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damage he may sustain" is intended, we think, to ensure compensation to the owner for every sort of damage, and not to restrict it to compensation for such damage as he may by his own arrangements contrive to reduce it to.

If this be the true construction of the section, and we are informed that such has been the construction placed on it in practice, then the damage consists in the loss of a strip of land forming part of land having a frontage value, a proportionate part of which must, according to the ordinary mode of valuation, be appropriated to the strip in question, and we think that Mr. Hewson's view is, therefore, more in accordance with the intention of the section. As the frontage values fixed by Mr. Hewson are not disputed, nor the extent of the set-back, the compensation fixed by Mr. Hewson and adopted by the Judge of the Small Cause Court, independent of the question of the 15 *per cent.*, must stand. As to the 15 *per cent*, it is expressly directed to be allowed in addition to the compensation by s. 42 of the Land Acquisition Act of 1870 in consideration of the compulsory nature of the acquisition; but no such provision is to be found in the Municipal Act passed subsequently in 1872. It constitutes no part of the compensation, properly so called, for the owner's loss, and cannot, therefore, without an express provision for the purpose, be allowed by the Court. The 15 *per cent.* must, therefore, be disallowed, which will reduce the compensation to Rs. 13,821.74. Parties to pay their own costs of this appeal.

Attorneys for the appellant:—Messrs. *Crawford, Burder, Buckland* and *Bayley.*

Attorneys for respondents:—Messrs. *Conroy* and *Brown.*

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[299] APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Candy.

MAHARANA SHRI JASVATSINGJI FATESINGJI, CHIEF OF LIMDI (*Original Plaintiff*), *Appellant v.* THE SECRETARY OF STATE FOR INDIA (*Original Defendant*), *Respondent.** [30th September, 1889.]

Money paid under protest—Right of suit—Contract of indemnity—Indian Contract Act (IX of 1872, ss. 124, 141, 142.

The Thakor of Limdi possesses several *talukdari* villages in the Ahmedabad District, for which he pays a lump *jama* to Government. One of these villages was Akru. Disputes arose between the Thakor and the *grassias* of Akru as to the ownership of the village. The Thakor filed a suit against the *grassias*, which was ultimately compromised, and a consent decree was passed in 1883, providing (*inter alia*) that the Thakor should assign to the *grassias* a moiety of the village, that the *grassias* should hold the same free from all liability to pay the *jama*, and that the Thakor should alone be responsible for all Government demands.

In accordance with this decree, a moiety of the village was made over to the *grassias*. The Collector demanded *jamabandi* for this moiety. The Thakor intervened, and objected to the demand, on the ground that he paid a lump *jama* for the whole of his taluka, including the moiety of the village assigned to the *grassias*. Government, however, passed a resolution declaring that half of the village belonged to the *grassias*; that from them the Government had a right

* Appeal, No. 13 of 1888.

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to levy the *jama*; that the Thakor might, if he chose, pay the same on behalf of the *grassias*; and that if it was not paid, it would be recovered by attachment and sale of the *grassias*' half share.

The Thakor thereupon paid the *jama* on behalf of the *grassias* for two years, and then filed a suit against Government to recover back the payments he had made, and for a declaration that Government had no right to levy any assessment on any portion of the village beyond the lump *jama* fixed for his taluka.

This suit was dismissed on the preliminary ground that the Thakor had no cause of action against Government in respect of any of the reliefs sought, the Court being of opinion that the payments he had made to Government on account of the *grassias* were voluntary, and that he had no interest whatever in the *grassias*' half share of the village.

Held, reversing the decision of the lower Court, that the suit would lie. Under the consent-decree the Thakor stood in the relation of an insurer to the *grassias* from all exactions of Government dues. The payments of *jama* he made on account of the *grassias* were, therefore, not voluntary, but made under protest, and, as such, were recoverable by suit.

APPEAL from the decree of G. Jacob, Joint Judge of Ahmedabad, in suit No. 2 of 1886.

[300] The Thakor of Limdi, a ruling chief of Kathiawar, holds several villages on *talukdari* tenure in the Ahmedabad District for which he pays a lump *jama* to Government. It was alleged that one of these villages is Akru. The *grassias* of this village for a long time enjoyed the *chouth*, or a fourth share of the revenues of the village, besides being in exclusive possession of what were called their *jivai* lands.

