

## APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1900.  
April 2.

SHAMRAO PANDURANG (ORIGINAL PLAINTIFF), APPELLANT, v. THE SECRETARY OF STATE FOR INDIA (ORIGINAL DEFENDANT), RESPONDENT.\*

*Landlord and tenant—Lease—Condition—Condition binding tenant to reclaim land—Meaning of the word “reclaim”—Construction.*

On the 16th June, 1885, certain marshy land adjoining the sea comprising about 760 acres was leased by Government to the plaintiff in perpetuity, subject to the condition (*inter alia*) that if the whole of it was not reclaimed (*navasádhyā*) by the end of ten years, the lease might be cancelled. At the end of the ten years only 83 acres of the land were actually under cultivation. The remainder had been rendered safe against the inroad of salt water. In March, 1896, the Government cancelled the lease on the ground that the plaintiff had not brought the whole of the land into cultivation. The plaintiff thereupon instituted this suit, praying for a declaration that the Government had no right to cancel the lease, and for an injunction restraining it from taking possession of the land. He contended that under the condition he was only bound to reclaim the land from the sea and that he had done so; that he was not bound to render the land fit for cultivation, but that, if he was, he had done so as far as it was possible.

*Held*, awarding the plaintiff's claim, that on the construction of the lease the term “reclaim” (*navasádhyā*) as used in the grant meant nothing more than recovering the land from the dominion of the sea, and did not include the further obligation of rendering the land fit for cultivation. The plaintiff having erected the necessary embankments to shut out the sea was entitled to say that he had reclaimed the land and satisfied the terms of the grant.

APPEAL from the decision of M. B. Tyabji, District Judge of Thána.

On the 16th of June, 1885, the Government of Bombay granted to the plaintiff, Shamrao Pandurang, a lease of a large tract of marshy land bordering upon the sea and measuring about 760 acres, situate in the villages of Utan and Gorái in Sálsette.

The principal conditions of the lease were as follows:—

“1. The assessment has been excused for the first ten years commencing from the 1st of August, 1884.

“2. After ten years of remission in respect of the said land are over, for the next twenty years the lessee will pay assessment at 4 annas per acre per annum.

\* Appeal, No. 100 of 1899.

"3. At the end of thirty years, the lessee will pay such assessment in respect of land as may be fixed on such land under the rules which may be then in force in respect of land to which survey settlement may be made applicable, and will continue to pay the same in future.

"4. Such portion of the said land as may be set apart for public roads shall be exempted from assessment.

"5. If a moiety of the said land is not reclaimed by the end of five years, and the whole land (is not reclaimed) by the end of ten years, or if the work of erecting embankments is not carried on with due diligence within one year from (the time when) the land comes into the lessee's possession, then the lease which has been given shall be cancelled. But the Collector is authorized to give it again if he likes."

The plaintiff erected embankments and shut out the sea water by building a dam  $3\frac{1}{2}$  miles long at a cost of over Rs. 40,000. Out of the total area of 760 acres, he brought into actual cultivation 83 acres. He alleged that of the remainder, 644 acres, though culturable, were not actually cultivated because he could not obtain tenants, but that the whole of the land had been reclaimed from the sea.

In October, 1895, the Collector gave notice to the plaintiff that as he had not brought the whole of the land under cultivation within ten years from the date of the grant, the lease would be cancelled, and on the 6th March, 1896, the lease was cancelled, and the plaintiff was called upon to deliver up possession of the land to Government.

The plaintiff thereupon instituted the present suit against the Secretary of State for India in Council for a declaration that Government had no right to cancel the lease, and for an injunction restraining it from taking possession of the land.

The defendant contended (*inter alia*) that the plaintiff had not complied with the terms of the lease, and that it was, therefore, properly cancelled.

The District Judge of Thana held that the plaintiff had to make the whole of the land fit for cultivation within ten years, and had, therefore, broken one of the main conditions of the lease, and that, consequently, the Collector had a right to cancel the lease.

He, therefore, dismissed the suit.

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Against this decision plaintiff appealed to the High Court.

*Manekshah Jehangirshah*, for appellant.

Ráo Bahádur *Vasudev J. Kirtikar* (Government Pleader) for respondent.

