

Before Mr. Justice Norman and Mr. Justice E. Jackson.

KAMALA KANT GHOSE AND OTHERS (PLAINTIFFS) v. KALU
MAHOMED MANDAL AND ANOTHER (DEFENDANTS)*

Illegal Cess—Void Contract.

Every contract relating to the collection from ryots and payment to the zemindar of an illegal cess, is *ab initio* void.

PLAINTIFF sued in the Civil Court, to recover a sum of money due on an ikrarnama. It appeared that defendant had taken a farming lease of certain property from plaintiff, and had, before the expiration of the farm, sublet it to a third party. At the time of subletting, defendant gave plaintiff an ikrar, or written agreement, that he, defendant, would be responsible; that a festival cess up to that time paid to plaintiff by the ryots should continue to be paid, and that defendant would make the said payments annually. Plaintiff now sued to recover the amount of the cess, according to the ikrar. Defendant contended that it was an illegal cess upon the ryots, and could not be recovered. The first Court held, that, as no mention of the cess was made in the sublease, and defendant had now no direct connection with the ryots, the agreement was to be looked upon as a personal contract between plaintiff and defendant, on which plaintiff could recover.

On appeal, the Judge held, that it was to be presumed the payment was intended at the time of contract to be made by the ryots, and that the claim was irrecoverable. The Judge relied on two cases: *Radhamohun Surma Chowdhry v. Gungapershad Chuckerbutty* (1) and *Megnath Thakoor v. Thomas & Meliss* (2).

The case was then appealed specially.

Baboo Anand Chandra Ghosal for appellants.

None for respondents.

* Special Appeal, No. 2885 of 1868, from a decree of the Officiating Judge of Zilla Dinagepore, dated the 27th of August 1868, reversing a decree of the Sudder Moonsiff of that district, dated the 1st of July 1868.

(1) S. D. A., 1843, 142.

(2) S. D. A., 1852, 9.

The judgment of the Court was delivered by

NORMAN, J.—The defendants took a village in izara from the plaintiff for ten years. Before the expiration of their lease, the defendants sub-let the property, and at the same time entered into an agreement with the plaintiff to the following effect: “ We “ have been getting your parobi (festival cess) paid from the “ village at Rs. 175. The dur-izardar has nothing to do with “ the said parobi. We shall pay you the same, year after year.” It was found by both the lower Courts, and is now not denied, that this parobi is an arbitrary and indefinite cess on the ryots, such as is described in section 54 of Regulation VIII. of 1793. The exaction of such a cess would have been illegal under section 3, Regulation V. of 1812, and is now prohibited by section 10, Act X. of 1859. A contract providing for the collection and payment over to the zemindar of the proceeds of such a cess, appears to us to fall within the rule stated by Chief Justice Holt in *Bartlett v. Vinor* (1): “ Every contract made for or “ about any matter or thing which is prohibited and made unlaw- “ ful by statute, is a void contract.” See also *Domats’ Civil Law*, Book I., Tit. 18, section 4, p. 234, Ed., 1737.

We think the object of the contract was to provide for the collection and payment of an illegal cess; that the contract was, therefore, illegal; and that the suit was properly dismissed on that ground by the Judge.

We affirm the decision of the lower Appellate Court without costs, no one appearing for the respondent.

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KAMALA KANT
GHOSH
KALU MALLO-
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(1) *Carthow*, 252.