In 1864 the Talukdari Settlement Officer, who had the management of the village under Bombay Act VI of 1862, put the *grassias* in possession of the whole village, on the understanding that they were the *mul gametis*, or original owners of the village, and that the Thakor was a mortgagee.

The Thakor thereupon filed a suit against the *grassias* to establish his proprietary title to the village and recover possession thereof. This suit was eventually compromised, and a consent decree was passed on 21st March, 1883.

The decree provided (*inter alia*) that the village should be restored to the Thakor, that he should assign a moiety of the village to the *grassias* in perpetuity, that they should enjoy this moiety free from all liability to pay the Government *jama*, and that the Thakor should alone be responsible for the Government demand.

In accordance with this decree a moiety of the village was made over to the *grassias*. The Collector thereupon demanded *jama* in respect of this moiety of the village. The Thakor intervened, and objected to the demand, on the ground that he paid a lump *jama* for the whole of his taluka, including the *grassias*' share of the village.

Government, however, passed a Resolution, No. 2702 of 1885, the material portion of which was in the following terms:—"Half the village belongs to the *grassias*, and from them Government have a right to take *jama*, and to attach their moiety of the village in default of payment. If the Thakor chooses to pay their *jama* in accordance with the compromise, well and good; otherwise the Collector should recover half of the *jama* of the village from the *grassias*, leaving them to their remedy against the Thakor under the compromise and decree."

[301] The Thakor thereupon paid the *jama* on account of the *grassias* for the years Samvat 1941 and 1942 (A.D. 1884 and 1885).

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In 1886 the Thakor filed the present suit against Government to recover back the payments, which he alleged he had made under protest, of the *jama* imposed on the *grassias'* half share of the village. The plaintiff also prayed for a declaration that the village of Akru is included in his taluka, and is not liable to any separate *jamabandi* assessment, and also for an injunction restraining Government from levying any separate *jama* on the village in future.

The defendant pleaded (*inter alia*) that half of the village of Akru belonged to the *grassias* absolutely, that Government was entitled to levy *jama* from the *grassias* on their half of the village, that the plaintiff had voluntarily and of his own accord paid the *jama* claimed from the *grassias* for two years, and could not, therefore, sue to recover those payments, and that the plaintiff had no cause of action against Government.

The Joint Judge, who tried this case, dismissed the suit, on the preliminary ground that the plaintiff had no cause of action against Government in respect of the payments made by him, or the other reliefs sought with regard to the *jama* on the *grassias'* half share of the village. The Joint Judge was of opinion that the plaintiff had made the payments in question voluntarily, and could not, therefore, sue to recover them. He further held that the plaintiff had not such interest in the *grassias'* half share as to entitle him to intervene between Government and the *grassias*. He, therefore, rejected the plaintiff's claim.

Against this decision the plaintiff appealed to the High Court.

Inverarity and *Jardine* (with them Rav Saheb *Vasudev J. (Kirtikar)*; for appellant:—We contend that the payments of *jama* we made on account of the *grassias* were not voluntary. We made those payments under protest. We had a sufficient interest in the *grassias'* half share to entitle us to intervene and protest against the Government demand. Under the decree and compromise of 1883 we took upon ourselves the whole responsibility in respect of the Government *jama* We assured the *grassias* [302] against all exactions of Government dues. Under that compromise we were, therefore, bound to pay the *jama* imposed on the *grassias'* half share. We contend that Government had no right to levy any separate *jamabandi* on any portion of the village of Akru. The village is an integral part of our taluka, for the whole of which we pay a lump *jamabandi*. We have, no doubt, assigned a moiety of the village to the *grassias*, but that assignment does not divest us of all interest in the *grassias'* share. The decree provides for our right of re-entry in case of a sale or a mortgage. We submit, therefore, that our suit lies against Government both to recover back the money we paid under protest, and to have it declared that Government have no right to levy any separate *jama* on any part of the village—*Dulichand* v. *Ramkishen Singh* (1).

Shantaram Narayan, Government Pleader, for respondent :—Under the compromise the *grassias* become absolute owners of a moiety of the village. The Thakor has no interest whatsoever in that moiety. That moiety is no longer part of his taluka. It is permanently severed from it. Government have, therefore, a perfect right to levy a separate *jama* on the *grassias'* half share. The agreement between the Thakor and the *grassias* does not bind Government. If the Thakor chose to pay on account of the *grassias*, he did so voluntarily and of his own accord, and not under any compulsion. He has, therefore, no cause of action against Government.

