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in respect of the property held by the appellants and that the appeal fails. It is true that there were no separate mortgages of these two mauzas, both having been mortgaged together for a certain sum of money; but when the mortgagor sold the equity of redemption of one mauza to plaintiffs and of the other to defendants, the mortgage was split up; that in respect of the mauza bought by plaintiffs merged in their purchase, but that in respect of the other mauza remained a debt redeemable by defendants at a proportionate valuation, and in consequence one which the plaintiffs could foreclose on similar terms. In fact the mauza in suit remained mortgaged to plaintiffs for such amount of the original mortgage-debt as is proportionate to its value.

The case of *Chandika Singh v. Pokhar Singh* (1) cited by the first Court and referred to before us was decided on quite different grounds. In that case there had been no division of the equity of redemption in respect of the mortgaged property, and in other respects it differed from the one before us. The mortgagee had treated a payment by one mortgagor as redeeming his share, and he sought to foreclose the shares of the other mortgagors. The Court held that the payment could only be properly treated as made for the whole of the mortgagors, and ought to have been carried to the credit of all in reduction of the principal sum jointly due, and he was not justified in exempting the share from the foreclosure proceedings and directing his claim against the property of the other mortgagors alone. We dismiss the appeal with costs.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

DOWNES (INSOLVENT) v. RICHMOND AND OTHERS (CREDITORS.)

*Insolvent—Discharge from liability—Agreement to satisfy debts in full—Civil Procedure Code, s. 358.*

An insolvent, who had procured, and taken, and acted on an insolvency order, which had been granted to him, because of the withdrawal of the opposition of his creditors, by reason solely of his engagement to pay a certain sum monthly until the whole of his debts should be discharged, after his scheduled debts had been satisfied to the extent of one-third, applied under s. 358 of the Civil Procedure Code, to be declared discharged from further liability in respect of his debts. *Held* that, under the circumstances, his application had been properly refused.

\* First Appeal No. 152 of 1882, from an order of R. D. Alexander, Esq., Judge of the Court of Small Causes at Allahabad, dated the 23rd August, 1882.

(1) I. L. R., 2 All. 906.

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This was an appeal from an order under s. 358 of the Civil Procedure Code refusing to declare the appellant, an insolvent, discharged from liability in respect of his debts. It appeared that on the 14th July, 1881, the appellant, who had applied to be declared an insolvent under the Civil Procedure Code, presented a petition stating that some of his creditors agreed that he should pay Rs. 80 a month till their claims were fully satisfied, and asking for an adjournment to settle with his other creditors. On this the case was adjourned till the 11th August, 1881. On the 10th August the appellant applied for a further adjournment, stating that his creditors had agreed to the terms stated in the petition of the 14th July, whereby he was to pay Rs. 80 per month to be equally divided among them in full liquidation of all claims set out in his schedule, commencing from the 5th September. The prayer for adjournment was not granted, and the petition was put up on the 11th August with the case. On that date, in accordance with the statements of the appellant and the opposing creditors, the following order by consent of parties was made:—"The opposition is withdrawn on the condition that the applicant pays up Rs. 80 a month to a receiver to be appointed by the Court till all the claims are satisfied in full, and the applicant by petition agrees to the same." On the 21st August, 1882, the appellant applied, under s. 358 of the Civil Procedure Code, to be declared discharged from further liability in respect of his debts, on the ground that he had paid into the hands of the receiver more than one-third of the amount of the debts. The Court rejected this application, holding that the matter having been adjusted by consent of parties, the appellant could not claim the benefit of s. 358, which related to cases decided "*suo motu*" by the Court, and not to cases where by consent of parties an applicant has been declared an insolvent.

For the appellant it was contended that he had been unconditionally declared an insolvent under s. 351 of the Civil Procedure Code, and that the Court could not go behind that declaration and hold that it had been made subject to a condition.

Pandit *Nand Lal* and Babu *Ram Das Chakurbati*, for the appellant.

The respondents did not appear.

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The Court (BRODHURST and TYRRELL, JJ.) delivered the following judgment :

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RICHMOND.

TYRRELL, J.—The appellant procured, and took, and acted on an insolvency order which was granted to him, because of the withdrawal of the opposition of his creditors, by reason solely of the appellant's engagement to pay Rs. 80 a month until the whole of his debts should be discharged. Under these circumstances the order of the Court below, against which this appeal is made, was proper, and should not be disturbed. We dismiss this appeal.

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January 8.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

KUPIL RAI AND OTHERS (DEFENDANTS) v. RADHA PRASAD SINGH (PLAINTIFF).\*

*Landholder and tenant—Submergence of occupancy-tenant's land—Dilution—Liability for rent—Resumption by landholder—Custom—Jurisdiction—Act XII of 1881 (N.-W. P. Rent Act), ss. 18, 31, 34 b., 95 (n).*

A landholder, alleging that by local custom when land was submerged, and the tenant ceased to pay rent for the same, his right to it abated, and when the land re-appeared the landholder was entitled to possession thereof; that certain land belonging to him had been submerged and the occupancy-tenant thereof had ceased to pay rent for it; and that such land had re-appeared and had come into his possession under such custom; sued such tenant in the Civil Court for a declaration of his right to the possession of it.

*Held* that, inasmuch as ss. 18 and 31 of the N.-W. P. Rent Act 1881 showed that, notwithstanding the submergence of the land, the tenancy still subsisted; and as the tenant could not lose his right to the land except by relinquishment or ejectment under the provisions of that Act; and as the custom set up by the landholder was opposed to the provisions of s. 34 (b) of that Act; the suit was not maintainable. Further that, with reference to the provisions of s. 95 (n) of that Act, the suit was not cognizable in the Civil Courts.

THE plaintiff in this suit, the zamindar of a certain village, sued the defendants to set aside an order made under s. 530 of Act X of 1872 (Criminal Procedure Code), declaring the latter to be in possession of certain land in the village as tenants, and to have it declared that he was in proprietary possession of the land. It appeared that the land in question had been submerged by the river Ganges, the defendants being at the time of such submer-

\* Second Appeal No. 1354 of 1881, from a decree of Maulvi Muhammad Baksh, Subordinate Judge of Ghazipur, dated the 12th August, 1881, modifying a decree of Muunshi Kulwant Prasad, Muunsif of Balia, dated the 25th March, 1881.