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amount due on the *bybilwafa* at the time of issuing the notice of foreclosure. We have no hesitation in holding that the pre-emptor, in enforcing pre-emption in respect of a sale which was originally conditional, but subsequently becomes absolute, is bound to pay to the vendee the price in lieu of which the latter became absolute purchaser. That price is not the sum due at the date of issuing notice of foreclosure, but the entire amount due on the *bybilwafa* at the expiry of the year of grace, when the sale becomes absolute for non-payment of the sum due. The learned pleaders who have appeared before us on behalf of the plaintiff-pre-emptor and the defendant-vendee have admitted before us that in the present case the sale became absolute on the 7th January, 1879, by expiry of the year of grace, and that the amount due on the *bybilwafa* on that date was Rs. 921-8-6. This amount must, therefore, be regarded as the price in lieu of which the sale became absolute, and which the plaintiff-pre-emptor is bound to pay before he can obtain possession under the decree to be passed in this case. We accordingly decree this appeal, and setting aside the decree of the lower appellate Court, restore that of the Court of first instance, with this modification, that the plaintiff shall, upon payment into Court of the sum of Rs. 921-8-6 on or before the first day of December, 1882, obtain possession of the property in suit, and recover the costs incurred by him in all the Courts from Mathura Kandu, defendant-vendee, respondent; but that if the sum above named be not so paid by the plaintiff, the suit shall stand dismissed, and the plaintiff shall pay to the defendant-vendee, respondent, the costs incurred by him in all the Courts.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

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BADRINATH AND OTHERS (DEFENDANTS) *v.* BHAJAN LAL (PLAINTIFF).*

Lease for a term of years—Death of lessee before expiration of term—Lease binding on representatives of lessee—Construction of lease—Separate liability of lessees—Jurisdiction—Suit partly cognizable in the Revenue Court and partly in the Civil Court—Act XII. of 1881 (*N.-W. P. Rent Act*), *ss.* 206, 207.

A suit was instituted in a Court of Revenue which was partly cognizable in the Civil Courts: *held*, on the question, raised on appeal, whether the Revenue

*Second Appeal No. 428 of 1882, from a decree of H. A. Harrison, Esq., Judge of Farukhabad, dated the 2nd January, 1882, modifying a decree of A. Sells, Esq., Collector of Farukhabad, dated the 22nd August, 1881.

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Court had jurisdiction to entertain the suit, that the provisions of ss. 206 and 207 of the Rent Act (North-Western Provinces) 1881, rendered the plea in respect of jurisdiction ineffective.

In the absence of words to the contrary, a lease of zamindari rights for a term of years does not terminate before the expiration of the term by the mere fact of the death of either the lessor or lessee. *Maharaja Tej Chund* v. *Sri Kanth Ghose* (1) and *Raja Burdahanth Roy* v. *Aluk Munjooree Dasiah* (2) relied on.

On the question whether the lessees in this case were jointly as well as severally liable, *held* that the terms of the lease indicated that the liability of the lessees was intended to be several, but equal in extent.

ON the 22nd October, 1873, Hira Lal and Khiali executed a "*kabuliyat*" or counterpart of a lease, in favour of the plaintiff in this case, whereby they took a lease (*thika*) of a certain village for nine years (1281—1289 fasli or September 1873—September 1882), agreeing to pay Rs. 265 annually, in equal shares, in the month of Sawan of each year, and undertaking to pay the Government revenue, &c., for the village during the continuance of the lease. There was an express clause in the *kabuliyat* to the effect that the lessees should have no power to relinquish the lease before the expiry of the stipulated term. The other conditions of the *kabuliyat* need not be noticed. Under the terms of the *kabuliyat* the lessees were placed in possession of the village, and acted according to the terms of the contract. About the 5th September, 1879, Hira Lal died, and Khiali died about the middle of 1288 fasli (February 1881). The lessees, and after them their heirs, the present defendants, made default in payment of the Government revenue, and the plaintiff had to pay Government revenue for 1287 and 1288 fasli (September 1879—September 1881). The present suit was commenced on the 26th May, 1881, having for its object the recovery of the Government revenue so paid by the lessor on behalf of the lessees, and for arrears of rent due under the *kabuliyat* for the years 1286 and 1287 fasli (September 1878—September 1880), together with interest on the sum so claimed. The defendants were the heirs of Hira Lal and Khiali, the original lessees. The main pleas on behalf of the defendants were, that the suit was not cognizable by the Revenue Court, by reason of the joinder of the claim for rent with a claim for money paid as arrears of revenue; that the lease being a merely personal contract, the death of the

(1) 3 Moo. I. A., 261. (2) 4 Moo. I. A., 321.