(1) 7 C. 648.

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JUDGMENT.

JARDINE, J.—I am of opinion that the payments to Government of *jama*, made by plaintiff, the *talukdar* of the village, on account of the *grassias*, were made under protest. He may, therefore, recover them by suit—*Scott* v. *Uxbridge and Rickmansworth Railway Company* (1); *Green* v. *Duckett* (2); *Fatima Khatoon Chowdrain* v. *Mahomed Jan Chowdry* (3).

The suit is brought on a contract of indemnity. The plaintiff, who is the insurer of the *grassias* against the exaction of *jama*, has paid the *jama* to Government. In England he would on equitable principles be entitled to maintain this suit, using the [303] name of the *grassias*, the insured—*Simpson* v. *Thomson* (4), *Randal* v. *Cockran* (5) and *Mason* v. *Sainsbury* (6). The objection in the present case, that the *grassias* ought to have been joined, is, in my opinion, formal and made too late. The principle which the counsel for plaintiff asks us to apply is that "well-known principle of law, that where one person has agreed to indemnify another, he will, on making good the indemnity, be entitled to succeed to all the ways and means by which the person indemnified might have protected himself against or reimbursed himself for the loss"—*per* Earl Cairns, L. C., in *Simpson* v. *Thomson* (at p. 284).

The Indian Contract Act, IX of 1872, s. 141, applies this principle to the contract of suretyship: but ss. 124 and 125, which deal with the contract of indemnity, are silent on this point: only the rights of the promisee are stated; those of the promisor are not mentioned. The learned counsel for plaintiff did not notice this omission when arguing for the application of the doctrine of subrogation. In the absence of reported decisions, I am of opinion that the doctrine is to be applied for the following reasons. It is an essential part of the law about indemnity. It is clearly based on natural equity, and is thus of general application. The Indian Contract Act does not impair it, and is itself only a partial measure as the preamble shows.

The learned Joint Judge took a different view regarding the nature of the payments and the rights of plaintiff as an insurer; and, in so far as the judgment relates to the first and only issue argued below, its effect is, in my opinion, to dispose of the suit on these preliminary points. It is true that the Joint Judge does deal with the merits, and expresses an opinion on the interpretation of the compromise arranged between the plaintiff and the *grassias*, and afterwards embodied in a decree of the District Court. But this compromise and decree ought not to be dealt with isolated from the rest of the facts which make up the merits: they were to be dealt with under the second and other issues, but on these evidence has not been recorded, there is no [304] definite finding below, and they are not ripe for argument before us. The case must, therefore, be sent back for trial on the merits.

There has been a contention here about the meaning and effect of the plaintiff's pleadings. It is obvious that if the plaintiff, the insurer, proves that the Government is not entitled to levy *jama* from the *grassias* on the moiety of the village assigned to them under the decree, plaintiff would be entitled to recover what he has paid. Plaintiff doubtless wishes to show that the exchange of rights which took place between him and the *grassias* did not create a right in the Government to levy *jama*. He

(1) L. R. 1 C. P. 596. (2) L. R. 11 Q.B.D. 275. (3) 12 M. I. A. 65 (79).
(4) L.R. 3 Ap. C. 279 (284). (5) 1 Ves. Sen. 97. (6) 3 Doug. 61.

appears to claim a right to convey to a transferee, free of *jama*, any lands which he held in the village of Akru with that exemption. His counsel has suggested in different ways that this right arises from the plaintiff's seignorial rights as a *talukdar*, from the relations arising out of the respective status of himself and the *grassias*, and from the rights created between them by the compromise and decree. The learned Government Pleader has urged that in basing plaintiff's rights on these grounds, the plaintiff's counsel has put forth a new case. It becomes necessary, therefore, to give some directions to the Court below.

