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infinitesimal accretions caused by the recession of a river. So long as lands were capable of identification by lines drawn from one place which had not been submerged to another, clause 1 could never apply according to that view; and indeed, on that view of the construction of clause 1 of section 4, it is difficult to understand what would have been the necessity of enacting clause 2. We must put a natural construction upon clause 1, and we hold that, whether the accreted lands are capable of identification or not, the clause applies where the lands have been gained by gradual accession by the recession of the river. It does seem rather hard in this case that lands undoubtedly belonging to these plaintiffs should, by the perverse course which the river Rapti chose to take, become vested in the defendants, but we have to apply the law as we find it. It was unfortunate for the plaintiffs that the river was not as accommodating to them as to the defendants, but suddenly altered its course. We set aside the decree of the lower appellate Court, and restore the decree of the first Court with costs in all Courts, and dismiss the respondents' objections with costs.

Appeal decreed.

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January 12.

Before Mr. Justice Knox and Mr. Justice Burkill.

CHUNNI LAL AND ANOTHER (PLAINTIFFS) v. AJUDHIA PRASAD AND
OTHERS (DEFENDANTS).*

Act No. VII of 1870 (Court Fees Act), Section 10, cl. ii—Court fees—Suit insufficiently valued—Order for payment of additional Court fees—Power of Court to enlarge time for payment

Held that it is competent to a Court which has made an order under section 10, cl. ii, of Act No. VII of 1870 for the payment of an additional Court fee to enlarge, either before or after its expiration, the time limited for the payment of such additional fee. *Budri Narain v. Mussamat Sheo Koor* (1) and *Bhugwan-das Bagla v. Haji Abu Ahmad* (2) referred to.

The plaintiffs in this case sued to recover possession of certain zamindari property and some houses, which latter they valued for the purposes of this suit at Rs. 1,400. One of the defendants to the suit in his written statement objected that the houses in

* First Appeal, No. 33 of 1895, from a decree of Rai Banwari Lal, Subordinate Judge of Sháhjahánpur, dated the 4th December 1894.

(1) L. R., 17 I. A., 1.

(2) L. R., 16 Bom., 268.

question were undervalued, and that in consequence the plaint was not sufficiently stamped and ought to be rejected. The Subordinate Judge thereupon himself inspected the houses, and having recorded his opinion that the proper value was Rs. 2,100, ordered the deficiency in the Court fee to be made good within four days from the date of the order, which was made on the 23rd of November 1894. On the 28th of November the plaintiffs came into court and asked for an extension of the period fixed for payment of the additional Court fee by one day, on the ground that, the treasury having closed, they could not obtain the requisite stamps on that day. The Subordinate Judge, apparently being of opinion that the time limited had not expired, granted the plaintiffs the time they asked for, and on the following day the deficiency was made good.

When the suit came on for hearing, the objection as to deficiency of Court fee was again raised by the defendants, and it was contended that the payment made under the order last mentioned was made too late. The Subordinate Judge accepted this contention, stating that he had been misled as to the time when the period limited for making good the deficiency in the court-fee expired. The Subordinate Judge held that the plaint should be rejected under s. 54 (b) of the Code of Civil Procedure, and passed orders accordingly.

The plaintiffs appealed to the High Court.

Pandit *Sundar Lal* and *Munshi Gobind Prasad*, for the appellants.

The respondents were not represented.

KNOX and BURKITT, J.J.—This is an appeal from an order rejecting a plaint purporting to have been passed under section 54, cl. (b) of the Code of Civil Procedure. The plaintiff sued for possession of certain lands and houses. One of the defendants in the written statement filed by him set out that the relief sought had been undervalued. In course of time the Court proceeded to determine the question thus raised by inspection of the house property in dispute. It came to the conclusion that the property

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had been undervalued, and fixed what it deemed a correct value, and directed that the plaintiff should within four days supply the deficient Court fee stamps. This order was passed on the 23rd of November 1894. On the 26th of November; that is, before the four days granted had expired, the plaintiff brought a portion of the deficient Court fees into Court, and asked permission to withdraw his claim to a portion of the house property with leave to sue again for the portion thus omitted. The Court very properly refused to grant the petition under section 373 of the Code until the Court fee duty still deficient had been paid in. The order just recited was passed on the 28th of November. The plaintiff then said that the treasury was closed and he could not put in a Court fee stamp, but he tendered a sum of money equivalent to the deficiency of the Court fees. The Court, being under the erroneous impression, as it says in its order, that the four days granted under the order of the 23rd had not expired, allowed the plaintiff one day more within which to make good the deficiency, and on the 29th the deficiency was paid in Court fees stamps within the period thus enlarged. The defendant objected to the receipt of the deficient Court fees on the 29th on the ground that the time granted had already expired. The Court on the 4th of December allowed the contention raised by the defendant to prevail, and, thinking the case fell within section 54, clause (b), and that it had no option but to reject the plaint, so rejected it.

