1910

CASSIM AHMED JEWA v. NARAINAN CHETTY.

With reference to the two clerks, their evidence is not sufficient to support the defendants' case. The evidence is extremely weak. They say it is customary to endorse on a promissory note the payments made on account. There is no endorsement on the promissory note, and there is no corroboration of their statement, which is positively denied on the other side.

Their Lordships will, therefore, humbly advise His Majesty that the appeal must be dismissed. The appellant will pay the costs of the appeal.

The judgment of the Chief Court will be amended by the providing for interest subsequent to the decree in accordance with the prayer of the petition presented by the respondents.

J. V. W. *Appeal dismissed.*

Solicitors for the appellant: *Bramall & White.*

Solicitors for the respondents: *Sanderson, Adkin, Lee & Eddis.*

LETTERS PATENT APPEAL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Doss.

1910

April 29.

BANESWAR MUKHERJI

v.

UMESH CHANDRA CHAKRABARTI.*

Kabuliyat, construction of—Rent, partly in money and partly in kind—Fixed rent—Evidentiary value of later documents between different parties in construing an earlier one.

Where the terms of a document clearly point to the fact that the rent is to be partly in money and partly in kind, the rent cannot be regarded fixed in amount, even though the *kabuliyat* is a *mokarrari* one, and in the original deed the two items of rent in kind and rent in cash were lumped up and expressed as a consolidated money-rent.

An earlier document cannot be construed by reference to a later document which is not between the same parties.

* Letters Patent Appeal, No. 79 of 1909, in Appeal from Appellate Decree No. 1083 of 1908.

1910

BANESWAR MUKHERJI v. UMESH CHANDRA CHAKRABARTI.

APPEAL by the plaintiffs, Baneswar Mukherji and another.

The defendant was a tenant under one Musammat Parbati Debi of a certain *mokarrari* tenure in respect of which a *kabuliyat* was executed in December 1900. The tenure was subsequently mortgaged by the lady to the plaintiff as security for the payment of Rs. 43, being the interest due on a loan made by her. The plaintiffs, as mortgagees in possession, sued the defendants for arrears of rent in respect of the year 1313, and obtained a decree at a modified rate in the Court of first instance. The plaintiff claimed rent on the basis of the original registered *mokarrari kabuliyat* that had passed between the lady and the defendant, her tenant. The relevant portion of the *kabuliyat* ran as follows :—

"I (Parbati Debi) make a settlement with you (Umesh Chandra Chakrabarti) on an annual rent of Rs. 12-14 to be paid in cash and 40 maunds of paddy of which the value is Rs. 37 in all, on a rent of Rs. 49-14 settled in perpetuity. On taking from you a bonus of Rs. 200, you shall furnish me with paddy in the month of *Paus* every year, and out of the cash rent of Rs. 12-14, you shall pay Rs. 4-6, the revenue for one anna share of *mauza* Gobindapur and *chaukidari* tax of Rs. 1-8 and Re. 1 for Doorgamata, and the balance, Rs. 6, to me."

The plaintiff claimed the cash rent with the then market value of the 40 maunds of paddy. The Court of first instance gave a decree at the rate of Rs. 49-14, holding that the lease contemplated a fixed rent. On appeal, the Judicial Commissioner reversed the judgment and decree of the first Court and decreed the suit fully. The defendant preferred a second appeal to the High Court, and Carnduff J., sitting singly, restored the judgment and decree of the first court.

The plaintiff, thereupon, preferred this appeal under section 15 of the Letters Patent.

Babu Kshettramohan Sen, for the appellant. The terms of the *kabuliyat* are clear. It stipulates for 40 maunds of paddy or its value, plus the cash rent. The plaintiff is entitled to realize 40 maunds of paddy or its present value. As regards the statement in the *kabuliyat* of the cash rent of Rs. 49-14, it must have been so stated for the purpose of valuation for stamp-duty and registration at the time. A subsequent deed

1910

BANESWAR MUKHERJI v. UMESH CHANDRA CHAKRABARTI.

between strangers should not be allowed to explain a previous one.

Babu Jadunath Kanjilal, for the respondent. The lease in question was a *mokarrari* lease, and that of itself indicates that fixed rent was in the contemplation of the parties. Moreover, the rents in cash and in kind were consolidated by the terms of the lease into a lump sum of Rs. 49-14, and this also points to rent in cash fixed in perpetuity. The subsequent mortgage-deed confirms this impression as regards the intention of the parties, and this is further evidenced by the fact that in a previous rent-suit the plaintiff claimed rent at the rate stipulated, though the price of the paddy at the time was very high.

JENKINS C.J. In my opinion the construction placed by Mr. Justice Carnduff on the *kabuliyat*, which forms the basis of this suit, is erroneous. The terms of that document clearly point to the fact that the rent is to be as to part in money and as to part in kind, and this is emphasized by the express provision relating to the delivery of paddy in the month of *Paus* every year. I think it is impossible to read the document otherwise than as it has been read by the learned Judicial Commissioner. It is quite true that the paddy has a money-value attributed to it; but that is explicable by the desirability of stating that amount for the purpose of fixing the stamp-duty. The learned Judge, from whose decision this appeal is preferred, appears to have been influenced in his construction of the document by a mortgage subsequently executed in favour of the plaintiffs by the original grantor of the *mokarrari* tenure. But no canon of construction would allow the Court to construe an earlier document by reference to a later document which is not between the same parties.

The result then is, that in my opinion this appeal must be allowed, the decree of Mr. Justice Carnduff set aside and that of the Judicial Commissioner restored, with costs of the hearing before Mr. Justice Carnduff and before this Court.

DOSS J. I agree.

S. M

Appeal allowed.