I am of opinion that the present contentions of the plaintiff, if not all expressly stated in his plaint, are consistent therewith: and that what is ambiguous might have been ascertained and ought now to be ascertained by the Court below. For exapmle, when he avers that he is a *talukdar*, and that the village is part of his taluka, it is not clear that this status and estate are the basis of his right. This vagueness ought to be discouraged. If a plaintiff in England merely stated that he was lord of the manor in which the land lay, so vague a pleading would leave open the question whether the land was held of the manor and on what terms, or whether it was freehold. It may be that the plaintiff's seeming reliance on seignorial status as *talukdari* has induced the Government to be more persistent in resisting what the Government Pleader has likened to an interference between the Government and its subjects, the *grassias*. If to this status any rights are attached, whether of a feudal character or resulting [305] from conventions with the Government, these ought to have been pleaded with all reasonable particularity. The Court below ought now give the plaintiff this opportunity, and, in justice to the defendant Government, it ought by the ordinary procedure to ascertain, in plain terms, the different bases of right on which plaintiff relies. The defendant will also have a fresh opportunity of showing their rights to levy *jama* on the moiety of Akru in possession of the *grassias*. I avoid all expression of opinion on the merits, the interpretation of the compromise, or the rights of the parties. These can all be pleaded and shown to the Court below. That Court will doubtless consider the question whether the *grassias* should be joined as parties, after the fuller statement of the plaintiff's claim. We now remand the cause to the District Court for a new trial on the merits. Costs to be dealt with when the new decree is passed.

CANDY, J.—Plaintiff is the Thakor of Limbdi, a second class State in the province of Kathiawar, holding certain villages in the Dhandhuka Taluka of the Ahmedabad District. [See Account of the Talukdars by J. B. Peile, Government Selections, N. S., CVI, p. 5—"The States of Limri, Wadhwan and Wankanir have villages in Dhandhuka."] Defendant is the Collector of Ahmedabad (Secretary of State). The dispute is with regard to the village of Akru in Dhandhuka, which the plaintiff says is one of the villages for which a lump "*jamabandi*" is paid by him to the British Government according to Colonel Walker's settlement in 1808 A.D.

There are in the village of Akru certain *grassias*, who are not parties to this suit (called in this judgment, the *grassias*). It appears that when Bombay Act VI of 1862 was passed, the Talukdari Settlement Officer took possession of Akru, claiming to manage it on behalf of the *grassias* as owners. Litigation ensued. The Thakor sued the *grassias*, and eventually in accordance with a compromise arrived at between the Thakor and the

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grassias, the District Judge of Ahmedabad decreed that the whole village should be handed over to the Thakor, and that he should assign to the *grasssias*, in lieu of their former *'jivai'* and *'chouth'*, a moiety of the entire village. [306] These admitted facts may be illustrated by a quotation from Mr. Peile's Account of the Talukdars (*Item.*, P. 21):—"The Chiefs of Limri, &c., . . . in Kathiawar have estates in the *talukdari* districts . . . The greater part of the estates of Limri are not their original property, but villages belonging to Churasumas, Kathis, or their own Bhayat, made over to them for protection or loans. In the former case (protection) the Darbars are probably safe under the Statute of Limitations, but where sixty years have not yet expired since a mortgage was made, or acknowledged in writing, the orginal owners may yet recover their villages. . . . The relief which it is possible to give to original holders (*mul gametis*) is, therefore, small. This would not much matter if they were safe in the enjoyment of the lands and fourth share (1), which they invariably reserved when mortgaging their villages. Unhappily, their position has invited aggression, and they have often been the victims of painful injustice, for which a remedy is to be had only in the Civil Courts; and for this they have not the means."

As noted above, the result of the litigation was that the Thakor was decreed possession of the village, but he had to assign a moiety to the *grassias* in lieu of their *jivai* and *chouth*. Nothing was decreed as to whether the *grassias* were the original owners of the village (*mul gametis*), or whether by lapse of time or otherwise the Thakor had become owner of the whole village, subject to the *grassias*, *chouth* and *jivai*, or whatever was agreed upon between the parties in lieu of that; it was simply decreed in accordance with the compromise that the Thakor should assign to the *grassias* a moiety of the entire village, and as the *grassias* had formerly held their *jivai* and *chouth* without payment of any *jamabandi*, so now they should hold the moiety of the village without any such payment, and should any dispute arise with Government about this, the Thakor took on himself the sole responsibility regarding the same.

This decree was carried out. The Thakor handed over a moiety of the village to the *grassias*. The Collector of Ahmedabad then demanded *jamabandi* for that moiety. The Thakor, [307] according to the compromise, intervened and protested. Eventually Government passed the following Resolution (No. 2702, 31st March 1885) :—

"The result of the litigation between the Thakor of Limbdi and the *grassias* was that each party was held entitled to half of the village of Akru.