PARSONS, J.:—This suit is brought to try the validity of the action of the Collector cancelling a lease granted to the plaintiff on the 16th June, 1885. By that lease the occupation right over some 608 acres of marsh land at Gorái and Utan was let to the plaintiff in perpetuity subject to the payment of assessment on his promise to reclaim it. The official translation of the counterpart of the lease, which only is recorded in evidence, is as follows:—

“Kabalúyat. To Ráo Sáheb Mámlatdár of táluka Sálsette. I, Shamrao Pandurang, residing in house No. 28 in New Lane, Lohár Chawl, Bombay, do by this kabalúyat (accept the kháta of) the undermentioned land situate in the villages of mauje Utan and mauje Gorái in táluka Sálsette, district Thána, on behalf of myself and my future sub-khátédárs.

“1. Marsh land situate at mauje Gorái, being land measuring about 533 acres out of Survey No. 233 together with land appertaining to the ‘Dongar’ (hill) called Mudya which is situate therein.

“1. Salt marsh land out of the unassessed Parigh marsh land situate at mauje Utan, (measuring) about 75 (seventy-five) acres.

“The four boundaries of the lands situate in the two aforesaid villages are as follows:—

“1. On the east, marsh land out of Survey No. 233 situate at mauje Gorái and marsh land out of mauje Utan, beyond which there is the creek.

“1. On the south, land out of marsh land bearing Survey No. 233 situate at mauje Gorái and Survey No. 191, being Taljan land.

“1. On the west, land out of the unassessed Survey No. 233 situate at mauje Gorái; in the interval, land out of Survey Nos. 186—65; beyond (that), land out of Survey No. 295 situate at Utan.

“1. On the north, the salt marsh Kalya Maryachi, bearing Survey Nos. 311 and 312 out of Utan.

“I accept the kháta of the land situate within the aforesaid four boundaries and apply for my name being entered in Government records as the khátédár of the said lands.

“The said kháta has been given to me permanently under the conditions of clause 21 of Rules under the Land Revenue Code, subject to the provisions of the rules framed and brought into force under the Land Revenue Code of 1879. The said conditions are as follows:—

"1. The assessment has been excused for the first ten years commencing from the 1st of August, 1834.

"2. After ten years of remission in respect of the said land are over, for the next twenty years I will pay assessment at 4 (annas) per acre per annum.

"3. At the end of 30 (thirty) years, I will pay such assessment in respect of land as may be fixed on such land under the rules which may be then in force in respect of land to which survey settlement may be made applicable and will continue to pay the same in future.

"4. Such portion of the said land as may be set apart for public roads shall be exempted from assessment.

"5. If a moiety of the said land is not reclaimed by the end of five years and the whole land (is not reclaimed) by the end of ten years, or if the work of erecting embankments is not carried on with due diligence within 1 (one) year from (the time when) the land comes into possession, then the kháta which has been given shall be cancelled. But the Collector is authorized to give it again if he likes.

"Under the aforesaid conditions I have accepted the kháta. Dated the 16th of June, 1835. Place Bombay."

The material portion is clause 5 of the conditions. The original was evidently a translation into Maráthi of clause 21 of the Rules framed under the Land Revenue Code, in which the word is "reclaimed" was used. This word the person who drew up the lease translated by the word "*nausadh*". Apparently that word is unknown to the Maráthi language, but its component parts mean "new" and "acquired". It has been retranslated "reclaimed" by the official translator in this Court, and during the argument of this appeal it was practically assumed that there was no difference in meaning between the two words. The point, therefore, at issue is whether, at the end of the ten years allowed, the plaintiff had reclaimed the whole land. The District Judge thought that the plaintiff was bound to have made the land fit for cultivation. He says: "I think the terms of the agreement were satisfied if within five years half of the area was in a state in which a fair crop could have been raised, and if at the end of ten years a fair crop could have been raised on the whole land, making allowance for the portions unavoidably under water and unarable land." He held that the plaintiff had failed to make half of the land fit for cultivation within five years from the date of his agreement and the

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whole of it within ten years from that date, and he added "the failure seems to have been due to a sufficient number of small dams not having been put up." In a previous part of the judgment he had said that "salt land is reclaimed by enclosing it first within an embankment to shut out salt water and then dividing the area by means of small dams, within which sweet water is stored up. Unless the small dams are erected, according to Damodar a fair crop will not be obtained. See Campbell's Gazetteer, Volume XIII, pages 282, 283."

