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of *Rajmonee Dabee* v. *Chunder Kant Sandel* (1). There are other cases in which a similar doubt arose. These doubts were removed by the amended s. 582 of the present Code, in which it is provided that "in Chapter XXI, so far as may be, the words 'plaintiff,' 'defendant' and 'suit' shall be held to include an appellant, a respondent, and an appeal, respectively, in proceedings arising out of the death, marriage, or insolvency of parties to an appeal." Looking at the express provisions of s. 3 of the present Code, we think that the term "Code" in Art. 171*B*, Sch. II of the Limitation Act, must apply to the present Code (Act XIV of 1882), and this being so s. 368 must be read with s. 582, and the word "defendant" in s. 368 must be held to include a respondent.

[With reference to the question whether the particular facts, as first alleged, were sufficient to explain the reason why the application was made beyond the time allowed by law, the Court directed the appeal to abate, unless the appellant should satisfy the Court by stronger facts on affidavit, that he had sufficient cause for the delay, and on the 13th February 1885 the appellant complied with this order, and the Court considering the facts then alleged (as set out in the body of the report) were sufficient to warrant the delay, made the order of substitution asked for subject to any objection that might be made thereto at the hearing of the appeal.]

Application allowed.

Before Mr. Justice Mitter and Mr. Justice Norris.

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CHOORAMONI DEY AND OTHERS *v.* HOWRAH MILLS COMPANY, LD.*

Land Acquisition Act (*X of* 1870)—*Accretion to parent tenure*—*Reg. XI of* 1825, *s.* 4, *cl.* 1—*Rate of rent*—*Apportionment of compensation awarded.*

The words "increase of rent to which he may be justly liable" contained in cl. 1, s. 4, Reg. XI of 1825, were not intended to lay down an inflexible rule applicable to all cases, and in the absence of any special circumstance

* Appeal from Original Decree No. 182 of 1883, against the decision of C. B. Garrett, Esq., Special Judge under the Land Acquisition Act, sitting at Howrah, dated the 17th of April 1883.

(1) I. L. R., 8 Calc., 440.

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the rate of rent to be assessed upon an accretion should be in proportion to that paid for the parent tenure. Where therefore such accreted land is taken up under the Land Acquisition Act, the compensation awarded should be divided by giving the landlord the value of the rent payable in respect thereof, with 15 per cent. for compulsory sale, and the balance to the tenure holder.

Golam Ali v. *Kali Krishna Thakur* (1) commented on.

THIS was an appeal against a decree apportioning certain compensation granted in respect of lands taken up by the Government under the Land Acquisition Act.

The dispute between the zemindars, the appellants, and the respondents who held a *mourasi* and *mukurari* tenure, related to the apportionment of the compensation granted in respect of two bighas and fifteen cottahs of newly formed land which had accreted to the original tenure.

The facts and the judgment of the lower Court are sufficiently stated in the judgment of the High Court for the purpose of this report.

The *Advocate-General* (the Honorable *G. C. Paul*), Mr. *Dass* and Baboo *Trailokya Nath Mitter* for the appellant.

Mr. *Pugh* and Mr. *McNair* for the respondents.

The judgment of the High Court (MITTER and NORRIS, J.J.) was as follows :—

This appeal has been preferred by the zemindars of Bagi Shibpore, against a decree of apportionment of the compensation granted in respect of two bighas fifteen cottahs of newly formed land which accreted to a *mourasi* and *mukurari* tenure within the zemindari by the recession of the river Hooghly, of which tenure the respondents before us are the proprietors.

The appellants contended that, as the land in question was, under the 1st clause of s. 4, Reg. XI of 1825, added as an increment to the *mourasi* tenure of the respondents, they under that clause were bound to pay rent at the full letting value *minus* a deduction of twenty per cent. as their profits; and that the land having been taken under the Land Acquisition Act, the compensation awarded in respect thereof should be divided in the proportions of 80 per cent. to the appellants and 20 per cent. to the respondents.

