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We do not think that there is any force in the argument. The mere fact of the property being sold for a higher price than the amount of the debt to liquidate which it was sold, is not a reason for considering the sale invalid, when the purpose for which the sale is made, namely, the payment of the ancestral debt, is quite legal.

Under this view of the case, we see no reason for interfering with the order of the lower Court, and we dismiss the special appeal with costs.

Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.

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RAM CHANDRA JANA v. JIBAN CHANDRAJANA.*

Damages—Ryots—Lessor—Right to bring Suit—Interest in Land—Parties.

A. erected an embankment across a river, in consequence of which, lands let by B. to ryots were overflowed, and the crops lost. The ryots paid rent to B. only when crops were reaped from the lands. *Held*, B. had such an interest as to entitle him to sue A. for damages.

THIS was a suit to recover damages on account of injury alleged to have been caused to the crops of plaintiff's (respondent's) ryots, by the defendants (appellants) who, it was alleged by the plaintiff, had constructed an embankment, across the river Puranga, below the mouth of Jamtola Khal, which arrested the course of the water, whereby the lands of his (plaintiff's) farm were inundated.

The defendants denied the right of the plaintiff to sue for damages, and set up that the so-called embankment was an old *band*, re-erected on its former site; and that it did not cause water to flow over the farm of the plaintiff; but that the injury complained of was the result of excessive fall of rain and plaintiff's own neglect to dam up the mouth of the Jamtola Khal.

The Principal Sudder Ameen held, that the plaintiff had sufficient interest in the lands which entitled him to institute this suit; that the defendants had constructed a new *band*, of considerable height, running accross the river, which created

* Special Appeal, No. 3099 of 1867, from a decree of the Judge of Midnapore, affirming a decree of the Principal Sudder Ameen of that district.

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total obstruction to the passage of water; that the damages sustained by plaintiff could not be attributed to a heavy fall of rain, for if the *band* had not existed, or even if an opening had been left on one side of the embankment, water would easily have escaped; and, lastly, that from the very beginning, the acts of the defendants were not only wrongful but malicious. He also found that the rate at which the ryots paid their rents to the plaintiff, was 1 rupee 8 annas per biga, when they succeeded in reaping the harvest; that out of 1,500 bigas of land, by reason of the overflow of water, the crops of 125 bigas only were secured; and, therefore, that in assessing damages, the plaintiff was entitled to recover them in proportion to the amount of rents which he would have received had the produce of the whole area been raised. The Principal Sudder Ameen gave a decree for the plaintiff accordingly.

The Judge, on appeal, confirmed this decision.

The defendants appealed.

Mr. *Allan*, (Baboos *Ashutosh Dhur*, and *Bhawani Charan Dutt* with him) for appellants.—The plaintiff has not that amount of interest in the soil which gives him a right to sue. The proper persons to have instituted this suit, would have been the ryots whose crops are alleged to have been destroyed by the erection of the *band*. The damages are too remote, because the injury to the crops of the ryots was rather the consequence of the operation of natural causes than the acts of the defendants, inasmuch as the inundation was caused by excessive fall of rain. The defendants were justified in damming up the river for the purpose of irrigating their land. The area of the land, which was alleged to have been endamaged by the overflow of water, was greater than that covered by the plaintiff's potta, therefore he was not entitled to assess damages on that quantity of land.

Baboo *Anukul Chandra Mookerjee*, (Baboo *Kaliprasana Dutt* with him) for respondent.—Both the lower Courts have clearly found that *khamar* lands of the zemindar were let out to plaintiff, who sub-let them again to the ryots, on this agreement that

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they would cultivate the lands and pay rents to the plaintiff at the rate of 1 rupee 8 annas per biga, provided the harvest grew. The plaintiff, therefore, had a right to institute this suit. The damages sustained by the plaintiff are not too remote His loss was attributable to the acts of defendants, which were also malicious. The proper measure of damages in this case is the amount of rents which plaintiff would have received from his ryots, had they succeeded in sowing the crops and reaping the harvest.

The judgment of the Court was delivered by

JACKSON, J.—We think the decision of the Court below must be affirmed. The plaintiff had such an interest in the land and in the crops as fully entitled him to maintain the suit. The act done by the defendant was, doubtless, such as to make him liable in damages. Indeed, the contest in the Court below was not upon this point. It was not contended that the damage caused to the plaintiff could not be directly traced to the act of the defendant. The whole case for the latter was that he had done no more than keep up an old existing embankment, in which matter the Courts below have expressly found against him

Then as to the assessment of damages, it is urged that the area of land, on which the damage was computed, is larger than that which the plaintiff's potta covers: we think that is no concern of the defendants. The area of land cultivated by the plaintiff's under-tenants was ascertained on a local investigation. The rate per biga was not disputed, and the amount, therefore, is not a matter which we can deal with in special appeal.

The appeal must, therefore, be dismissed with costs.