All this shows clearly that in the opinion of the District Judge it was necessary that the plaintiff should not only have kept the sea water out of the land, but should also have brought the land into such a state that fair crops could have been grown on the greater part of it. The total area of the land taken up by the plaintiff was, he says, about 760 acres. "Of this, after making allowances for the sandy and rocky portions, the area under channels and that under the embankments, and taking the land incapable of cultivation to be 200 acres, the residue is 560 acres." These 560 acres the plaintiff ought in the opinion of the Judge to have made fit for cultivation. It is admitted that the plaintiff had erected the necessary outer embankments and kept the sea water out of the area leased to him. He had erected a dam some  $3\frac{1}{2}$  miles long, 35 feet wide at the base, and 15 or 16 feet wide at the top at an actual cost of Rs. 40,000 and, to again use the words of the Judge, "had made the area granted to him practically safe against the inroad of salt water." It appears to me that this was sufficient, and that having done it, the plaintiff was entitled to say that he had reclaimed the land, that is, that he had recovered it from the dominion of the sea. This, I conceive, is the meaning of the word "reclaim". The purpose of the reclamation is a secondary matter which would have to be provided for specially. The District Judge thinks that in the present case the reclamation was to be made in order that the land might be rendered fit for cultivation. I do not know why it should be so, because there is nothing said in the lease about it. For all that appears from the lease the plaintiff having reclaimed the land might do whatever he liked with it. It certainly was not obligatory on him to make the whole land fit for cultivation, because he was allowed

to set apart such portion as he chose for roads, and the portion so set apart was to be exempted from assessment. The Judge also excepts about 200 acres as being incapable of cultivation, but this is introducing into the lease a condition which does not exist in it. If the impossibility of cultivating the whole land is conceded in this way, it is a very strong argument that it was not the intention of the parties that the whole should be made fit for cultivation, and that the difficulty will arise of determining how much was to be made fit for cultivation. There are no means of solving that difficulty, and the Judge has not attempted to do so. His judgment merely sets out what according to the witnesses was the amount of actual cultivation, and he gives no opinion as to the value of that evidence. It is obvious that the actual area cultivated is not the same as the actual culturable area. The evidence as to the extent of the latter has not been alluded to by the Judge. If, however, we turn to that evidence, it would seem that it supports the plaintiff's case most strongly,—for instance, witness Exhibit 100, called for the defendant, says that “the whole area of the khár is 759 acres, of that 83 acres are under cultivation and 644 acres are not cultivated though culturable.” I take it that the word “culturable” is used in its ordinary meaning, namely, able to be cultivated, especially as the witness says that if a dam is made and fresh water falls on salt land for two or three years, it becomes sweet and can be cultivated. The plaintiff says that the land is fit for cultivation, and that the only reason it has not been cultivated is that he could not get tenants to cultivate it. I think that he is entitled to be believed when he says this. It is clearly to his benefit to have the land cultivated, for he has to pay assessment upon it whether it is cultivated or not, and he naturally would use his best endeavours to obtain some rent for it. It does not appear why the Government should have resolved to cancel the lease at the end of ten years when, if their contention is correct, they could have done so just as legally after five years had elapsed, for the same state of things existed then as now as regards the small portion of the land under actual cultivation, then less than half, now less than the whole. However, nothing turns upon this forbearance on their part.

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In my opinion the conditions of the lease have not been broken by the plaintiff. The work of erecting embankments (the only work specified in the lease) has been done, and the land has been reclaimed from the sea. The work of making it fit for cultivation is not included in the lease, but even if it had been, I could not find, on a consideration of the evidence which is on the record, that that has not been done. All that the evidence proves is that only a small portion of the land has been actually cultivated, but actual cultivation is certainly not one of the conditions of the lease. This is the only point at issue in the appeal. The other points about the agreement that the plaintiff was called on to pass, and about the fishing, were found against the defendant by the District Judge, and no objection has been taken thereto.

We reverse the decree of the District Judge and award the plaintiff the relief he claims with his cost in this litigation.

RANADE, J. :—The principal point in dispute in this appeal turns upon the construction of a reclamation lease or agreement passed by the appellant-plaintiff to the defendant-respondent on the 16th June, 1885, and which agreement was cancelled by the respondent early in 1896. This cancellation was made on the ground that the appellant-plaintiff had failed to carry out the conditions of the contract contained in the agreement of June, 1885, in that he did not reclaim the whole of the land so as to render it fit for cultivation, but only reclaimed a very small portion of the same; the defendant-respondent contended that this failure of the appellant-plaintiff justified his action in cancelling the lease. On the other hand the appellant-plaintiff claims that he had carried out the terms of the contract which related to the reclamation of the land, and the respondent had no right to put an end to it by resuming the concession of the lease. This is the principal point on which the parties are at issue. There are minor contentions which have to be considered along with it, as they have an important bearing on the principal dispute.

