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It is urged that, assuming this decree was not evidence against the appellants, no admission on their part could make it evidence. It is a clear evidence agains the *pro forma* defendants under whom the appellants claimed, and the document being evidence, at any rate, as against them, I am not satisfied that the observations of the Privy Council in the case of *Miller* v. *Matho Das* (1) would properly apply under the special circumstances of this case.

I think, therefore, that we should not be justified at this late stage in remanding the case, and allowing it to be reopened upon this point; especially as what was proved by the decree can obviously be proved in the way I have indicated. On these grounds, the appeal fails and must be dismissed with costs.

BANERJEE, J.—I agree with the learned Chief Justice in thinking that this appeal should be dismissed with costs. Upon the question of the propriety of the lower Appellate Court having used as evidence the judgment and decree in the previous suit, I think it enough to say that the appellants are precluded by the course they have adopted in this litigation from raising the objection now. For not only did they not object to the judgment and decree being admitted in evidence before the first Court, but in paragraphs 6 and 7 of their written statement they sought to make use of the decree in question as the basis of two of their objections to the present suit; and having done that, they could not be heard to say that the Court of first instance was wrong in using the judgment [146] and decree as evidence against them. This case is clearly distinguishable from the case of *Miller* v. *Madho Das* (1) upon which reliance was placed by the learned Vakil for the appellant, because all that happened in that case was, that there was an erroneous omission to object before the Courts below to the admission of evidence that was not relevant, and their Lordships of the Privy Council held that that was not enough to make irrelevant evidence relevant. Here, as I have stated above, there was not merely an omission to object to the documents to which exception is now taken, but there was a reference to those very documents as affording a basis for two of the objections raised by the defendants appellants to the present suit. That being so, it must be held that they are precluded from raising the objection now.

Appeal dismissed.

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28 C. 146.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Banerjee and Mr. Justice Harington.

SHAMA PROSUNNO BOSE MOZUMDAR AND ANOTHER (*1st Party*) v. BRAKODA SUNDARI DASI (*2nd Party*).* [4th July 1900.]

***Land Acquisition Act** (X of 1870)—Apportionment of compensation money, principle, of—Land lord and tenant.*

In apportioning compensation money between a landlord and a tenant, the principle to be followed is to ascertain first the amount of rent payable to the landlord and capitalize that rent at so many years' purchase, then to put a money value upon the chance (if there be any) of an enhancement of the then existing rent. These two sums the landlord is entitled to get, and the tenant is entitled to get the balance.

***Appeal from Original Decree No. 158 of 1899 against the decree of B. C. Mitter Esq., Officiating District Judge of Faridpore, dated the 7th of February 1899.**

(1) (1896) I. L. R. 19 All. 76; L. R. 23 I. A. 106.

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THIS appeal arose out of a reference made under s. 18 of the Land Acquisition Act to the District Judge of Faridpore. A plot of land was acquired by the Eastern Bengal State Railway Co., and a sum of Rs. 600 was awarded as compensation for the acquisition of the said land. The Land Acquisition Deputy Collector apportioned the said sum between the landlord and the tenant, allowing the former a six annas share and the latter a ten annas [147] share of the money. The landlord objected to this and prayed for a reference to the Civil Court. Accordingly the case was referred to the District Judge of Faridpore. Before the Judge the landlord (1st party) denied the tenancy and possession of the second party, and claimed the whole of the compensation money. Upon the evidence the Court, having found that the 2nd party was a tenure-holder, and that at the time of the acquisition there were twenty under-raiyats under the 2nd party, directed the amount to be divided in equal shares between the parties.

Against this decision the landlord appealed to the High Court.

Babu *Gyanendra Nath Bose*, (for Babu *Satis Chunder Ghose)*, for the appellants.

Babu *Saroda Churn Mitter*, and Babu *Hara Kumar Mitter*, for the respondent.

