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next day. Applying the same principle here, if, on the 19th of January, which in that case was within time, or on the expiration of four days from that date the application had been refused, the decree-holder would have been in time to make a fresh application in proper form. Therefore it seems to us that the Court not having dismissed the application on the expiration of the four days allowed by it, and allowed the petition to remain on the file, the case comes within the purview of the decision cited. As to the other difference it is no difference at all, because, instead of allowing the vakeels to amend the petition while it was on the file of the Court, the Court simply allowed the vakeel to take it away and to amend it within the time given by the Court. That would not make any difference as to the application of the principle upon which the decision cited was passed. That being so, and it not being shown that the decision cited does not correctly lay down the law, we dismiss these appeals but without costs.

Appeals dismissed.

Before Mr. Justice Maclean and Mr. Justice Field.

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March 31.

WATSON & Co. (DEFENDANTS) *v.* NISTARINI GUPTA (PLAINTIFF.)*

Vis major—Ijara Settlement—Land acquired by Government for public purposes—Deduction from Rent.

An ijaradar took on lease certain lands, giving a *kabuliat* which contained the following clause:—"In regard to the aforesaid rent we take upon ourselves the risk of flood and drought, of death and flight, of alluvion and diluvion, of profit and loss. In no case shall we be able to claim a reduction in the rent, nor will it be open to you to demand more on account of alluvion, &c."

During the lease part of these lands were taken up by Government for the purpose of a railway, and compensation was paid to the lessor therefor. The ijaradar claimed to make a deduction from his rent for the land taken away from him. Held, that such a claim did not come under the meaning of the words "abatement" as used in the rent law, nor was it intended by the parties to be within the clause of the lease, but the land having been taken from the whole area demised, not by natural causes, but by *vis major*, the ijaradar was entitled to a deduction from the rent on his showing that there were tenants of his on the land who, before the land was taken by Government, paid rent to him which they had now ceased to pay.

* Appeal from Appellate Decree No. 1529 of 1882, against the decree of Baboo G. C. Chowdhry, Subordinate Judge of Rajshahye, dated 11th of May 1882, reversing the decree of Baboo Kali Charan Ghosal, Sudder Munsiff of Beauleah, dated 16th of August 1881.

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In this case the defendants took from the plaintiff an ijara settlement of certain lands at yearly rental of Rs. 585 for a term of ten years from 1277 to 1286.

During the continuance of this settlement part of the lands included in the ijara were taken up by the Northern Bengal Railway Company, and for these lands so taken up the plaintiff had received compensation from Government. The kabuliat given by the defendants contained amongst others the following clause:—"In regard to the aforesaid rent fixed at Rs. 585, we take upon ourselves the risk of flood and drought, of death and flight, of alluvion and diluvion, of profit and loss. In no case shall we be able to claim a reduction in the rent; nor will it be open to you to demand more on account of alluvion" &c.

"উক্ত বার্ষিক ৫৮৫ টাকা জমায় হাজা শুখা, ফৌতি ফেরারী, সিকস্তি পয়স্তি, লাভ লোকসান জেয়া আমাদিগের কোন বাবতে জমা কমির আপত্তি করিতে পারিব না, আপনারাও নদি পয়স্তি ইত্যাদি কোন বাবতে বেশি তলব করিতে পারিবেন না।"

The defendants paid their rent up to 1285, and for 1286 paid to the plaintiff a sum of Rs. 63 only, stating that they were entitled to obtain a deduction in their rent for the lands taken up by the Government for the railway.

The plaintiff then brought the suit for arrears of rent for the year 1286, contending that the words of the kabuliat prevented the defendants from making any deduction for any purpose. The defendants contended that the deduction should be made.

The Munsiff dismissed the plaintiff's suit, deciding that the defendants were entitled to an abatement of rent.

The plaintiff appealed to the Subordinate Judge, who found that it was clearly the intention of the parties that the lessee should not be able to claim abatement on any account, and that although the ground on which abatement was claimed by the defendants was not specially mentioned in the kabuliat, yet the words "in no case" were wide enough to prevent them claiming any abatement for any purpose whatever, and he therefore held that the defendants were precluded under the terms of the kabuliat from claming any abatement, and gave the plaintiff a decree.

The defendants appealed to the High Court.

Baboo *Bhowani Charan Dutt* for the appellants.

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Baboo *Kali Prosunno Dutt* for the respondent.

The judgment of the Court was delivered by

FIELD, J.—We think that the lower Appellate Court has taken a mistaken view of this case. The suit was one for rent against an ijaradar. The ijaradar claimed a deduction in respect of certain land which was taken up for public purposes, that is to say, for a railway. The Munsiff held that the special stipulation in the kabuliat relied upon by the plaintiff did not cover a case of this kind. The Subordinate Judge took a different view and held that the clause in the kabuliat was wide enough to cover the case of land taken for public purposes.

We have heard the clause in the kabuliat, and we think it was intended to meet the ordinary cases in which the area of land demised is diminished by diluvion, or other similar causes, and that the present case is not within the intention of the parties. Looking at the question from another point of view, it would be inequitable that the zemindar, who has received the whole amount of compensation, should be allowed further to obtain from the ijaradar the former rent undiminished; in other words, after receiving the principal, should be allowed to continue to receive interest on this principal in the shape of rent. We think that this is not properly a case of abatement, as that term is ordinarily used in the rent law. It is a case in which the tenant seeks to have a deduction in respect of land taken away from the whole area demised, not by natural causes, but by *vis major*. In this view we think that the ijaradar is entitled to a deduction. But in order to obtain this deduction, we think he ought to show that in consequence of the land being taken for the railways, his receipts from the tenants of his ijara have been diminished; in other words, that there were tenants on the land who, before it was taken, paid him rent, which they have ceased to pay since it was taken for the railway. The appellants' vakeel informs us that there is evidence of this nature on the record, and we must direct therefore the lower Appellate Court to consider such evidence and decide the case accordingly. We set aside the decree of the lower Appellate Court, and remand the case for a fresh decision. The costs will abide the result.

Appeal allowed and case remanded.