The land to be reclaimed was situated in two villages, about 652 acres in Gorái and nearly 107 acres at Utan. This area was admittedly swampy land covered with salt water at high tide,

and its reclamation was undertaken by the appellant-plaintiff. The concession was sanctioned in February, 1884, and, in pursuance of previous correspondence between the parties, the swampy land mentioned above, together with some hill land given on survey tenure, was placed in the possession of the appellant-plaintiff in May, 1884, and he was made a khátedár of the land. As far as the swampy land was concerned, the terms agreed were not reduced to writing, but reference was made in this correspondence to Rule 21 of the Rules made under Land Revenue Code, section 214.

In 1885 a Maráthi kabuláyat was passed by plaintiff-appellant to respondent which set forth the terms on which the concession was made. The principal condition was to reclaim half the land in five and the whole land in ten years. After which time assessment was to be paid in part and after thirty years full assessment was to be levied. No counterpart lease was prepared by the respondent till February, 1892, when a draft indenture was prepared and sent for his signature to the appellant. As the draft indenture did not in some details conform to the Maráthi kabuláyat passed in June, 1885, the appellant-plaintiff declined to execute it. He remained in possession of the whole kháta as before and paid the assessment in part as provided for in 1895 when the ten years' term was over. In October, 1895, the respondent issued a notice to the plaintiff stating that, as he had only brought five acres of the land under cultivation he had broken the terms of the contract which required him to bring the whole land into cultivation in ten years, and he was asked to show cause why the kháta should not be cancelled. On 6th March, 1896, notice cancelling the kháta in appellant-plaintiff's name was issued, and his application to the Government was disallowed in May, 1896. In August, 1896, the Mámlatdár called on the appellant-plaintiff to make over possession of the land to Government, and this led to the institution of the present suit on 12th August, 1896.

In this plaint the appellant-plaintiff prayed for a declaration that the land was granted in perpetuity under Rule 21, and the defendant had no right to cancel the same. There was also a prayer for

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injunction to restrain the defendant from taking possession and also requiring the defendant to execute a lease in perpetuity of the lands in accordance with the Rule 21. The defence was chiefly based on the allegation that the plaintiff-appellant had broken the conditions of his contract, in that he had not reclaimed,—so as to render fit for cultivation the whole of the land included in the reclamation lease, but reclaimed only 84 acres. There were also the further contentions that the term of the lease was not perpetual, but it was only passed in accordance with Rule 21 framed under section 214 of the Land Revenue Code; that the indenture of 1892 was one which the plaintiff was bound to execute under Rule 31, and his failure to do so discharged the defendant from granting any further lease; that under the circumstances defendant was justified in cancelling the lease.

The parties joined issue on these pleadings, and the lower Court found that the plaintiff-appellant was entitled to an occupancy in perpetuity of the land in dispute, subject to Rule 21; and that the respondent-defendant was not entitled to require the plaintiff to accept the lease as contained in the draft of 1892, which differed in material respects from the agreement of June, 1885. While this issue was found in plaintiff's favour, the lower Court found on second and third issues that the plaintiff had failed to reclaim the whole of the land as stipulated in his agreement, and that, therefore, the defendant had a right to resume the land. Plaintiff's claim was, therefore, rejected. In his appeal before us the appellant contends that the lower Court was in error in holding that the reclamation of the land had not been made as provided by the agreement of June, 1885. He contended that all that he had bound himself to do was reclamation of the land from the sea, which work had been completed, and that the work of rendering the land fit for cultivation did not come within the agreement, and even if it did, the agreement was carried out to the extent it was possible to do so in respect of all lands which were not incapable of being brought under cultivation. Under the circumstances the appellant contended that he was entitled to the injunction and declaration sought.

