

1873. For these reasons, we are unable to agree with the Court  
 RA'V SA'HEB below that Sadáshiv had an authority to bind the defendant  
 V. N. MAND. or the estate of the infant by the bond in question.  
 LIK  
 v. The appeal must, therefore, be allowed, and judgment  
 KAMALJA'BA'I. passed for the defendant with costs in the Court below.  
 Parties to pay their own costs of appeal.

Attorney for the plaintiff—*Venayekrao Harichand.*

Attorney for the defendant—*D. S. Garud.*

*Note*—See the concluding portion of the judgment in *Vináyak Raghunath v. G. I. P. Railway Co.*, at page 118, 7 Bom. H. C. R., where the Court declined to recognise an agreement somewhat similar to that in the above case.

[APPELLATE CIVIL JURISDICTION.]

1872.  
 March 19.

*Regular Appeals Nos. 1 and 2 of 1871 under the Land Acquisition Act X. of 1870.*

No. 1.

A. D. CAREY, ASSISTANT to the COLLECTOR

OF SURAT ..... *Appellant.*

BANU MIYA' and another ..... *Respondents.*

No. 2.

A. D. CAREY, ASSISTANT to the COLLECTOR

OF SURAT ..... *Appellant.*

KA'LU MIYA' and another ..... *Respondents.*

*Market Value—Land Acquisition Act X. of 1870—Valuation of Land—Annual Rental.*

In assessing the market value of house property, situated in the town of Bulsar, acquired for public purposes under Act X. of 1870, the court awarded a capital sum which, at the rate of six per cent. per annum, would yield interest equal to the ascertained annual rental of the premises after deducting the amount necessarily expended for annual repairs.

THESE were appeals against the decisions of W. H. Newn-  
ham, Judge of the District, of Surat, in cases referred to  
him under Section 15 of the Land Acquisition Act, 1870.

1872.

A. D. CAREY  
v.  
BANU & KA'LU  
MIYA'.

They were heard by MELVILL and KEMBALL, JJ,

*Dhirajlál Mathurádas* ( Government Pleader ) for the ap-  
pellent.

*V. N. Mandlik* for the respondents.

The facts of the case, in so far as they are material, appear  
in the judgment of the Court.

MELVILL, J. :—These cases have been brought before us,  
apparently, in order that we may lay down some general prin-  
ciple on which compensation should be calculated in such cases.

As the shops, which have been pulled down, were occu-  
pied, not by the owners, but by mortgagees, the only one of  
the four matters, mentioned in Sec. 24 of Act X. of 1870,  
which has to be considered in these cases, is the market value  
of the property. The District Judge considers that the as-  
certained rental should represent 6 per cent. on the market  
value of the shops. To this it is objected that the Judge  
should have taken into account the necessary expenditure  
from the rent on account of repairs.

We think that there is weight in this objection. Consider-  
ing the rate of interest ordinarily obtained in the Mofussil, we  
consider that a person, investing in house property, would  
have a right to expect that the rent should represent a net  
return of 6 per cent. after deducting all expenses on account  
of repairs. Against this nominal profit he would have to set  
the cost of insurance and house taxes, the risk of the house  
being temporarily untenanted, and other contingencies vary-  
ing according to circumstances.

The only evidence as to the expense of repairs is that of  
the witness Utamráam, who has been called by both parties  
and was considered by the District Judge to be the most  
reliable witness in the case. He says: "Repairs to house  
property might amount to about a quarter of the rent in Bul-  
sar." This is very vague testimony; for it is clear that ex-

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 penditure on repairs must vary according to the original construction of a house, and the care subsequently bestowed upon it. But the defendant, by whom the objection has been raised, has produced no other evidence on the subject. The shops to which these cases relate are very old, and we shall certainly not be doing an injustice to the plaintiffs, if we adopt Utam-rám's statement, and take a quarter of the estimated rent for the amount which the owner would be obliged to expend in order to keep the shops in proper repair.

In case No. 1 the estimated rent is Rs. 100. Deducting one quarter for repairs, Rs. 75 would be the net annual proceeds, which sum represents at 6 per cent. a capital of Rs. 1,250. This added to Rs. 200 for the cattle shed is less than the sum offered by the Assistant Collector. We therefore amend the District Judge's decree in this case, and award to the plaintiff only the amount tendered, viz., Rs. 1,725. Of this sum, Rs. 1,495 to be paid to the mortgagee Dvarkádás, and the balance Rs. 230 to be divided equally between Zahir, Banu, and Badu.

In the other case, the ascertained rent is Rs. 80. Deducting one quarter, we have Rs. 60 as the annual net proceeds, which sum represents at 6 per cent. a capital of Rs. 1,000. This was the sum offered by the Assistant Collector, but, for some unexplained reason, he made no offer for the cattle shed behind the shop, though there would appear to be as much reason for doing so in this as in the other case. The value of the cattle shed is estimated by the District Judge at Rs. 155. We award Rs. 1,155 and Rs. 173, under Sec. 42; altogether Rs. 1,328, to be paid to the mortgagee Mániklál.

Costs in Appeal No. 1 and in the original suit to be paid by the plaintiffs. Costs in the other case by the defendant.

*Decree accordingly.*