Madhu Sudan Bhuiya (1) has not been in any way overruled by the decision of the Privy Council in *Balkishen Das* v. *Legge* (2).

BRETT, J.—I agree with the learned Chief Justice.

Appeal dismissed.

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28. C. 289.

Before Mr. Justice Rampini and Mr. Justice Pratt.

JILLAR RAHMAN *alias* RAJAMIA (*Defendant*) *v.* BIJOY CHAND MAHTAP, RAJAH OF BURDWAN, MINOR, BY HIS NEXT FRIEND AND MANAGER, BANBEHARI KAPUR (*Plaintiff*).* [2nd August, 1900.]

Cess—Dak cess—Zemindari dak, Maintenance of—Regulation XX of 1817, *S.* 10—*Bengal Act VIII of* 1862—*Contract between Zemindar and Putnidar as to payment of dak charges—Liability of Putnidar to pay dak charges—Construction of putni lease.*

In a putni *kabuliat* executed in 1855, the putnidar stipulated to pay the salary and expense of amlas of dak chowki houses, and to appoint them and superintend their work, under the system of zemindari dak then in vogue.

Held, that this stipulation imposed upon the putnidar the liability of paying dak charges recoverable from the zemindar; and although the system has since been changed, the liability of paying such charges must be taken to exist.

Saroda Soondury Debea v. *Wooma Churn Sircar* (3) followed.

[294] THIS appeal arose out of a suit instituted by the Rajah of Burdwan against one Jillar Rahman for the recovery of the amount of dak cess in arrears with interest as per account mentioned in the plaint, the sum claimed being Rs. 56-2-9. It was alleged that the plaintiff had paid into the Collectorate of Burdwan the entire dak cess payable to the Government in respect of his zemindari appertaining to Dewan Daftar, recorded as Towzi No. 1 in the Burdwan Collectorate; that within the said zemindari the defendant held lot village Pandugram at a putni jama; and if the total amount of dak cess paid by the plaintiff be distributed over the total amount of the different putni jamas held within the said zemindari, the amount due from the plaintiff would be as stated in the plaint, which the defendant was bound to pay, but did not pay on demand.

The defendant contended *inter alia* that the plaintiff could not recover the sum claimed, as there was no agreement to pay dak cess between the putnidar and the plaintiff.

The putni *kabuliat*, under which the defendant held, was executed by one Syed Golam Hossain in favour of the Maharajah of Burdwan in the year 1855, and the clauses of the *kabuliat* which are necessary to be considered for the purpose of this report are reproduced in the judgment of the High Court.

The Munsif held that under the terms of the said *kabuliat*, the defendant was liable to pay the dak cesses claimed. He accordingly decreed the suit.

On appeal by the defendant, the Subordinate Judge directed the first Court to take additional evidence as to the rate of the dak cess pay-

* Appeal from Appellate Decree, No. 1697 of 1898, against the decree of Babu Durga Charan Ghose, Subordinate Judge of Burdwan, dated the 24th of June 1898, affirming the decree of Babu Govind Chandra De, Munsif of Cutwa, dated the 2nd of June 1896.

(1) (1898) I. L. R. 25 Cal. 608.
(2) (1899) L. R. 27 I. A. 58.
(3) (1865) 3 W. R. S. C. C. Ref. 17.

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able by the denfendant. The appeal then came on again for hearing, and the Subordinate Judge held, on the authority of the cases of *Bissonath Sircar* v. *Shurno Moyee* (1) and *Saroda Soondury Debea* v. *Wooma Churn Sircar* (2), that under the former covenant the defendant was liable to pay the dak cess imposed under Bengal Act VIII of 1862, as that Act [295] was not intended to impose a new tax, but to consolidate and regulate an old liability. The appeal was accordingly dismissed.

The defendant appealed to the High Court.

Mr. *P. O'Kinealy* and M. *Siraj-ul-Islam*, for the appellant.

Babu *Ram Charan Mitter*, for the respondent.

1900, AUGUST 2. The judgment of the High Court (RAMPINI and PRATT, JJ.) was as follows :—

This is an appeal from a decision of the Additional Subordinate Judge of Burdwan, dated the 24th of June 1898.

The suit is one for arrears of dak cess amounting to Rs. 56 2 annas 9 pies ; and the only question is whether under the terms of the contract which was entered into between the plaintiff and the defendant's predecessor, the defendant is liable to pay dak cess at all.

The defendant does not deny that when he purchased the putni at one of the half-yearly sales under Regulation VIII of 1819 he was aware of the provisions contained in the *kabuliat* which his predecessor had given for this putni, and that he got the putni subject to these provisions.

