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we think, come within the meaning of the expression "houses." In the present case the new indigo factory was built subsequently to the date of the last settlement of the lands in dispute, and the site of it is assessed with Government revenue, but this coincidence cannot, we think, be regarded in determining the true meaning of the section of the Court Fees Act to which we have referred: The substantial subject-matter of the suit, so far as regards the new indigo factory, was not the site of the factory, but the factory itself. If the subject-matter of the suit had been the new indigo factory alone, it seems to us that it could not reasonably have been argued that the Court fee was to be computed according to the amount of revenue payable to Government in respect of the site, and not according to the market value of the buildings, &c.

We are of opinion for these reasons that the plaintiff, when he claimed in his plaint a right to pre-empt the new indigo factory, was bound to value it according to its market value for the purposes of the Court fee, as in fact he did purport to do. Unfortunately he undervalued it and must take the consequences. The case is no doubt a hard one upon him, for he paid the additional Court fee which was required of him only to find that his suit was statute-barred. We must, for these reasons, dismiss the appeal with costs.

Appeal dismissed.

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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkill.

BURI SINGH AND ANOTHER (PLAINTIFFS) v. NAWAL SINGH
AND OTHERS (DEFENDANTS).*

Parties to suit—Practice—Suit by some only of several persons entitled to sue, the others being joined as co-defendants.

Where out of several persons who apparently had a right to bring a suit as co-plaintiffs, some only appeared as plaintiffs and joined the others as co-defendants. *Held* that the suit ought not to have been dismissed merely because the plaintiffs failed to show that the persons whom they joined as co-defendants refused to appear with them as plaintiffs. *Pyari Mohun Bose v. Kedar Nath Roy* (1) followed. *Dwarka Nath Mitter v. Tara Prosunna Roy* (2) referred to.

* First Appeal No. 305 of 1898 from a decree of Pandit Raj Nath Sahib, Subordinate Judge of Mainpuri, dated the 29th September 1898.

(1) (1899) I. L. R., 26 Calc., 409. (2) (1889) I. L. R., 17 Calc., 160.

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THE plaintiffs brought the suit out of which this appeal arose to recover the amount alleged to be due to them upon a mortgage, dated the 25th of September 1875, and offering to redeem, if necessary, prior mortgages. The original mortgagees were Lachman Singh and Zalim Singh. Of the two plaintiffs, one, Biri Singh, was the son of Lachman Singh, whilst the other, Nita Ram, was the transferee of the interest of Zalim Singh in the mortgage sued upon. In paragraph 3 of their plaint the plaintiffs stated that the mortgage money had been borrowed by the defendants or their ancestors from "Lachman Singh, the father and leading member of the joint family of the plaintiff Biri Singh and of the plaintiff Nita Ram", and, apparently on the basis of the family being joint, they made defendants to their suit certain members of the family, namely, Bhup Singh, Bijai Singh, Bajan Singh and Kauchan Singh. When the suit, however, came to a hearing, the plaintiffs, on an issue as to whether Lachman Singh ought to have been made a party to the suit, pleaded that the family was separate. As regards Lachman, it was found that he had died, so that that issue became immaterial. The Court of first instance (Subordinate Judge of Mainpuri), however, found that the family was joint, and that the four persons above mentioned ought to have been made plaintiffs in the cause, and because it did not appear that the plaintiffs had given them the option of joining in the suit and that they had refused, he dismissed the suit. In taking this view of the law the Subordinate Judge relied on the case of *Dwarka Nath Mitter v. Tara Prosunna Roy* (1). Against the dismissal of their suit the plaintiffs appealed to the High Court.

Pandit *Sundar Lal* (for whom *Durga Charan Banerji*), for the appellant.

Babu *Jogindro Nath Chaudhri*, Pandit *Moti Lal Nehru*, (for whom Pandit *Tej Bahadur Sapru*) and Babu *Jivan Chandra Mukerji*, for the respondents.