It will be seen from these contentions that, as stated at the commencement, the whole dispute turns on the inquiry whether the original agreement contemplated reclamation in the stricter or the more liberal sense. Plaintiff-appellant construes the word "reclamation" or the Maráthi word *navasadhya* used in the agreement of June, 1885, as being intended for the work of recovering the land from the sea, while the respondent contends that the word "reclamation" or its Maráthi equivalent *navasadhya* included the further obligation to make the land fit for cultivation. The lower Court has accepted this latter view, and held that the reclamation work had not been completed. Rule 21 of the Rules under section 214 must be read in connection with the rules which go before it and those which come after it. Rule 15 relates to grants of occupancy, which either relate to lands (a) to which a survey settlement has been extended and (b) to lands to which a survey settlement has not been extended. The Rules 16 to 20 relate to lands to which survey settlement has been extended, and Rule 21 and the following rules apply to lands to which survey settlement has not been extended. Rule 19 provides for imposing reduced assessment or giving rent-free land for a term when the bringing of any such numbers under cultivation will be attended with a large expense. Rule 21 relates to the reclamation of salt marshes. The object there stated is not, as in Rule 19, bringing land under cultivation, but reclaiming such salt lands obviously protecting them from their liability to be submerged by the tides. In sub-clause 5 of Rule 21 the words are "if half the area is not reclaimed in five years, and the whole in ten years, the concession may be resumed." It will be thus seen that some difference must be recognised between reclamations, as such, of salt or marshy lands and encouragement to the cultivation of unarable lands. In the present case the object was chiefly to induce the appellant-plaintiff to undertake the reclamation. Mr. Mackenzie, the Collector of Thána, referred the plaintiff to Rule 21 as being sufficient for the purpose of encouraging the reclamation he intended to undertake. The Maráthi agreement of June, 1885, has obviously used the word *navasadhya* as a translation of the word "reclamation". The full reclamation, it was contemplated, would take at

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least thirty years before it could be held to be complete in its larger sense. The obligations undertaken by the plaintiff were (1) within one year he should complete the embankments; (2) within five years half the land; and (3) within ten years the whole land should be made *navasadhya*. If any of these obligations were not fulfilled, the lease was to be cancelled. The word *navasadhya* in this place could only have been meant to be used for the word "reclamation" in its stricter sense; as the dictionaries define it, reclamation means in the case of submerged or overflowed land the rescuing of it from being submerged. The rendering it fit for cultivation is not the original meaning in regard to submerged land. That would be its meaning in regard to the reclamation of unarable land. This distinction between the larger and the narrower sense becomes still more obvious by comparing the words used in the draft indenture prepared by the respondent, where throughout the words used are *navasadhita karil va lagavadis anil*, meaning would reclaim and bring under cultivation. If the word *navasadhya* itself included the idea of bringing the land under cultivation, this emphatic addition of the condition about cultivation throughout this draft would not have been made. No such words of addition are used in the Maráthi agreement of 1885 as also in the notice of 4th October, 1895, where the only words used are that he had not made the land *navasadhya*. In his written statement, again, the defendant found it necessary to state by way of explanation that the failure to make the land *navasadhya* means that plaintiff had failed to make the *khár* land fit for cultivation. It was also sought to make out that plaintiff tried to obtain his income from fisheries, which use of the land did not amount to reclamation. This extension of the word "reclamation" so as to include the necessity of cultivation was not obviously what Mr. Mackenzie had contemplated in his correspondence with plaintiff. He simply referred plaintiff to Rule 21. He writes to say that the Commissioner has sanctioned that the terms in regard to the swampy land shall be those laid down by Rule 21. Mr. Mackenzie agreed to allow the appellant-plaintiff to be made *khátedár* of the lands. In the Maráthi agreement the word *nirantar* is used, subject of course to the Rule 21 of the

Code, *i. e.* subject to cancelment under certain conditions. The conditions required that in five and ten years the land should be reclaimed *navasadhya* half and whole.

As a matter of fact, it appears from the evidence on either side that the embankments were completed within the time agreed, namely, one year. No objection is taken on that account. The Commissioner's report further shows that out of the whole area 759 acres of the swampy land exposed to the sea, as many as 644 acres were dry land, though not cultivated, 83 actually cultivated, and only 7 acres were exposed to the sea and 23 acres represented a fishery. In all thus 30 acres alone remained to be unreclaimed. This small exception of land liable to sea floods was inevitable in the nature of things. The oral evidence of the plaintiff shows that about 200 acres were in a fit state for cultivation. Plaintiff's witness No. 76 says about 350 acres were in that condition, and he produced some 16 *kabuláyats*. Of these *kabuláyats* a *kabuláyat* of 100 acres was passed in 1890 (Exhibit 77), and the rest were in 1892 (Exhibits 78—91). They together made up 200 acres. The *kabuláyats* were for five years and the total acreage would be about 300 acres (Exhibits 78—91). The evidence of Kalya, Exhibit 182, shows that 300 acres were cultivated and 150 acres were rocky, which could never be brought under cultivation. If plaintiff had put up the dams inside the *khár* and not left them to be put up by the tenants, more land would have been under cultivation. But for his failure in this respect, plaintiff had himself to suffer, for he lost the income of his *khár*. Smaller areas are mentioned by defendant's witnesses, but as their estimates ranged from 5 to 100, their evidence is less reliable than that of the plaintiff's. The lower Court does not appear to have taken sufficient account of these variations, as also of the difficulties which plaintiff found in bringing cultivators with means to make their own dams, as they undertook to do in the *kabuláyats* passed by them. The Commissioner's report leaves no room for doubt about the fact that the land was dry for the most part, and the reclamation was, therefore, complete as far as the appellant had undertaken to complete it. The appellant-plaintiff could have no interest in not cultivating the land if he could do so, for he was the principal sufferer. The *khár* lands always take a long time