original lessees terminated the lease; that the defendants had given notice to the lessor of their determination to relinquish the lease, and they were therefore not liable to the claim; that even if they were liable, a joint decree could not be passed against them, the liability of the lessees under the *kabuliyat* being several. The Court of first instance decreed the claim with costs "as against the representatives of Khiali, deceased, for the whole, but as against the representatives of Hira Lal, deceased, to the extent of Rs. 1,003-0-9 only out of the whole, amount." From this decree the defendants preferred an appeal to the District Judge, repeating the pleas urged by them in the Court of first instance. The District Judge declined to enter into the question of jurisdiction, relying on the provisions of s. 207 of the Rent Act. On the other points in this case, he held that the heirs of the lessees were not bound by the contract of the *kabuliyat*, but that Hira Lal having during two or three months of 1287 fasli collected rents, his estate was liable; that under the lease, notwithstanding the specification of the shares of the two lessees, their liability was joint, for the reason that "as between themselves the lease shows they were equal sharers, but they executed the lease jointly, and since the death of Hira Lal, Khiali held the whole of the leased property." The District Judge, however, disallowed the interest claimed by the plaintiff, and passed the following order in appeal:—"The decree will be for Rs. 882-8 against the estate of Hirá Lal and Khiali Ram, and for Rs. 90-10 against the estate of Khiali Ram; costs in both Courts in proportion to the success of the parties." From this decree the present second appeal was preferred by the defendants, and the grounds of appeal raised three points for determination—(i) whether the suit was cognizable by the Revenue Court; (ii) whether the defendants were bound by the terms of the lease of 22nd October, 1873, so far as the present claim was concerned; and (iii) whether the liability of the two lessees under the lease was joint or several.

Pandit *Ajudhia Nath*, for the appellants.

Mr. *Howell*, for the respondent.

The judgment of the Court (TYRRELL and MAHMOOD, JJ.) was delivered by

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MAHMOOD, J., (who, after stating the facts as stated above, continued:)—In regard to the first point, we agree with the District Judge in the view that ss. 206 and 207 of the Rent Act render the plea ineffective, and we therefore consider it unnecessary to enter into the question of jurisdiction with reference to the nature of the suit. But on the remaining two points in appeal we cannot accept the view of the District Judge as correct in law. We are not aware of any rule of law by which a *thika* lease of zamindari rights in India expires before the stipulated term owing to the death of the lessor or the lessee during the continuance of the term of the lease, or by which the estate of either of them can escape the obligations created by the lease. It is true that the *thika* lease in question in this case contains no words which would necessarily and expressly signify, that the lessor and the lessee intended that the obligations and rights created by the stipulations of the lease should continue after the death of either of the parties so as to bind those who inherit their estates; but this circumstance is of no avail in face of the fact that the *thika* was given expressly for a fixed term of nine years; and whilst the deed is devoid of any expressions to the contrary, the lessees expressly agreed to have no power to relinquish the lease before the expiry of the stipulated period. Under these circumstances, it would be inequitable to hold that those who have by inheritance succeeded to the estates of the deceased lessees are not bound by the terms of the lease, and can escape the liabilities which the obligations of the *thika* create. This view is supported by the rulings of the Privy Council in *Maharaja Tej Chund* v. *Sri Kanth Ghose* (1) and in *Raja Burdakanth Roy* v. *Aluk Munjooree Dasiah* (2), which we regard as authorities for the principle that, in the absence of words to the contrary, a lease for a fixed term of years does not terminate before the expiry of the stipulated term by the mere fact of the death of either the lessor or the lessee.

Turning now to the question whether the liability under the lease was joint or several, we are of opinion that the specification of the shares in the lease indicates that the obligation of the lessees was intended to be several. Every covenant in the lease is accom-

(1) 3 Moo. I. A., 261. (2) 4 Moo. I. A., 321.

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panied by the Hindustani expression "*ba hissa-i-musawi*" (in equal shares) or "*nisf nisf*" (half and half), and these expressions occur in no less than six places. In our opinion they leave no doubt that the liability of the lessees was intended to be several, but equal in extent.

Under this view of the case we partially decree the appeal, and, without altering the amount decreed by the lower appellate Court, modify the decree of that Court so as to decree the sum of Rs. 486-9 against the defendants, heirs of Hira Lal, and a like sum of Rs. 486-9 against the defendants, heirs of Khiali Ram, the sums aforesaid being severally recoverable, with proportionate costs incurred by the plaintiff in the Courts below, from the estates of the two persons above-named respectively; and, on the other hand, the defendants to recover from the plaintiff the costs incurred by them in the lower Courts to the extent of the dismissal of the plaintiff's claim, half of such costs being recoverable by the defendants, heirs of Hira Lal, and the other half by the defendants, heirs of Khiali Ram. But as this appeal has partially prevailed, we make no order as to the costs incurred in this Court.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

1882 *September* 12.

MADAN MOHAN *v.* RAMDIAL AND ANOTHER.*

Certificate for collection of debts—Grant to several persons jointly—Act XXVII of 1860.

A certificate under Act XXVII of 1860 should not be granted to several persons jointly, but, where there are several claimants to the certificate, the District Court should determine which of such persons has the best title to the certificate, and grant the same accordingly.

MADAN MOHAN, the brother's son of one Radhe Lal, deceased, applied for a certificate to collect the debts due to the estate of the deceased under Act XXVII of 1860. Certain persons objected, severally claiming to be entitled to the grant of the certificate, among them Dwarka, Madan Mohan's brother, and Ramdial, the son of another brother of the deceased. The District Court made an order granting a joint certificate to Madan Mohan, Dwarka, and Ramdial.

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* First Appeal No. 82 of 1882, from an order of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 25th January, 1882.