STANLEY, C.J. and BURKITT, J.—This is an appeal from a decree of the Subordinate Judge of Mainpuri dismissing the plaintiff's suit, which was brought to recover the amount due to them upon a mortgage, dated the 25th of September, 1875, and

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to redeem, if necessary, any prior mortgages. The mortgagees in the mortgage-deed are Lachman Singh and Zalim Singh. The plaintiff Biri Singh is the son of Lachman Singh, and Nita Ram is admittedly entitled to the interest of Zalim Singh in the mortgage. The plaintiffs made parties as defendants to the suit, four persons, who are members of their family, namely, Bhup Singh, Bijai Singh, Badan Singh and Kaanchan Singh. One of the issues which was framed was an issue as to whether or not the suit could be proceeded with against these defendants, or was it necessary to make Lachman Singh a party to it, the parties at the time the issue was framed being under the impression that Lachman Singh was then alive. As a matter of fact Lachman Singh was then dead, so there was an end to this issue. The learned Subordinate Judge, however, thought fit to consider whether or not, under the circumstances of this case, the plaintiffs could succeed in establishing their claim without having arrayed the four persons above mentioned as plaintiffs instead of as defendants. He found that they and the plaintiffs were members of a joint Hindu family, and relying on the decision in the case of *Dwarka Nath Mitter v. Tara Prosunna Roy* (1), determined that the members of the family, who were arrayed as defendants, ought to have been joined as plaintiffs, and, accordingly, that the suit could not proceed. The decision upon which the learned Subordinate Judge relied has been overruled by a Full Bench of the Calcutta High Court, consisting of the Chief Justice and four judges, in the case of *Pyari Mohun Bose v. Kedar Nath Roy* (2), in which it was decided, with the concurrence of both of the Judges who decided the earlier case of *Dwarka Nath Mitter v. Tara Prosunna Roy*, that where two parties contract with a third party, a suit by one of them making the other a co-defendant ought not to be dismissed merely because the plaintiff has not proved that the co-defendant had refused to join as a co-plaintiff. This case disposes of the authority upon which the learned Subordinate Judge relied. We may observe, however, that it was quite apparent from the written statement which was filed by three of the defendants in question that they disclaimed all interest in the subject-matter of the suit, and

(1) (1889) I. L. R., 17 Cal., 160.

(2) (1899) I. L. R., 26 Cal., 409.

would not willingly have been made plaintiffs to it. We therefore must allow the appeal, set aside the decree, and, as the case has been decided on a preliminary point, we remand it under section 562 of the Code of Civil Procedure to the lower Court, to be replaced on the file of pending cases under its original number in the register, for the determination of the issues which have been left undecided. The costs of this appeal must abide the event.

Appeal decreed and cause remanded.

Before Mr. Justice Knox and Mr. Justice Blair.

PITAM MAL (DEPENDANT) v. SADIQ ALI (PLAINTIFF) AND SUGHRA
FATIMA AND OTHERS (DEPENDANTS.)*

*Award—Appeal from decree based on an award—Civil Procedure Code,
section 506—“All the parties to the suit.”*

Held that the words “all the parties to a suit” in section 506 of the Code of Civil Procedure refer to the succeeding words of the same section “any matter in difference between them in the suit,” and would not necessarily include parties who never put in any appearance in the Court, and between whom and any of the parties to the submission there was not in fact any matter in difference in the suit. *Deo Nandan v. Bhirgu Rai* (1).

THIS was a suit for sale upon a mortgage. During the pendency of the suit the plaintiff and the answering defendants agreed to refer the matters in dispute between them to arbitration. An award was pronounced. Subsequently one of the defendants raised objections to the award, but those objections were disallowed, the Court of first instance holding that it was sufficient that the plaintiff and the answering defendants who had entered an appearance were parties to the submission, and that it was not necessary to join those of the defendants who had never appeared in Court at all. The award was made a rule of Court, and a decree passed thereon. Against this decree the objecting defendant appealed to the District Judge. His appeal was dismissed, and he again appealed to the High Court, raising his former objection that the arbitration was invalid, and the consequent award illegal because all the parties to the suit did not consent to

* Second Appeal No. 870 of 1898, from a decree of L. M. Thornton, Esq., District Judge of Farrukhabad, dated the 6th September 1898, confirming a decree of Rai Anant Ram, Subordinate Judge of Fatehgarh, dated the 23rd December 1897.

(1) Weekly Notes, 1887, p. 215.

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