The only contention raised before us by the learned counsel for the defendant-appellant is as to the construction to be put upon the terms of the *kabuliat*. The clause in the *kabuliat* relating to the payment of dak cess is as follows : " In whatever places and stations in the mofussil there are and may hereafter be dak chowki houses and practice of running dak by the order of the magistrate, I will have the power to appoint amlas of those dak chowkis of different stations, to pay their salary and expenses and to superintendent them, and you will have no connection therewith. If I fail to pay the same and you pay it, I will repay the whole amount with interest. If I fail to pay, you will realize from me the said amount with interest by suit."

Now, we think there can be no doubt that the meaning of this clause is that, under the system of zemindari dak then prevalent, the putnidar was to pay the charges due for dak runners and so forth, and if he failed to do so the zemindar was entitled to recover by suit the amount which he would have to pay in place of the putnidar.

[296] Learned counsel for the appellant however contends that now-a-days that system of zemindari dak has been done away with; that a new system has taken its place, and that the provisions of the clause in the *kabuliat* just cited do not apply to the system of zemindari dak now in vogue. But we think that there can be no doubt that this clause imposed upon the putnidar the liability of paying dak charges; and although the system has been changed it does not appear to us that the liability of paying such charges no longer exists. And we are fortified in this view by the case of *Saroda Soondary Debea* v. *Wooma Churan Sircar* (3). The clause in the putnidar's *kabuliat* in that case was very similar to the clause in the *kabuliat* in the present case; and the Judge who decided that case came to the conclusion that the terms of the contract made

(1) (1865) 4 W. R. 6.
(2) (1865) 3 W. R. S. C. C. Ref. 17.
(3) (1865) 3 W. R. S. C. C. Ref. 17.

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while s. 10, Regulation XX of 1817, was in force between the zemindar and the putni lessees having imposed upon the latter the charge of the maintenance of the zemindari dak, this liability was not affected by the subsequent repeal of the Regulation by Act VIII of 1862, B. C.

The result of that case was that the plaintiff, as zemindar, was held entitled to recover dak, although the system of the zemindari dak had changed and the clause in question was no longer directly applicable.

Then, in the case of *Bissonath Sircar* v. *Shurno Moyee* (1) it was held that Act VIII of 1862 (B. C.) did not relieve putnidars from their liability under an old lease of paying the zemindari dak charges.

Learned counsel for the appellant contends that this last mentioned case has been practically overruled by the ruling in the case of *Rakhal Dass Mookerjee* v. *Shurno Moyee* (2), where it was laid down that where the terms of a putni lease did make the putnidar liable for the maintenance of the zemindari dak, the putnidar was not liable for a tax which was imposed on the zemindar by Act VIII of 1862 (B. C.)

[297] We are not prepared to agree that this ruling has overruled the previous one in the case of *Bissonath Sircar* v. *Shurno Moyee* (1). But in the present case it would seem to have no application, for the provisions of the defendant's putni lease do make the putnidar liable. In any case there remains the case of *Saroda Soondury Debea* v. *Wooma Churn Sircar* (3), from which we see no reason to dissent, but with which we fully agree, and for these reasons we must follow it in this case.

The appeal is dismissed with costs.

Appeal dismissed.

28 C. 297.

CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Stevens.

BAKTU SINGH (*Petitioner*) *v.* KALI PRASAD (*Opposite Party*).*

[30th November and 7th December 1900.]

Transfer of criminal case—Grounds for transfer—Reasonable apprehension in the mind of the accused of Magistrate being biased—Suit by servant of estate under Court of Wards, the District Magistrate as Collector being Manager—Code of Criminal Procedure (Act V of 1898), s. 526.

Where the apprehension in the mind of the accused that he may not have a fair and impartial trial is of a reasonable character, then notwithstanding that there may be no real bias in the matter, the fact of incidents having taken place calculated to raise such reasonable apprehension ought to be a ground for allowing a transfer.

***In the matter of the petition of J. Wilson* (4) and *Dupeyron* v. *Driver* (5) referred to.**

The mere fact that the Magistrate of the district is in his capacity as Collector concerned in the management of an estate held by the Court of Wards is no ground for asking for a transfer from the district of a case brought by a servant of the estate and pending before a Subordinate Magistrate in the district.

[298] IN this case certain disputes were going on between the Bettiah Raj Estate and the tenants of one of the mehals subordinate there-

* Criminal Revision Nos. 106 and 823 of 1900 made against the order passed by Mahomed Habibullah, Deputy Magistrate of Champaran, dated 26th September 1900.

(1) (1865) 4 W. R. 6.
(2) (1866) 6 W. R. 100.
(3) (1865) 8 W. R S. C. C. Ref. 17.
(4) (1891) I. L. R. 18 Cal. 247.
(5) (1896) I. L. R. 23 Cal. 495.