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should have considered myself insulted by the presentation of a petition in the language of that which has formed the basis of the present prosecution, though I might possibly have pointed out to the person responsible for the drafting that his object could be attained by a petition more courteously worded. I do not think this conviction can be sustained. I set it aside accordingly, acquit Murli Dhar and Ganga Saran of the offence charged and direct that the fine, if paid by them, should be refunded.

Conviction and sentence set aside.

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FULL BENCH.

Before Sir Henry Richards, Knight, Chief Justice, Justice Sir George Knox and Mr. Justice Tudball.

RANGI LAL AND ANOTHER (PLAINTIFFS) v. JASSA AND OTHERS (DEFENDANTS).^{*}
Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 56 and 88. Cess—Rent—Rent payable partly in cash and partly in kind.

Certain tenants holding under a *qabuliat* agreed to pay as rent a fixed sum in money and also certain quantities yearly of *bhusa*, *charri*, grain and sugarcane, described in the *qabuliat* as *rasum zamindari*.

Held, that, notwithstanding that the payments in kind were described as "*rasum zamindari*," they were nevertheless part of the rent and could be recovered by the lessor, and did not fall within the purview of section 56 or section 88 of the United Provinces Land Revenue Act, 1901. *Sis Ram v. Asghar Ali* (1) distinguished.

THE facts of the case were as follows :—

The defendants in 1881 made a usufructuary mortgage of their zamindari property to the plaintiffs, but later on resumed possession of the property on execution of a *qabuliat*, under which they consented to pay to the plaintiffs mortgagees, Rs. 795 yearly, together with *rasum zamindari* detailed at the foot of the deed, which consisted of a certain quantity of *charri*, *bhusa*, maize, *hola* and sugarcane. The suit was brought by the plaintiffs in the Revenue Court to recover arrears of rent for 1319 and 1320 Fasli, including both the cash rent and the items of

^{*} Second Appeal No. 1475 of 1914, from a decree of A. G. P. Pallan, District Judge of Saharanpur, dated the 23rd of July, 1914, modifying a decree of Bir Narain Singh, Assistant Collector, first class, of Saharanpur, dated the 27th of June, 1913.

rasum zamindari, which were valued at Rs. 48 per year. The court of first instance decreed the suit, assessing the items of *rasum zamindari* at Rs. 24 a year. On appeal the District Judge dismissed the claim for the Rs. 48 on the ground that the *rasum zamindari* mentioned in the *gabuliat* was a cess and consequently not recoverable. He relied on the case reported in I. L. R., 35 All., p. 19. The plaintiff appealed to the High Court.

Babu *Piari Lal Banerji*, for the appellant :—

The suit was brought in the Revenue Court for the recovery of rent which the defendants under the *gabuliat* had agreed to pay. The defendants had undertaken to pay a certain amount in cash and some agricultural produce in kind and the whole constituted "rent" within the meaning of the expression as defined in the Tenancy Act. Anything which is claimed under an agreement to pay is not a cess but a rent. The claim in the present case is not based on any village custom, and consequently section 86 of the Land Revenue Act is not applicable. Nor is there any claim to recover anything payable "in addition to rent," and consequently section 56 of the Land Revenue Act is not applicable. The whole claim is for rent, and the mere use of the words *rasum zamindari* makes no difference. In the absence of an agreement, the items would not be recoverable, but if a tenant agrees to pay certain agricultural produce as part of his rent, there is no bar to its recovery. The case reported in I. L. R., 35 All., 19, is distinguishable as the suit was brought in the Civil Court, which showed that the plaintiff treated the amount claimed not as 'rent' but as 'cess.' There are some reported cases which give some indication of what a cess is; I. L. R., 32 All., 193.

Mr. *Nihal Chund*, for the respondent :—

The *gabuliat* has to be read as a whole in order to ascertain whether the parties really intended the items mentioned as *rasum zamindari* to be rent: The deed provided for certain remedies on failure to pay the *money fixed*, which went to show that the items over and above the cash rental were something other than rent. The use of the expression *rasum zamindari* clearly showed that the items were claimed as 'cess' and

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were agreed to be paid as 'cess' and such an agreement, being contrary to the provisions of the Land Revenue Act was not enforceable.

