimate of the same could not have been satisfactorily made by the direct method. We, accordingly, hold that beneficial occupation determined in terms of letting value is not the principle adopted by the legislature in cl. (*b*). The provisions of s. 128, moreover, indicate that the said principle is not the only principle kept in view by the legislature for the purpose of estimating annual value of rateable property. Properties vested in the Board of

Trustees for the Improvement of Calcutta have no letting value during the improvement operations, still the Board is to be rated in respect of those properties on the basis that the annual value is to be a certain percentage of the costs of acquisition. The principle formulated by Lord Birkenhead L.C. in *Port of London Authority* v. *Assessment Committee Orsett Union* (1), that assessibility depends upon whether the occupation is of value or not, is no doubt a basic principle but it is not the only basic principle underlying the provisions of Chapter X of the Calcutta Municipal Act. In Calcutta bare ownership would sustain the liability to be rated. On the principle of rating adopted in England, however, if the owner of a house suffers it to lie barren and unoccupied, he cannot be rated at all (Ryde on Rating, p. 200, 4th Ed.; Farady on Rating, p. 11, 4th Ed.). This is not so under the Calcutta Municipal Act. In such a case the owner is rateable, but he has not to pay the full rate but gets deductions to the extent of half for the full period during which the premises is unoccupied and a further deduction of a fourth in certain contingencies (section 151). It would therefore, in our judgment, be not right to say that beneficial occupation is the sole consideration and that it is the beneficial occupier and the value of his occupation that has to be considered in all cases of assessment under the Calcutta Municipal Act. We cannot, therefore, agree fully with the observations of Roy J. in *Corporation of the Town of Calcutta* v. *Ashutosh De* (2). That principle may apply to an assessment falling within cl. (*a*) of s. 127, but even in that case, which was a case of assessment under cl. (*a*), the decision of the Letters Patent Bench, which upheld Mukerji J., does not support fully what Roy J. had said. We, accordingly, hold that in cases coming under cl. (*b*), it would not be legitimate to hold that the word "value" in that clause does not mean "sale value" and excludes the same. We

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cannot also hold that for finding the "estimated "present value of land" the assessor is bound to find out the reasonable hypothetical rent of the whole premises. That would be determining annual value in terms of cl. (*a*), and cl. (*b*) would in that case be redundant. The adoption of the method suggested by the learned counsel for the respondent would in effect introduce into an assessment of a residential building the method formulated in the case of a building let on hire. In our judgment, it is possible to give a reasonable meaning to the phrase "valued "with building" used in cl. (*b*) without adopting the method suggested by him.

Section 127(*b*) directs the determination—

(a) of the present costs of erecting the building, *e.g.*, structures;

and (b) of the present estimated value of the land valued with the building, *etc.*

A deduction on account of depreciation, if any, from the first item gives the nett value of the structures. That is the first item in the calculation. To it must be added the amount of the second item and five per cent. of the grand total is to be the annual or rateable value.

It is a fundamental principle of construction that ordinarily words should not be added to a statute. It is also a fundamental principle that ordinarily words used by the legislature are not to be ignored. No portion of a statutory enactment ought to be disregarded and every word used should, if possible, be given effect to. It is only when there is a manifest absurdity or inconsistency that the *paste* and *scissors* method is to be applied. The words "valued with the building" cannot be ignored, if some meaning can be given to the phrase. Mr. Basu's argument is that those words have been used by the legislature with two objects. Firstly, to indicate that the land on which the building stands and the compound is to be regarded

with the building as *one* unit of assessment; and secondly, to exclude the rental basis for the purpose of arriving at the value of the land in the premises on which the building stands.

With regard to the first contention, the said intention would have been equally expressed without the words "valued with the building" or without the word "valued". The words "estimated present value "of the land with the building as part of the same "premises" would have been sufficient. This construction of Mr. Basu leaves out of consideration the word "valued" used by the legislature.

Mr. Basu supports his second contention thus: He says that cl. (*a*) deals with two subjects: (i) bare land, (ii) building used for hire. But cl. (*b*) deals with buildings only, not with bare land. He says that, but for the phrase "valued with building" in cl. (*b*), it would have been open to the Corporation to estimate the present value of the compound and open spaces included in a house by the method indicated in cl. (*a*). The legislature, by the use of the said phrase, merely intended to exclude that method in the case of assessment of a residential building.

We cannot, however, accept this contention. Clause (*a*) defines the *annual value* of land. In cl. (*b*) the phrase used is not "estimated *annual* value "of land" but "estimated *present* value of land." The word building used thrice in that sub-section has not the same meaning at all the places. The word "building" occurring first obviously means not the structures only. It has the same meaning as in cl. (*a*). It includes the land underneath the structures and all open spaces which go with the house. The word "building" used later on in cl. (*b*) means the structures only. Even without the words "valued with the building", it would not have been legitimate for the Corporation to determine separately the annual value of the lands underneath the structures and the compound in terms of s. 127(*a*), for, in that case, there would be the determination of *two* annual

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values in assessments under cl. (*b*), whereas the legislature has said that there should be only *one*. We cannot, accordingly, accept this contention of Mr. Basu.