"2. The decree was passed in accordance with a compromise. The title was doubtful, and the compromise appeared to the Court to be a fair one. This decree has the same force as any other decree.

"3. In accordance with the decree, the Thakor has recovered half the village. The *jama* for this half village was included in the lump sum payable for his Dhandhuka villages under Colonel Walker's settlement; and therefore the Thakor cannot be called upon to pay anything for his half of the village.

"4. But half the village belongs to the *grassias*, and from them Government has a right to take *jama*, and to attach their moiety of the village in default of payment. If the Thakor chooses to pay their *jama*

(1) *Jivai* and *Chouth*.

in accordance with the compromise, well and good; but otherwise the Collector should recover half the *jama* of the village from the *grassias*, leaving them to their remedy against the Thakor under the compromise and decree."

Regarding this Resolution it may be remarked that the result of the litigation was not that each party was held entitled to half the village of Akru. The result simply was that the Thakor agreed to give and the *grassias* to take the half in lieu of their former *jivai* and *chouth*. Nor is it exactly accurate to say that, in accordance with the decree, the Thakor recovered half the village, he recovered the whole, and assigned half in lieu of *jivai* and *chouth*.

As Government resolved that they were willing to take the *jama* imposed on the moiety held by the *grassias* from the hands of the Thakor, he paid the same for two years under protest, and then brought this suit to recover the same, on the ground that no *jama* could be levied on any portion whatever of his village of Akru beyond what was included in the lump *jama* for all his villages of the Khadol Taluka: he also sued for a [308] declaration that the village of Akru is included in his Khadol Taluka, and is not liable to any separate *jamabandi* assessment, and also for an injunction restraining Government from taking any separate assessment on the village in future.

Government replied that the *grassias* were owners of half the village, and, as such, *jama* could be levied on their moiety; that plaintiff had no cause of action against Government in respect of the village of Akru; and that plaintiff had voluntarily paid the *jama*, and could not now recover the same.

The Joint Judge framed the following issues:—

1. Whether the plaintiff has any cause of action against Government in respect of the assessment levied on the half share of the village of Akru assigned by plaintiff to the *grassias*?

2. If so, whether Government has any right to assess this half of the village separately, or whether it was included in the lump assessment paid by plaintiff for his taluka?

3. Whether the plaintiff is entitled to recover the two sums paid by him on account of the *grassias'* half of the said village?

4. To what other relief, if any, is the plaintiff entitled?

Before summoning witnesses and recording voluminous evidence called for on both sides, the Joint Judge considered it advisable to hear the arguments upon the legal point involved in the first issue; and he then found on the first issue that "the plaintiff has no cause of action against Government in respect of the payments made by him or the other reliefs sought with regard to the assessment on the *grassias'* half share of the village."

It will be noticed that though the Joint Judge expressly refrained from deciding the second issue, whether Government had any right to assess separately the half of the village held by the *grasisas*, or whether it was included in the lump assessment paid by plaintiff for his taluka, yet the Joint Judge held that the plaintiff had no cause of action against Government in respect of any of the reliefs sought by him with regard to the assessment on this moiety of the village.

This is the objection now taken in appeal, *viz.*, that payment of the *jama* by the Thakor was not voluntary, because he, [309] as *talukdar* of

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the whole village, had an intimate interest in the assessment or any part thereof; that the *jama* of the whole village was included in the lump *jama* of his taluka; and that, therefore, he paid under protest the demand made by Government on the *grassias* to prevent that moiety being put up for sale.