(1) I. L. R. 7 Calc., 479.

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The respondents admitted that they were liable to an increased rent, but contended that such an increased rent should bear the same proportion to the rent of the original tenure as the quantity of land accreted bears to the area of the original tenure, and that the compensation awarded should be divided by giving the appellants the value of rent of the accreted portion taken upon the above basis, *plus* 15 per cent. for compulsory sale, and the balance to them.

The lower Court has accepted the contention of the respondents as correct.

In *Golam Ali* v. *Kali Krishna Thakur* (1) it was held that accreted lands should be governed by the terms and conditions applicable to the parent tenure, and that the same rent was payable for it as for the land included within the *kabuliat*. Reading the judgment of Mr. Justice PONTIFEX I do not think that any inflexible rule was intended to be laid down as applicable to all cases; but that, having regard to the particular circumstance of that case, it was thought that the accreted land should bear the same rent as was payable in respect of the land included in the original tenure. If I have rightly apprehended the purport of this decision, I feel no hesitation in following it. The words "increase of rent to which he may be justly liable," contained in cl. 1, s. 4 of Reg. XI of 1825, indicate to my mind that it was not intended to lay down any inflexible rule applicable to all cases. For example, where a *mukurari* was granted at the full letting value of the land comprised in it, it would be unjust to the tenant to assess the newly added land at the rate of the original *mukurari*, if the accreted lands be of inferior quality. On the other hand, if the accreted lands be of superior quality, or if in fixing the *mukurari* rent a lower standard than the full letting value was adopted in consideration of any bonus paid, it would be unjust to the landlord to fix the rent of the accretion at the rate of rent fixed in respect of the original tenure. But in the absence of any special circumstance the rate of rent to be assessed upon the accretion in my opinion should be in proportion to that paid for the parent tenure. In

(1) I. L. R. 7 Calc., 479.

this case no special circumstance is shown to exist. The decision of the lower Court upon this point is therefore correct. 1885

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(The Court then proceeded to deal with the other questions raised in the appeal, and concluded by varying the decree of the lower Court in certain particulars immaterial for the purpose of the report.)

Appeal allowed and decree modified.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Beverley.

BHUBAN PARI AND OTHERS (DEFENDANTS) *v.* SHAMANAND DEY (PLAINTIFF).* 1885 *June* 17.

Land Tenure, Transfer of—Mourasi survarakari tenure, The mode of succession to—Consent of the zemindar to the transfer.

The tenure known in Orissa as *mourasi survarakari*, although recorded in the name of a single member, is descendible to all the heirs as joint heritable property, and cannot be transferred without the consent of the zemindar.

THE plaintiff brought this suit on the allegation that a certain mouzah within his zemindari, which was originally recorded in the name of one Michu Pari had since his death been settled with and stood in the name of his son, Karunakar, defendant, as *survarakar*; that under the Bengal Government Resolution of the 25th September 1838, the *survarakar* was entitled only to collect the rents and was not competent to alienate or divide the mouzah without the consent of the zemindar; that defendants 1 to 5, the coparceners of Michu and Karunakar, were not entitled to the property nor had they any right to sell their share to defendant No. 6; that Karunakar had by a deed of relinquishment transferred the tenure to the plaintiff (zemindar) and the plaint prayed that the *kobala* of sale in favor of defendant No. 6 be declared void and *khas* possession of the mouzah be given to the plaintiff.

The Munsiff found that the *survarakari* was a joint heritable tenure and dismissed the suit. The lower Appellate Court held

* Appeal from Appellate Decree No. 563 of 1884, against the decree of J. B. Worgan, Esq., Officiating Judge of Cuttack, dated the 7th of January 1884, reversing the decree of Baboo Haranath Ghose, Rai Bahadur, Munsiff of Balasore, dated the 5th of October 1882.