1900, JULY 4. The judgment of the High Court (MACLEAN, C. J., BANERJEE and HARINGTON, JJ.) was as follows :—

MACLEAN, C. J.—Although the Officiating District Judge has not stated the principle upon which he has made his apportionment I think that, in the result, he is right. The question is one of the apportionment of certain compensation money awarded under the provisions of the Land Acquisition Act, as between the landlord and the tenant of the land taken by the Railway Company. The compensation money amounted to Rs. 600, and the Court below has ordered it to be divided in equal shares between the landlord and the tenant. The landlord complains of this, and has appealed. In the case of *Khetter Kristo Mitter* v. *Dinendra Narain Roy* (1), I expressed my view as to the apportionment of the compensation money as between landlord and tenant, and in effect followed the course taken in the case of *Dunne* v. *Nobo Krishna Mookerjee* (2), though I spoke of it as a somewhat rough and ready method of settlement. But in a quite recent case, which came before Mr. Justice Banerjee and myself, we said that the method we adopted in the case of [148] *Khetter Kristo Mitter* v. *Dinendra Narain Roy* (3) was not to be regarded as laying down a hard and fast rule applicable to every case. Speaking for myself, I think that the principle, upon which the compensation money in cases of this class ought to be apportioned as between the landlord and tenant, is as follows :—First, the Court must ascertain the amount of rent payable to the landlord and capitalize that rent at so many years' purchase, the number of years' purchase depending upon the particular circumstances of each particular case. The landlord is at the outset entitled to that capitalized value, but I think he is entitled to something more. There is, or in many cases may be, the chance of an enhancement of the then existing rent ; he is entitled in my opinion to have the value of this chance of enhancement assessed, and to have a money value put upon it, and to take that money value out of the compensation awarded. It may in some, perhaps in

(1) (1897) 8 C. W. N. 202.
(2) (1889) I. L. R. 17 Cal. 145 (147).
(3) (1897) 8 C. W. N. 202.

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many cases, be somewhat difficult to arrive at the true capitalized value to the landlord of this chance of enhancement, but it will be for the landlord who sets up such a claim to make it out and show what the true value is. I do not think the landlord can be entitled to anything more, nor have I heard it suggested that he can be. After thus providing for the claims of the landlord the balance ought to be paid to the tenant. Applying then these principles to the case before us, I do not think that the landlord has any cause for complaint. He has received Rs. 300 out of Rs. 600. His rent is Rs. 10 : the Court has valued this at 15 years' purchase, which gives a capitalized sum of Rs. 150. It is not clear for what the remaining Rs. 150 has been given to him; if for the chance of enhancement of rent it is a handsome award, for it proceeds upon the footing of an enhancement of another Rs. 10 rent per annum at 15 years' purchase, although upon this question the landlord went into no evidence before the Collector. But assuming that the landlord is entitled to 20 years' purchase of his rent, that would give him Rs. 200. Even then he has been awarded a further sum of Rs. 100 as representing the capitalized value of his chance of an enhanced rent, which at 20 years' purchase would mean an enhanced rent of Rs. 5 per annum. From [149] either point of view then, the landlord has received his full share of the compensation money. The appeal fails and must be dismissed with costs.

BANERJEE, J.—I am of the same opinion.

HARINGTON, J.—I concur.

Appeal Dismissed.

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28 C. 149.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Banerjee and Mr. Justice Stevens.

UMA CHARAN DAS (*Opposite party*) *v.* MUKTAKESHI DASI (*Applicant*).* [16th July, 1900.]

Appeal—Probate and Administration (Act V of 1881), ss. 51, 86 and 90—Order granting permission to dispose of immoveable property.

An appeal lies to the High Court against an order passed by a District Judge or District Delegate granting permission to an executor or administrator to dispose of immoveable property under s. 90 of the Probate and Administration Act (V of 1881).

ONE Muktakeshi Dasi applied to the District Judge of 24-Pergunnahs to obtain letters of administration in regard to the property of her deceased husband. The District Judge on the 22nd September 1897 made the following order :—

> **"Kedar Nath examined. Letters of administration granted. Bond with one surety in Rs. 800. Notice will be given to Uma Charan Das, sister's son of the deceased husband of the petitioner, when any application is made for permission to sell or mortgage any part or whole of the property belonging to the estate as applied for to-day by the said Uma Charan Das."**

THEN an application for permission to sell certain immoveable property belonging to the estate of the deceased husband of the administratrix was made and permission was granted on the 21st January 1898, but without any notice to Uma Charan Das. Thereupon Uma Charan put in an application for the revocation of the order granting permission, but that application was rejected on the 28th February 1898. Uma Charan

*** Appeal from Order No. 201 of 1899, against the order of F. F. Handley, Esq., District Judge of 24-Pergunnahs, dated the 17th of April 1899.**