Neither clause (a) nor (b) of section 54 of the Code had any reference to the case before the Court. The plaintiff had not been required by the Court to correct the valuation, and had not refused to make any correction: clause (a) therefore does not apply. The relief sought had not been properly valued, so clause (b) could have no application. The order rejecting the plaint, therefore, was in any case wrong.

The law under which the Court could have acted and ought to have acted was clause ii of section 10 of Act No. VII of 1870. That section provides that, when a Court finds after investigation that the value placed on property in dispute has been insufficient, it shall require the plaintiff to pay so much additional fees as would

have been payable on a correct valuation, and clause ii provides that the suit shall be stayed till the additional fees be paid. If the additional fees be not paid within such time as the Court shall fix, the suit shall be dismissed. The order which the Court, therefore, should have passed was not an order rejecting the plaint, but an order dismissing the suit.

The contention which the defendant raised was precisely similar to that which was raised in reference to an extension of time which had been asked for, but was refused by the High Court of Calcutta, on an application under section 549 of the Code of Civil Procedure. The words in that section setting forth the consequences of not furnishing security within a fixed time are almost identical with the words used in section 10, clause ii, of Act No. VII of 1870. The case in question is *Budri Narain v. Mussamat Sheo Koer* (1). The Privy Council held that an application to enlarge the time for giving security may be made either before or after the expiration of the time within which the security has been ordered to be furnished, and that the Court may thereupon enlarge the time according to any necessity which may arise when it is just and proper that such an extension should be given; but, if ultimately the order is not complied with and the security not furnished, the appeal may be dismissed.

The words used in section 10, clause ii, of Act No. VII of 1870, that the "suit shall be dismissed," are no stronger and not more imperative than the words "the Court shall reject the appeal" in section 549 of the Code. We have no doubt that the interpretation put by their Lordships on the words in section 549 of the Code of Civil Procedure should be applied to the words in section 10 of Act VII of 1870. We note that in the case of *Bhugwandas Bagla v. Haji Abu Ahmad* (2) the construction put by their Lordships on section 549 was held to be applicable to the words "the plaint shall be rejected" in section 54 of the Code. We hold that the order passed on the 28th of November in this case, granting the extension of one day,

(1) L. R., 17 I. A., 1, at p. 3.

(2) I. L. R., 16 Bom., 263.

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was a valid order and under the circumstances a reasonable order.

We, therefore, decree the appeal, and set aside the order of the Court below with costs, and we direct the record to be returned to the lower Court which will dispose of the case according to law.

Appeal decreed and cause remanded.

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January 12

Before Mr. Justice Banerji and Mr. Justice Aikman.

SRI RAMAN LALJI MAHARAJ (DEFENDANT) v. GOPAL LALJI MAHARAJ
(PLAINTIFF).*

Act No. XV of 1877 (Indian Limitation Act), Schedule ii, Art 61—Limitation—Suit for money payable to the plaintiff for money paid for the defendant.

Under an award two persons were made liable each for the payment of a moiety of the expenses of certain temples which were held jointly. One of the persons so made liable, alleging that he had paid more than his share of the expenses, sued the other for the balance in excess of the moiety which he was bound to pay under the award. *Held* that the suit was governed by Art. 61 of the second schedule to the Indian Limitation Act, 1877, and that, although the taking of accounts might be necessary, the suit was not a suit for an account to which Art. 120 of the same schedule might apply. *Rohan v. Jwala Prasad* (1) referred to.

The facts of this case sufficiently appear from the judgment of the Court.

Pundit *Sundar Lal* and *Munshi Kulindi Prasad*, for the appellant.

The Hon'ble Mr. *Colvin* and Mr. *D. N. Banerji*, for the respondent.

BANERJI and AIKMAN, J.J.—The parties to this appeal and the defendants Nos. 2 and 3 in the Court below are joint owners of certain temples in Muttra and Gokal. Disputes having arisen between them in regard to the temple property, those disputes were referred to arbitration, and on the 15th of March 1883, an award was made by the arbitrators which defined the rights of the parties.

* First Appeal, No. 12 of 1895, from a decree of Maulvi Abdul Rahman, Subordinate Judge of Agra, dated the 5th December 1894.

(1) L. L. R., 16 All., 333.