

**(1888) 08 CAL CK 0003**  
**In the Calcutta High Court**

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|------------------------------------|------------|
| Pudmanund Singh Bahadur and Others | APPELLANT  |
| Vs                                 |            |
| Baij Nath Singh                    | RESPONDENT |

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**Date of Decision :** 09-08-1888

**Acts Referred:**

**Citation :** (1888) ILR (Cal) 828

**Hon'ble Judges :** Tottenham, J; Ghose, J

**Bench :** Division Bench

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## Judgement

Tottenham, J.—In this case we reserved judgment because it appeared to us that the case was of some difficulty in connection with a Full Bench judgment of this Court upon which the District Judge relied in his decision.

2. The suit was brought to recover arrears of rent, including certain sums on account of what are called tehvari and salami due in respect of a mokurari tenure. There was also a question with regard to interest payable; the plaintiffs claimed interest in monthly instalments, the defendants denied their liability to pay monthly, they also denied their liability for tehvari and salami.

3. The first Court decided the suit in favour of the plaintiffs; but on appeal the District Judge modified the decree by disallowing the items of tehvari and salami, and reducing the claim to interest by making it payable quarterly instead of monthly. The District Judge, as regards the items of tehvari and salami relied upon a Full Bench decision of this Court--Ghultan Mahton v. Tilukdari Singh 11 C. 175 He was of opinion that under that decision he was bound to hold that the demands under these items were abwabs, and as such must be disallowed. He came to this conclusion because it appeared to him that the items in question were outside the rent properly so called.

4. The words of Mr. Justice Mitter's decision in that Full Bench case, to which the District Judge refers, do at first sight seem to bear out the view taken by the Judge, but I happened to be one of the Judges of the Full Bench who concurred in Mr. Justice Mitter's judgment, and I certainly did not at the time of the

decision intend to concur in holding that anything recoverable under the terms of Regulation v. of 1812 could not be recovered at the present day. That Regulation has been repealed by the new Tenancy Act. But at the time the kabuliat was given by the defendants in the present suit, it was in full force. We have had since an opportunity of consulting Mr. Justice Mitter on this point, and he is anxious that he should not be misunderstood in this matter. He did not mean then to exclude the operation of Regulation v. of 1812, where that Regulation could apply. In the case before the Full Bench, that Regulation did not support the plaintiffs : on the contrary it was directly opposed to their claim. In the present case, the Regulation does support the plaintiffs case, because the items in dispute are not arbitrary and uncertain in their character, but they are specific sums which the tenants agreed to pay to the landlords; and from the terms of their kubuliat it seems to us that the payment of these items, no less than the payment of the jumma itself, formed part of the consideration upon which the tenancy was created. Therefore, the plaintiffs were entitled by virtue of Regulation v of 1812 to demand and recover these items, they being in fact part of the rent agreed to be paid, although not so described. In the definition contained in the new Tenancy Act, "rent means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant." There is nothing new in this, but it expresses concisely what has always been understood by the word "rent." What is or is not an abwab must depend upon the circumstances of each particular case in which the question arises. The Full Bench case, upon which the District Judge relies, does not, as we have said, bar the plaintiffs' present claim. We think the plaintiffs are entitled to succeed on that point.

5. As regards the other point, namely, whether interest should be charged monthly or quarterly, we think it clear that the District Judge is in error, because it is expressly provided in the tenant's kabuliat that interest should be charged monthly. The respondent's pleader, upon this being pointed out to him, frankly admitted that he could not support the District Judge's decision upon this point.

6. The result is that the appeal will be decreed, the decree of the lower appellate Court disallowing these disputed sums will be set aside, and the decree of the Court of first instance affirmed with costs in this Court and in the lower appellate Court.