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A surer guide to the meaning of the word is furnished by the New English Dictionary of Murray. There, the word "deterioration" is shown as bearing the import of impairment of quality or value.

It appears to me that cases of late delivery must be occurring very often with the railways, and in such circumstances parties to the consignment would be prone to claim compensation. If the authors of the Railways Act were anxious to provide for loss, destruction, etc of the goods in transit, there was no reason why they should forget to provide for the loss of the value of goods owing to delay in delivery. I am of opinion that "deterioration" does include a loss in the value of the goods consigned owing to a delay in delivery.

The result is that the application fails and it is hereby dismissed with costs.

Before Mr. Justice Dalal.

POKHPAL AND ANOTHER (DEFENDANTS) v. MADHO RAM  
(PLAINTIFF).\*

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April, 25.

*Jurisdiction—Civil and revenue courts—Suit to recover amount of revenue paid by a person wrongly recorded as lambardar—Act (Local) No. II of 1901 (Agra Tenancy Act), sections 159 and 160—Payment not voluntary—Payment lawfully made—Act No. IX of 1872 (Contract Act), section 70.*

The plaintiff, who was recorded as lambardar of a certain property, paid a certain sum of money as Government revenue on citation being issued to him by the revenue authorities. At that time, though recorded as lambardar, he had sold his property to the defendants, who were really liable to pay the revenue. He then sued the defendants in the court of Small Causes for recovery of the sum. He was then no longer lambardar or co-sharer. The defence was that such a suit

\* Civil Revision No. 76 of 1929.

BHAGWAN  
DAS  
LACHEMI  
NARAIN  
v.  
BENGAL  
NAGPUR  
RAILWAY.

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RAM.

was cognizable by a revenue court and that the payment, being voluntary, was not recoverable.

*Held* that no suit could lie in the revenue court because the plaintiff was no longer lambardar or co-sharer and could not sue either under section 159 or section 160 of the Tenancy Act of 1901.

*Held*, also, that the payment was not gratuitous and was made lawfully because the plaintiff, whose name continued to be recorded as lambardar, was bound to make the payment; and the case fell within the purview of section 70 of the Contract Act.

*Tulsa Kunwar v. Jageshar Prasad* (1), and *Nath Prasad v. Baij Nath* (2), followed. *Chunia v. Kundan Lal* (3), distinguished.

Mr. *Baleshwari Prasad*, for the applicants.

Mr. *Girdhari Lal Agarwala*, for the opposite party.

DALAL, J. :—The plaintiff Madho Ram, while he was recorded as lambardar of a certain property, paid a certain sum of money as revenue on citation being issued to him by the revenue authorities. At that time, though recorded as lambardar, he had sold his property to the defendants who were really liable to pay the revenue. He sued the defendants in the court of Small Causes for recovery of the sum. The pleas were that such a suit was cognizable by a revenue court, and, secondly, that the payment was a voluntary payment and not recoverable under any section of the Contract Act. No suit can lie in the revenue court because Madho Ram is no longer lambardar or co-sharer and cannot sue either under section 159 or section 160 of the Tenancy Act of 1901. The payment was not gratuitous, and, in my opinion, Madho Ram paid lawfully because his name continued in the village record as lambardar and he was, therefore, bound to make the payment to Government. It was the fault of the defendants that they did not get the plaintiff's

(1) (1906) I. L. R., 28 All., 563. (2) (1880) I. L. R., 3 All., 66.

(3) Weekly Notes 1882, p. 150.

name removed from the village record on obtaining transfer of his property from him. In *Tulsa Kunwar v. Jageshar Prasad* (1) BANERJI, J., held on similar facts that the payment was not made voluntarily or gratuitously and that therefore the case fell within the purview of section 70 of the Indian Contract Act. A similar view was taken in the case of *Nath Prasad v. Baij Nath* (2) by a Full Bench in 1880. The learned counsel for the respondent quoted a ruling of 1881, *Chunia v. Kundan Lal* (3). So far as I understand the facts of that case, the plaintiff was not recorded either as a co-sharer or a lambardar at the date of the payment and was in no way bound to make any payment to Government.

I dismiss this application in revision with costs.

Before Mr. Justice Mukerji and Mr. Justice Niamat-ullah.

CHANDRIKA RAI (APPLICANT) *v.* SRIKANT RAI  
(OPPOSITE PARTY).\*

1929  
April, 26.

*Guardian and ward—Heir of deceased guardian in possession of ward's property—Order calling for accounts from person not appointed guardian—Order directing him to pay a certain sum upon the accounts—Jurisdiction.*

On the death of a guardian appointed by court under the Guardians and Wards Act, his heir remained in possession of the ward's property, though the heir was never appointed guardian. Subsequently the court appointed another person as guardian, and ordered the heir to furnish accounts of the minor's property in his hands. Accounts being furnished accordingly, they were scrutinized and thereupon the court ordered the heir to pay a certain amount over to the newly appointed guardian. *Held* that the Judge had no jurisdiction to make an order against the heir, who was not a guardian appointed by him but was in possession of the

\* Civil Revision No. 278 of 1927.

(1) (1906) I. L. R., 28 All., 563. (2) (1880) I. L. R., 3 All., 66.

(3) Weekly Notes, 1882, p. 150.