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to improve in quality, and that was the reason why the defendant allowed thirty years' term before full assessment was to be taken. Rain water has to be detained on the land and its silt allowed to accumulate from year to year before its saltish defects are cured and the land made fit for rice cultivation. The test of cultivation, therefore, was not a test which could have been in the contemplation of the parties in regard to these lands when such short periods as five and ten years were prescribed for reclamation. On the whole, therefore, it appears to me that the proper construction to be placed on the original agreement of the parties is that *navasadhya* meant reclamation in its stricter sense, and this condition was satisfied when the land was rendered dry and protected against the sea tides. This work was admittedly completed within the period stipulated, when nearly 700 acres were made dry, and even according to the defendant's witnesses, 83 or 100 acres were cultivated, while according to plaintiff's witnesses, actual cultivation extended over 300 acres. Plaintiff's evidence shows that this work of reclamation cost him a very large sum estimated at Rs. 40,000. And after such expenditure the appellant-plaintiff must, therefore, be held to have carried out the contract, and there was no breach of it, on his part, of a kind which the respondent could enforce by cancelling the lease.

As regards the other grounds on which the lease was cancelled, it appears to me that the District Judge was right in holding that the use of the fisheries and the realization of some money on that account, did not constitute a breach of the conditions, as this seems to have been in accordance with the custom which is recognised and proved by defendant's witnesses. It follows that the decision of the lower Court on second and third issues laid down by it cannot be supported. The plaintiff-appellant is thus entitled to the declaration and injunction sought by him. The insertion of the condition of 999 years, as also the levy of a nominal one pie assessment, and the condition about obtaining the sanction of the Collector before sub-letting or alienating of the lands, and the exclusion of the khan or quarry made over in the first concession, were inconsistent with the original agreement between the parties and could not be enforced. There was, in fact, no occasion to enforce a new lease under the circumstances

of this case. The Collector of Thána suggested as much, but he was overruled. If the indenture was necessary, it should have been in accordance with the Maráthi agreement of 1885. The District Judge's view on this point seems to be correct. I would, therefore, reverse the decree of the lower Court and award the plaintiff's claim, in regard to both the declaration and injunctions sought by him.

*Decree reversed.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

IMPERATRIX v. RUDRA.\*

*Evidence—Dying declaration—Indian Penal Code (Act XLV of 1860),  
Sec. 396.*

Appellant was convicted and sentenced to transportation for life on a charge of dacoity. The most material evidence for the prosecution was the statement, in the nature of a dying declaration, made to the jamádár of police by one Fakiria Shimpi, who received wounds during the dacoity and who died before the trial commenced.

The Assistant Surgeon, who made the *post-mortem* examination on the deceased, was not called, being on leave, but the Civil Surgeon, on a perusal of the notes left by the Assistant Surgeon, gave evidence that the cause of death of the deceased was pneumonia aggravated by a stab. In the notes themselves no cause of death was given, and there was no evidence as to how the pneumonia was aggravated. No explanation was given as to how the opinion was formed that the pneumonia was aggravated by the injury, and there was nothing in the notes to support it.

*Held*, that the statement of the deceased ought not to have been admitted in evidence in the absence of evidence to show that his death was caused or accelerated by the wounds received at the dacoity, or that the dacoity was the transaction which resulted in his death.

APPEAL from the conviction and sentence recorded by R. J. C. Lord, Sessions Judge of Dhárwár.

The accused was tried (with two others) on a charge of dacoity under section 396 of the Indian Penal Code (Act XLV of 1860) by the Sessions Judge assisted by two Assessors. The Judge

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