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can be ordered in default, a similar order can be at once passed in respect of non-payment of compensation. The Magistrate, however, has misread the law. It only directs that "compensation shall be recoverable as if it were a fine" and s. 386 and the following sections of the Code direct by what means a fine shall be recovered. These sections would, therefore, be applicable for realization of the money ordered to be paid as compensation. But in regard to an order for imprisonment in such a case, s. 250, proviso (2) declares that, "if the compensation cannot be recovered, simple imprisonment may be awarded for such term not exceeding 30 days." The alternative (imprisonment) therefore can only be awarded *if compensation cannot be recovered*. The case, therefore, is different from one in which a sentence of fine may have been passed. A case like the present, moreover, is provided for by s. 388 (2). The order for imprisonment is, therefore, set aside. The Magistrate is competent to proceed in accordance with the law in the terms of s. 250 (2) if the compensation has not been recovered on receipt of this order.

D. S.

APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pratt.

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 July 3.

BABALUDDIN MAHOMED AND OTHERS (PLAINTIFFS) v. DWARKA NATH SINGHA (DEFENDANT).*

Bengal Tenancy Act (VIII of 1885), s. 48, cl. (a)—Under-raiyat—Limit of rent—Retrospective effect.

The provisions of s. 48, cl. (a) of the Bengal Tenancy Act are retrospective and apply to a tenancy created before the passing of that Act. *Guru Dass Shut v. Nand Kishore Pal* (1) followed.

THESE appeals arose out of two analogous suits for recovery of rent and cesses. The plaintiffs, who are raiyats, claimed rent

* Appeal from Appellate Decree, No. 838 of 1899, against the decree of H. E. Ransom, Esq., District Judge of Midnapur, dated the 27th of January 1899, affirming the decree of Babu Jugal Kishore Dey, Munsif of Contai, dated the 17th of June 1898.

from the defendants, who are under-raiyats, at the rate of Rs. 2-6 annas per bigha in accordance with the terms of kabuliats executed by the defendants before the Bengal Tenancy Act came into operation. The kabuliats were admitted by the defendants, but they contended that inasmuch as the plaintiffs themselves had to pay rent for the lands in suit at the rate of 13 annas per bigha only, they could not recover rent from the defendants at a rate higher than Re. 1-3 annas 6 pies per bigha, having regard to the provisions of s. 48, cl. (a) of the Bengal Tenancy Act.

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The Munsif gave effect to this contention and decreed each of the suits for rent calculated at the rate of Re. 1 3 annas 6 pies per bigha.

The plaintiffs appealed to the District Judge, who affirmed the decision of the Munsif.

The plaintiffs appealed to the High Court. The appeals came on for hearing on the 3rd July 1900.

Babu Boidya Nath Dutt, for the appellants.

Babus Lal Mohan Das and *Sarat Chandra Dutt* for the respondent, in Appeal from Appellate Decree No. 838 of 1899.

1900, JULY 3. The judgment of the High Court (RAMPINI and PRATT, JJ.) was as follows :—

These are two appeals against a decision of the District Judge of Midnapore, dated the 27th of January 1899.

The point in the case is whether the defendants, who are under-raiyats, are liable to pay rent to the plaintiffs at a higher rate than 50 per cent. per annum, above the rate the plaintiffs pay to their landlord.

It appears that before the passing of the Bengal Tenancy Act they entered into a written and registered lease agreeing to pay rent to the plaintiffs at a rate higher than 50 per cent. above what the plaintiffs paid to their landlord.

The Lower Courts have concurrently held that in spite of the kabuliat, the plaintiffs cannot recover rents exceeding by 50 per cent. what they themselves pay.

The plaintiffs now appeal, and on their behalf the cases

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of *Atulya Churn Bose v. Tulsi Das Sarkar* (1) and *Basanta Kumar Roy Chowdhry v. Promotho Nathi Bhattacharjee* (2) have been cited, and we have ourselves referred to the case of *Tejendro Narain Singh v. Bakai Singh* (3). These cases are not strictly in point, but they relate to other sections of the Bengal Tenancy Act, which have been held not to affect contracts made before that Act. They are, therefore, not precedents and cannot guide us in this case. The learned pleader for the appellants relies upon the principle on which they have been decided. We, however, think that we are bound by the rule in the case of *Guru Dass Shit v. Nand Kishore Pal* (4), and the case of *Ram Kumar Jugi v. Jafar Ali* (5). In our opinion these cases are clearly in point. They lay down that the provisions of s. 48, cl. (a) are retrospective, and therefore that, although in the present case a kabuliat was executed before the passing of the Bengal Tenancy Act, the plaintiffs cannot recover rent at a rate exceeding by 50 per cent. what they themselves pay to the landlord.

That being so, these appeals fail and we dismiss them with costs.

M. N. R.

Appeals dismissed.

Before Mr. Justice Rampini and Mr. Justice Pratt.

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 July 31.

SUKUMARI BEWA, MINOR, BY HER FATHER AND GUARDIAN CHEMA MALIA (PLAINTIFF) v. ANANTA MALIA AND ANOTHER (DEFENDANTS).*

Hindu Law—Adoption—Validity of adoption by a Sudra leper in Bengal—Religious ceremonies, Competency to perform.

In Bengal, a Sudra leper may adopt a child.

Such an adoption was held valid, in the absence of any proof that the disease of the adoptive father was inextinguishable or that he was in such a state as not to be able to adopt at all.

* Appeal from Appellate Decree No. 732 of 1898, against the decree of W. B. Brown, Esq., District Judge of Cuttack, dated the 21st of December, 1897, reversing the decree of Babu Kishori Lal Sen, Munsif of Puri, dated the 21st of April 1897.

(1) (1895) 2 C. W. N., 543.

(2) (1898) I. L. R., 26 Calc., 130.

(3) (1895) I. L. R., 22 Calc., 658.

(4) (1898) I. L. R., 26 Calc., 199.

(5) (1898) I. L. R., 26 Calc., 199, note.