

Lower Appellate Court was considered to have been justified in accepting (according to its own knowledge of them) rates which were admitted and had been awarded in other cases.

Certain payments which were not so much in the nature of cesses as of rent in kind, and which were fixed and uniform and had been paid by the ryot from the beginning according to local custom, were held not to be illegal cesses.

Pontifex, J.—This is a suit to recover three years' arrears of rent. The plaintiff alleged that the defendant occupied certain plots of land at certain rates named in the plaint.

The defendant denied that he held the whole of those plots, but admitted that he cultivated $1\frac{1}{2}$ pao of dun chhatisa land at a rent of Rs. 6, and one pao of balkati land at a rent of one rupee.

The Assistant Commissioner gave the plaintiff a decree for Rs. 21 only, disbelieving the plaintiff's statement as to the quantity and description of the land occupied by the defendant, and also disbelieving the rates stated in the plaint.

In appeal the Judicial Commissioner has held that the witnesses of the plaintiff clearly proved that the defendant had regularly held and cultivated the several plots of rent-paying land mentioned in detail in the plaint, and he has further found that the defendant had paid Rs. 26-2 for them per year, as the rents and cesses payable in respect thereof, and he gave the plaintiff a decree at that rate for three years.

In special appeal it is objected that the rates allowed by the Lower Appellate Court are not supported by any evidence, and that the cesses are illegal and should not have been awarded.

The plaintiff adduced evidence to show that the rates claimed by him were correct, and he put in certain books of account to establish this. Both the Courts below held that these books are not to be relied upon; but, as to the rates which he allows, the Judicial Commissioner says that he "ought to accept the rates which are admitted, and have been awarded in other cases," and he has given those rates in detail at the foot of his judgment, relying upon his own knowledge of them. We think under the circumstances that the Judicial Commissioner was justified in fixing the rates as he did, and those rates, it seems to us, are fair and proper.

With respect to what are called the cesses in this case, we think they are not so much in the nature of cesses as of rent in kind, and it is not describing them correctly to say of them that they are uncertain and indefinite. They are fixed and uniform, and are paid from year to year in the same quantity and amount;

and evidence was adduced to show that the defendant, ever since he occupied the land, has paid these cesses; and the Judge has moreover found that in Chota Nagpore it is the custom for ryots to pay these cesses.

In support of the appellant's contention as to the illegality of these cesses, a case has been referred to which is to be found in Volume X., Weekly Reporter, page 257, which was also an appeal from this same district. But the cesses there referred to were by no means of such a definite and certain kind, as they are in the present case, as appears by the remark at the conclusion of the reported judgment: "It does not follow that because a defendant had been adjudged to pay a particular cess, or other demand, in a particular year, he should therefore be compelled to pay it for ever." The reasons which the Judge below has given for decreeing the cesses in the present case show that these certain and definite cesses were paid regularly every year for the land occupied.

Upon these grounds, the decision of the Lower Appellate Court must be upheld, and this appeal dismissed with costs. Pleader's fee, one gold mohur.

The 28th April 1875.

Present:

The Hon'ble F. A. Glover and Romesh Chunder Mitter, *Judges*.

Attachment of Allowances.

Cases Nos. 403 and 409 of 1874.

Miscellaneous Appeals from an order passed by the Judge of Sarun, dated the 19th June 1874, reversing an order of the Moonsiff of that District, dated the 31st December 1873.

Chukowree Misser and another
(Decree-holders), *Appellants*,

versus

Mussamunt Numoodah Kooer and others
(Judgment-debtors), *Respondents*.

Baboo Bama Churn Banerjee for
Appellants.

Baboo Hureehur Naik for *Respondents*.

No allowance can be attached until it is actually due and paid to the judgment-debtor; but when an instalment of maintenance is about to become due, the Court may make an order for non-payment by the party chargeable and its non-receipt by the debtor.

Glover, J.—THE Judge's decision in this case appears to be right. No future allow-

ance can be attached as it does not become the judgment-debtor's property until it is actually due and paid. There is a case similar to this reported in Volume XV., Weekly Reporter, p. 188, *Monessur Doss against Beer Pertap Sahee*, where the Judges say that when an instalment of maintenance, such as this, is about to become due, the Court may make an order for the non-payment of such instalment by the party chargeable and its non-receipt by the judgment-debtor. And this seems to be the utmost limit which the law will allow our going to in this case.

It remains now for the judgment-creditor to make an application to the Court immediately before the money becomes due to the debtor, and ask the Court to grant an injunction that the debtor may not receive the money, but that it may be paid over as it accrues, to the judgment-creditor.

These appeals must be dismissed with costs. Pleader's fees, Rs. 10 in each case.

Mitter, J.—I concur.

The 28th April 1875.

Present :

The Hon'ble C. Pontifex and E. G. Birch,
Judges.

Ejectment—Rights of Occupancy—Transferable Tenures.

Case No. 1042 of 1874.

Special Appeal from a decision passed by the Judge of Purneah, dated the 15th January 1874, affirming a decision of the Moonsiff of Sahibgunge, dated the 28th October 1873.

Mrs. M. R. Hyes (Plaintiff), *Appellant,*

versus

Moonshee Moneerooddeen Ahung
(Defendant), *Respondent.*

Moonshee Mahomed Yusuf for Appellant.

Baboo Oomesh Chunder Banerjee for
Respondent.

A suit by a landlord for ejectment of the purchaser of a jote, on the ground that the jote was not transfer-

able, having been dismissed by both the lower Courts on the ground that a mere right of occupancy is transferable, the case was remanded by the High Court, in special appeal, with reference to the Full Bench decision in 22 Weekly Reporter, page 22 (which had not been published when the case was decided) for trial of the question whether the defendant was entitled to a higher right than a mere right of occupancy.

Pontifex, J.—IN this case the zemindar sues to eject the defendant on the ground that the jote which he occupies is not transferable.

The defendant, in his written statement, asserted that the jote was a transferable jote; that he had purchased it at an auction-sale in execution of a decree against one Dhuniram to whom it had belonged; and that the tenure so acquired by him was mowrosee.

The first Court, among other issues on the merits, raised one as to "whether the defendant was an auction-purchaser of the jote of Dhuniram Sunha; whether Dhuniram had been the jotedar of the disputed lands; and whether his jote was of the nature of a gozashta tenure existing from a long time past, or whether his lease was only a temporary one; and if his lease is a gozashta lease, is the plaintiff entitled to eject him."

The third issue was, whether jote lands can be transferred without the consent of the zemindar.

At the trial of the case the defendant produced witnesses to prove that the jote was a gozashta tenure formerly belonging to Dhuniram, and the first Court, although it found that the land had constituted a jotedaree tenure of Dhuniram, and had been purchased by defendant in execution of a decree, was doubtful as to whether the jote was transferable or not.

The Moonsiff in his judgment says: "It is, however, somewhat doubtful whether the jote of Dhuniram Sunha was a gozashta tenure, and whether he had acquired a right of occupancy thereto, for no conclusive evidence has been adduced by the defendant upon this point, but only some witnesses, who appear to be trustworthy and cognizant of the facts, have been examined by him." Then he goes on to say that hustobood, receipts, and other papers are to be relied on as evidence on this point, but that those filed by the zemindar, plaintiff, in this case, do not appear to him to be trustworthy. He adds that "the plaintiff sues upon two grounds: first, that the lands