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tiff says, moreover, that it was discussed for some fifteen days, and altered." In another part of his judgment he says: "The defendants have not produced clear proof that plaintiff entered into a special agreement about interest, nor that he authorised them to include other debts in the mortgage deed, or to appropriate payments on account of decrees to the liquidation of other claims, but it is only reasonable to assume that, when the defendants were entering into such a heavy transaction with the plaintiff, they would make a general settlement of their claims, and not leave small, or comparatively small, debts outstanding." It appears to their Lordships that, putting a correct construction upon the deed, and taking the evidence which was adduced, and the findings of the learned Judge, there is no reason to suppose that there was any fraud or deceit on the part of the defendants, or that there was any mutual mistake of the parties as to the amount which was stated as the sum for which the security was to be given.

Under these circumstances their Lordships are of opinion that the decision of the Judge, who tried the case in the first instance, and the decree of the Judicial Commissioner who affirmed that decision, are correct, and they will, therefore, humbly advise Her Majesty that the judgment below be affirmed, and that the appeal be dismissed, the appellants paying the costs of the appeal.

*Appeal dismissed.*

Solicitors for appellants: Messrs. *Barrow & Rogers.*

Solicitors for the respondents: Messrs. *Watkins & Lutley.*

C. B.

## APPELLATE CIVIL.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Cunningham.*

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 February 10. HOSSAIN BUX (PETITIONER) *v.* MUTOOKDIHAREE LALI AND OTHERS  
 (OPPOSITE PARTIES).\*

*Bengal Tenancy Act (VIII of 1885), ss. 93, 143—Manager, Application for—Appeal—Civil Procedure Code (Act XIV of 1882), s. 2.*

An application under s. 93 of the Bengal Tenancy Act, 1885, is not a suit between a landlord and tenant within the meaning of s. 143, and no appeal lies from an order rejecting such an application.

\* Appeal from Order No. 396 of 1886, against the order of T. Smith, Esq., District Judge of Gya, dated the 11th of August, 1886.

On the 11th August, 1886, one Hossain Bux, who held a mokurari tenure in a portion of an estate, applied in the Court of the District Judge of Gya for an order, under s. 93 of the Bengal Tenancy Act, 1885, for the appointment of a common manager to the estate. This application was opposed by certain persons, who, although admitting that they collected their rents separately from the petitioner, denied his right to have a manager appointed.

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The District Judge, holding that the petitioner was not a co-owner with the objectors opposing the application, refused to appoint a manager, intimating that the petitioner should sue the ryots for his share of the rent, making the objectors parties to the suit.

The petitioner appealed against the order.

Baboo *Saligram Singh* for the respondents took a preliminary objection that no appeal lay; the application not being a suit between a landlord and tenant within the meaning of s. 143 of the Bengal Tenancy Act; contending that under that section the Civil Procedure Code regulated appeals, no rules having as yet been framed under the Act, and that under the Civil Procedure Code there was no provision for an appeal from such an order.

Mr. *M. L. Sandel* for the appellant contended that the order amounted to a decree within the meaning of s. 2 of the Civil Procedure Code.

The judgment of the Court (PETHERAM, C.J. & CUNNINGHAM, J.) was delivered by

PETHERAM, C.J.—It appears, on an examination of the Code, that the order in question is not a suit within the meaning of s. 143 of the Bengal Tenancy Act of 1885, as the operation of that section is confined to suits between landlord and tenant. This is not a proceeding between landlord and tenant, but a proceeding initiated by some third person who does not fill either of these positions. Under these circumstances, and it not being shown to us that unless it comes within the meaning of s. 143, this order would be appealable at all, we must hold that the order is not appealable, and therefore we must dismiss the appeal for that reason.

T. A. P.

*Appeal dismissed.*