Babu Piari Lal Banerji, was not heard in reply.

RICHARDS, C. J., and KNOX and TUDBALL, JJ.:—This appeal arises out of a suit for rent in the Revenue Court. The facts are that the plaintiffs, or their representatives, having lent money to the defendants, or their representatives, took a usufructuary mortgage of certain zamindari property. The mortgagees then made a letting of the property to the defendants on the terms that the defendants should pay a certain sum in cash (which included a sum sufficient to pay the Government revenue). In addition to this they agreed to deliver a certain amount in *bhusa*, *charri*, grain and sugarcane. In the *qabuliat* the expression "*rasum zamindari*" is used. The court of first instance found in favour of the plaintiffs, but calculated the value of the produce at Rs. 24 per annum. The plaintiffs claimed interest on all the arrears of rent from the time they became due up to the time that they were paid. This included interest on a sum of Rs. 200 which the defendants paid into court. The first court disallowed the interest on the Rs. 200 even prior to the suit. The plaintiffs appealed and contended that the value of the produce was more than Rs. 24 per annum. They further contended that they were entitled to interest on the Rs. 200 which had been disallowed by the court of first instance. The defendants filed a cross appeal on the strength of the ruling in *Sis Ram v. Asghar Ali* (1) and they contended that having regard to the provisions of the sections 56 and 86 of the Land Revenue Act the plaintiffs were not entitled to the *bhusa*, and other produce which we have mentioned. This contention found favour with the lower appellate court, which disallowed the plaintiffs' claim in respect of the *bhusa*, etc. The plaintiffs come here in second appeal and contend that the court below was wrong in disallowing their claim for the *bhusa*, etc., and also that they should have the interest which the court of first instance had disallowed them. On the first point, namely, the liability of the defendants to deliver the *bhusa*, etc., or to pay its equivalent in

cash, we think the court below was wrong. It is quite clear on the construction of the *qabuliat* the defendants agreed to deliver the produce as part of their rent. The suit was brought in the Revenue Court and the claim which the plaintiffs made to it was as rent. In the ruling referred to the plaintiffs sued in the Civil Court to recover the *rasum zamindari* as something over and above the rent. The ruling accordingly does not apply. On the second point we think that the plaintiffs were entitled to the interest on the Rs. 200 up to the time of payment into court. The parties very properly, instead of prolonging the litigation have agreed to a lump sum for the interest and the value of the produce. We allow the appeal, set aside the decree of the court below and restore the decree of the first court with Rs. 10 added. We wish to say that the calculation of Rs. 24 as the value of the produce is not to be taken as a final decision, that this is the value for all time. The value will necessarily vary in different years. The appellants will have their costs both in this and the lower appellate court.

Appeal allowed.

APPELLATE CIVIL.

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Before Mr. Justice Piggott and Mr. Justice Walsh.

TAJ SINGH (JUDGEMENT-DEBTOR) *v.* JAGAN LAL (DECREE-HOLDER). *
Civil Procedure Code (1908), order XXI, rule 16—Execution of decrees—Res judicata.

On application by a person to have his name substituted as decree-holder upon the ground that he was in fact the true owner of the decree, an order was passed, after notice to the judgement-debtor, permitting the applicant to execute the decree as its transferee. Held on application for execution of the decree that the judgement-debtor was not entitled again to raise the question of the validity of the transfer of the decree to the applicant. *Oman Prasad v. Durlab Shankar* (1) followed.

THE facts of this case were as follows :—

A mortgage decree was passed in favour of one Dule Ram in 1911. After his death his son Lallu Mul applied for a decree absolute, which was passed in 1912. The respondent Jagan Lal brought a

* First Appeal No. 175 of 1915, from a decree of Ganga Sahai, Subordinate Judge of Moradabad, dated the 17th of April, 1915.