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

MAHOMED MAHMOOD (PLAINTIFF) *v.* SAFAR ALI (DEFENDANT.)* 1885 *March* 30.

Issues, Frame of—Collection papers—Road Cess papers—Evidence—Act XIV of 1882, s. 147.

A Court, in framing issues, is not bound down to the language of the plaint and written statement; but may frame them not only from the pleadings, but also from the statements of the parties and their pleaders made before the Court.

THIS was a suit for rent for the year 1290 F. S.; the plaintiff claimed rent at Rs. 11-1-6, alleging that the defendant in 1288 F. S. had entered into a *kabuliat* for the term of one year, and that after the expiration of that term he had continued to hold possession of the land on the footing of the terms of the *kabuliat*.

The defendant denied execution of the *kabuliat*, but stated that he held the land at a rental of Rs. 5-6 per year. The Munsiff framed the following issue:—"What is the amount of the *jumma* held by the defendant?"—and found that the plaintiff had failed to prove both the *kabuliat* and the *jumma* rate at which he claimed, but inasmuch as the defendant had admitted the rate to be Rs. 5-6, he gave the plaintiff a decree for that amount. The plaintiff appealed to the Subordinate Judge, who found on the strength of certain collection papers, dated previously to 1288, that the rent of the land in question was Rs. 10-12-1, and on this, coupled with the evidence of certain witnesses who stated that rent had been paid at that rate for previous years, and the corroboration of these statements by the road cess papers, he gave the plaintiff a decree for Rs. 10-12-1.

The defendant appealed to the High Court. Mr. Justice *Field* was of opinion that the issue fixed by the Munsiff was too indefinite, and that the proper issue in the case was: "Is the rent

* Appeal under s. 15 of the Letters Patent, against the decree of Mr. Justice Field, one of the Judges of this Court, dated the 7th of March 1884, in Appeal from Appellate Decree No. 2097 of 1882, against the decree of Baboo Uma Charan Kastagiri, First Subordinate Judge of Tipperah, dated the 28th of June 1882, varying the decree of Baboo Jadupati Banerji, First Sudder Munsiff of that district, dated the 21st of November 1881.

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"of the defendant Rs. 11-1-6 as alleged by the plaintiff?" And considered that the issue should be taken to mean, "with reference to the allegation of the parties, what is the amount of the "*jumma* held by the defendant; was it Rs. 11-1-6 as alleged by the plaintiff, or Rs. 5-6 as alleged by the defendant?" And holding that the Subordinate Judge was wrong in admitting the road cess and collection papers as evidence against the defendant, and in deciding the case, not according to the allegations of the parties in the pleadings, but according to the statement of a witness, allowed the appeal.

The plaintiff appealed under s. 15 of the Letters Patent.

Baboo *Aukhil Chunder Sen* for the appellant contended, amongst other matters, that it was open to the Munsiff to frame issues upon points on which the parties were at variance, and that in so doing he was not restricted to the allegation contained in the plaint and written statement.

Munshi *Serajul Islam* for the respondent contended that the Subordinate Judge had wrongfully received in evidence against the defendant the road cess and collection papers.

Judgment of the Court was delivered by

GARTH, C.J. (MCDONELL, J., concurring).—In this suit the plaintiff claimed to recover from the defendant under a *kabuliat* at a *jumma* of Rs. 11-1-6.

The defendant's case on the other hand was, that the *jumma* was only Rs. 5-6.

The issue fixed by the Munsiff was, "what is the amount of the "*jumma* held by the defendant?"

The Munsiff found that the *kabuliat* was not proved. He also found that the plaintiff had not proved the *jumma* rate, which he claimed; but as the defendant admitted the amount to be Rs. 5-6, he gave the plaintiff a decree for that sum.

The case was then appealed to the Subordinate Judge, and upon going into the evidence he found that the proper amount of the *jumma* was Rs. 10-12-1. In arriving at that conclusion, he appears to have taken into consideration three items of evidence:—

First, he says that certain collection papers for the period prior

to 1288 had been filed; that it did not appear that the first Court rejected these papers as being false, and that the *jumma* mentioned in them in respect of the *jote* in question was Rs. 10-12-1.

Secondly, he says there is evidence to show that that amount had been realized, and that it had been proved by witnesses for the plaintiff that the defendant had paid rent for previous years at that rate.

And, lastly, he says, that the road cess papers filed before the District Judge, although not binding on the tenant, also go to show what the witnesses have proved.

On appeal to this Court it has been contended by the defendant that the Subordinate Judge has taken into consideration evidence that was not admissible.

It is said that the collection papers are no evidence *per se*, and can only be used when they are produced by a person who has collected rent in accordance with them, and who merely uses them for the purpose of refreshing his memory.

Then again it is said that the road cess papers are not admissible against the defendant either as substantive evidence or as corroborative evidence. In fact, that the plaintiff had no right to use them against the defendant at all.

The learned Judge of this Court considers both these objections to be well founded, and in this we concur. But he has also raised another point, upon which we cannot agree with him.

He says the proper issue in the first Court was not "what was the amount of the *jumma* held by the defendant," but whether the defendant's rent was Rs. 11-1-6, as the plaintiff said it was, or Rs. 5-6-0 as the defendant said it was? He says that it was not competent for the Munsiff to raise any other issue or for the Subordinate Judge, having regard to the pleadings, to find that any intermediate sum was the correct *jumma*.

We cannot agree with this view of the matter. It does not appear what materials the Munsiff had before him at the time when he framed the issue; and, so far as we can see, that issue was probably better calculated than any other to ascertain what was the proper amount of the *jumma*, and to do justice between the parties. It might be that the plaintiff had overstated the

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jumma, or that the defendant had understated it; and if both parties were mistaken, it was surely right that the proper *jumma* should be ascertained in this suit, rather than that the delay and expense of another suit should be incurred. Under the present Code a Court is by no means bound, in framing the issues, by the language of the plaint and written statement. By s. 147 of the Code the issues may be framed, not only from the pleadings, but from the statements of the parties and their pleaders, when they come before the Judge; and it seems to us that the issue framed in this case was perfectly unobjectionable, and probably best adopted to do justice between the parties.

As to the other points, we think they afford ground, not for restoring the judgment of the Munsiff, but for sending the case back to the lower Appellate Court, in order that the proper amount of rent may be ascertained, without reference to the collection papers, and the road cess papers, which are not evidence against the defendant.

The Judge must decide the issue upon the other evidence in the case.

The costs of both hearings in this Court and of the lower Appellate Court will abide the result.

Case remanded.

APPELLATE CRIMINAL.

Before Mr. Justice Field and Mr. Justice Beverley.

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NETAI LUSKAR (APPELLANT) *v.* QUEEN EMPRESS (RESPONDENT.)*

Charge of murder, Statement by the accused in answer to—Penal Code, ss. 302, 300, *exc.* 1 *and Expl.—Plea of guilty—Act X of* 1882, *ss.* 271, 299.—*Criminal Procedure Code.*

An accused person in answer to a charge of murder stated that he had killed his wife; but that he had done so in consequence of his having discovered her in an act of adultery on the previous day: *Held*, that such a statement did not amount to a plea of guilty on the charge; and that it was the duty of the Court to try whether the provocation, therein disclosed, was sufficiently grave and sudden to reduce the offence.

* Criminal Reference No. 11 of 1885, and appeal No. 187 of 1885, against the order of C. B. Garrett, Esq., Additional Sessions Judge of 24-Pergunnahs, dated the 5th of March 1885.