admitting the rate of rents claimed, and only denying that they had not been paid. In this case we think that it would have been more right and more just if the lower Appellate Court had made one case out of the two, and had done justice between the parties upon the merits.

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We think, therefore, that the judgment of the Judge must be reversed, and the cases must go back to the Judge, and that he must try as if they were one case between the plaintiffs and the defendants, whether, on the evidence on the record, the defendants have paid the whole or any part of the rents in question.

The costs of all the Courts will abide the result of the ultimate decisison of the Judge; but in awarding those costs, the Judge will be careful not to give more costs than he would have given had these suits been instituted in the first instance as one suit.

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

KIIUB LAL (PLAINTIFF) *v.* GHINA HAZARI AND OTHERS (DEFENDANTS.)*

1869 March 20.

Right to Settlement—Separately Numbered Estates.

Certain lands accreted to an estate, No. 667, and were temporarily settled as a separate estate, No. 3148. During the currency of this settlement, the owner sold his right and interests in 667 to the plaintiff; and in 3148 to the defendants. On the expiry of the temporary settlement the plaintiff as owner of the parent estate, sued to establish his right to the permanent settlement of 3148.

Held, that the suit would not lie, and that the plaintiff had no claim to have a settlement of 3148.

ONE Ramlal was the owner of an estate, Mauza Madanpur, bearing a number, on the towji of the Collectorate, 667. To this some alluvial land accreted, of which a temporary settlement was made with Ramlal under a number, 3148, in the towji. In 1865, Ramlal sold all his rights in No. 667, describing it by that number and as the Nizamut mehal, making no allusion whatever to any churs as appertaining thereto. At the same time he sold all his right and interest in 3148 to the defendant. The temporary settlement of 3148 expired in 1867. On the expiry of the

* Special Appeal, No. 2280 of 1868, from a decree of the Subordinate Judge of Bhagulpore, dated the 30th June 1868, affirming a decree of the Moonsiff of Tegra, dated the 11th February 1868.

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temporary settlement of 3148, the plaintiff, as owner of 667, the original estate, claimed and ultimately brought this suit to establish his title to the permanent settlement of 3148.

The suit was dismissed by the first Court, and that decision was affirmed on appeal.

Baboo *Kali Krishna Sen* for appellant.

Baboo *Khettra Mohan Mookerjee* for respondents.

The judgment of the Court was delivered by

NORMAN, J. (after stating the facts as above).—We are of opinion that the decision of the lower Court is perfectly correct. It seems to us that, when No. 3148 had completely formed, and more particularly after it had been assessed and settled as a separate estate with a separate jumma, as provided for by section 1, Act XXXI. of 1858, it became for all purposes a distinct estate, and was capable of being sold, or otherwise dealt with as such by the owner of the estate to which it had originally accreted; that, when Ramlal sold the original estate without any words, shewing that he meant to convey the new estate or any right in it to the purchaser, the purchaser of the original estate acquired no more interest in the new estate than he did in any fruit or profit which had been produced by that estate before the date of his purchase. So much for the plaintiff's supposed title. As to the title of the defendant, we think it is clear that, by the conveyance of all the rights and interests of Ramlal in the new estate 3148, he, as purchaser, acquired, not only the rights and interests of Ramlal under the temporary settlement, but his right to ask for and obtain the permanent settlement after the expiration of the temporary settlement.

In our opinion the appellant's claim is without the slightest foundation, either in law or justice, and we would dismiss the appeal with costs.