

(1910) 04 CAL CK 0023
In the Calcutta High Court

Baneswar Mukherji and Another

APPELLANT

Vs

Umesh Chandra Chakrabarti

RESPONDENT

Date of Decision : 29-04-1910

Acts Referred:

Citation : 7 Ind. Cas. 875

Hon'ble Judges : Lawrence Jenkins, C.J.; Doss, J

Bench : Division Bench

Judgement

Lawrence 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 Pous 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.

2. 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.

3. I agree.