In my opinion, the objection is well founded. The Joint Judge supposes that there is no privity between Government and the plaintiff, and that plaintiff merely paid the money in consequence of his apprehension that he would eventually have to repay the *grassias* under his agreement of indemnity with them. But the plaint distinctly shows that the reason why he entered into the agreement with the *grassias*, and why he paid the Government demand under protest, was that as *talukdar* he claimed to be paying the *jama* for the whole of Akru in his lump *jama*. It may be pointed out that the Joint Judge mistranslated the document, (Ex. 20), the agreement between the Thakor and the *grassias*, which was finally embodied in the decree of the District Court, and wrongly supposed that a right of re-entry was reserved to the plaintiff in case of sale or mortgage by the *grassias*. What was reserved to the Thakor was a right to purchase or obtain in mortgage any of the lands assigned to the *grassias*. The meaning of this reservation is easily understood by any one acquainted with the political administration of Kathiawar, where there are stringent orders against *talukdars* purchasing by sale or mortgage the estates of their *grassias*. The danger of powerful Chiefs absorbing the petty *grassias* is evident. But Akru being in Ahmedabad district, and not in Kathiawar, the Thakor felt himself at liberty to specially reserve to himself that right. Then as Chief he would have the rights of reversion, so that he is deeply interested in any burdens which may be imposed by the Paramount Power on any portion of the village. The Joint Judge expressed an opinion that if the lands now held by the *grassias* should come into the Thakor's possession and should "again be absorbed in his village of Akru, Government would of course have no right to levy a separate assessment on them, or if Government attempted to do so, the plaintiff would then have a good cause of action for such [310] relief as he now claims. But so long as the lands continue the property of the *grassias*, the plaintiff has no direct interest in them and cannot intervene between Government and the *grassias*." The crucial mistake here made is in supposing that the lands held by the *grassais* are not now part of the village of Akru, but that they may eventually be absorbed in the village of Akru. Of course they are at this moment just as much part of Akru as they ever have been or ever can be. The next mistake is in supposing that so long as the lands continue "the property of the *grassias*" the plaintiff has no direct interest in them. He may or may not have a very direct interest in them. That depends upon whether he can establish the proposition on which his claim is based. His contention is that he is the *talukdar* of the whole village, and that the *grassais* held under him certain *jivai* lands, and took a fourth (*chouth*) of the produce of the village, that during this state of things Government did not and could not levy one pie of *jama* on any portion of the lands of the village, not even on the *jivai* lands owned and held by the *grassias*, that by an arrangement between himself and the *grassias* the latter in lieu of the *jivai* lands and *chouth* took one-half of the lands of the village (the lands formerly held as *jivai* being included in the moiety assigned to the *grassias*), that though Government never attempted to levy *jama* on lands held as *jivai*, they were now

attempting to levy *jama* on the same lands when held in lieu of *jivai*. Of course the plaintiff may not be able to establish that proposition. Government may be able to show that the *grassias* are the original owners (*mul gametis*) of Akru, that Government are willing to exempt from *jama* any lands in Akru now actually held by the Thakor, who gained a footing in the village under the *grassias*, but that barring this exemption the village is fully liable to the *jama* which is in no way included in the lump *jama* taken for the Khadol Taluka.

It is idle to consider which of these propositions is proved for the parties have not been allowed to adduce evidence thereon. The case has been considered simply as if it was one of two neighbouring survey occupants, A, holding field *a*, and B, holding [311] field *b*. Government might not be bound by any agreement between A and B, that A should pay the Government assessment on *b*. The revenue authorities would simply say that if the assessment on *b* was not paid, the right of occupancy of *b* would be sold by auction.

In the present case the fact that the land itself is liable for the Government demands, and can be sold in default, does not prove that there could be no privity of interest between Government and the Thakor. The case in reality is that A says: "The estates *a* and *b* are one for which I pay the whole assessment. I, as *talukdar* of the whole estate, though not in actual possession of the portion *b*, am entitled to object to that portion being sold by auction and going into the possession of a perfect stranger; to prevent that I was obliged to pay the Government demand; and I now seek to recover the same and have it declared that the levy is illegal." It was suggested at the hearing of this appeal that the plaintiff's contention, as shown above, was not clearly set forth in his plaint. Even if this be so, yet considering the "many infirmities in pleading in the Mofussil Courts" (Westropp, C. J., at I. L. R., 5 Bom., at p. 613) I should be most unwilling to dismiss the plaintiff's suit *in limine* without giving him the opportunity of establishing the claim for which he is contending. Indeed, reading his previous correspondence with the revenue authorities together with his plaint, it seems to me that he in distinct and unequivocal terms based his right to protest against the Government levy of *jama* on any portion of Akru, on the ground that he, as *talukdar* of the whole village, already paid the full *jama* for the same.

Under these circumstances it is clear that the Joint Judge was not justified in rejecting the claim without going into the case fully and deciding the second issue. I, therefore, agree in the order reversing the decree of the lower Court and remanding the suit for trial on the merits.

Decree reversed and case remanded.