It is a well-established principle in rating that property must be valued as it exists at the time, when the rate is made, with all the existing circumstances, *rebus sic stantibus*. Prospective appreciation or depreciation cannot be taken into account by the rating authority, nor can a hypothetical state of things be assumed. We think that the legislature intended to give effect to this principle only when it used the phrase "land valued with the building" in s. 127(*b*). The land is not to be regarded as bare land. It is to be taken in its present disposition and valued. It may be that the nature of the structure then existing on the land may reduce the value of the land to a figure below what it would have had, if it had been in a bare state, or may increase it to a higher figure. But that is a matter for the valuer. Such lands can be valued even without recourse to the process contended for by the respondent's counsel. We, accordingly, overrule the contention of the respondent on this part of the case.

The evidence on the record is, moreover, not such as can lead us to estimate what would be the reasonable rent of the entire premises. Mr. Sawday gives the rate of rent at Rs. 10 or Rs. 11 per hundred square feet in respect of premises which are at a distance and in localities of a different nature. The evidence on the said head by Lalit Mohan Laha carries with us no weight. He made some desultory enquiries with regard to rents paid in respect of some buildings at a distance and in a locality of a different character, but made no attempts to find out the rents paid for buildings near about. The Corporation of Calcutta has led some evidence on the point, but most of the cases relate to office rooms in or near the stock exchange. There is, accordingly, no reliable evidence

on the record, from which a fair conclusion can be drawn as to the letting value of the Writers Buildings. The rent paid by the co-operative bank and the other co-operative societies located in some ground floor rooms afford no sure criterion. They were semi-Government departments.

To support its case about the value of the land, the appellant, the Corporation, has adduced evidence of accepted assessments and has also relied upon a return submitted by the East Indian Railway Administration in respect of premises No. 105, Clive Street, in pursuance of a notice issued by the Chief Executive Officer under s. 136. The said premises is marked 105 in the plan, which shows the Writers Buildings and the adjoining locality. It is almost opposite the Writers Buildings across the street. It has upon it a building almost of the same nature as the Writers Buildings and the plot is almost as big as the plot in question. The value of the land is stated in the return to be Rs. 18,000 per *cottâ*. The assessment was made on that basis and accepted by the assessee. That plot is, however, inferior to the Writers Buildings in situation. It has a northern frontage, whereas the latter faces south with a large open space with a beautiful garden and tank in the south. It is an island plot with broad roads on all the four sides. It is, as Mr. Shrosbee has termed, a spot site in Calcutta. Lalit Mohan Laha, a witness examined by the Government, has admitted the superiority of the Writers Buildings and has stated in his evidence that the value of the land would be 10 to 15 per cent. more than the land occupied by the East Indian Railway offices. This is an admission from an unwilling witness. The value of land of the Calcutta Collectorate was assessed at Rs. 18,500 per *cottâ*. That plot is much inferior to the Writers Buildings. We hold that it would be right and proper to add 15 per cent. to the value of land comprised in the premises occupied by the offices of the

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East Indian Railway Administration. We accordingly assess the present value of the land valued with the building as part of the premises at Rs. 20,700 per *cottâ*. On that basis the annual value works out at Rs. 3,08,036 and the assessment must be on that basis.

We do not consider that the evidence afforded by the aforesaid return or by the accepted assessment of the neighbouring premises on which we have relied as inadmissible in evidence. Those, in our judgment, are relevant facts and admissible under s. 9 of the Indian Evidence Act. In the case of *Pointer* v. *Norwich Assessment Committee* (1) it was held that evidence of the rateable value of other similar premises in the same union is in point of law admissible but it was pointed out that the value afforded by such evidence would depend upon the circumstances and degree of closeness with which the two sets of premises resemble one another. On the question of admissibility *Pointer's* case was approved in *Ladies Hosiery and Underwear Limited* v. *West Middlesex Assessment Committee* (2). In the case before us, we have already pointed out that there are cogent reasons on which the assessment of the Writers Buildings can be made on a comparison with assessment of the East Indian Railway offices and the Calcutta Collectorate.

The result is that this appeal is partly allowed. As the appellant has succeeded very substantially it must have the costs of the this Court and of the lower Court from the respondent. We assess the hearing fee at 15 gold mohurs.

AKRAM J. I agree.

Appeal allowed in part.

N. C. C.

(1) [1922] 2 K. B. 471. (2) [1932] 2 K. B. 679.