"negligently or not." The definition does not apply to the Contract Act which was enacted in 1872, but in the present case the facts indicate dishonesty rather than mere negligence: they point to deliberate abstention from enquiries which, if made, would have put the defendant on his guard or to wilful blindness in entering upon a speculative transaction which it was expected would be profitable.

I agree that the appeal should be dismissed.

A. P. B. *Appeal dismissed.*

Attorneys for the appellants: *B. N. Basu & Co.*

Attorneys for the respondents: *Khaitan & Co.*

## ORIGINAL CIVIL.

*Before Page J.*

RAMKISSENDAS AND ANOTHER

*v.*

BINJRAJ CHOWDHURY AND ANOTHER.*

1923

*Jan.* 10.

*Ejectment—Decree for ejectment—Sub-tenant.*

In a suit by a sub-tenant to restrain the superior landlord from obtaining vacant possession by executing a decree for ejectment obtained by the superior landlord against his original tenant :—

*Held*, that the sub-tenant need not have been made a party in the ejectment suit and the decree against the original tenant was binding on him.

*Ezra* v. *Gubbay* (1) distinguished.

THE defendants were the landlords of the premises No. 13, Armenian Street, and a firm of Ramkissendas Maniklal were their tenants in the said premises.

* Original Civil Suit No. 1744 of 1922.

(1) (1920) I. L. R. 47 Calc. 907.

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RAMKISSENDAS v. BINJRAJ CHOWDHURY.

One of the rooms in the said house was again sub-let by the firm of Ramkissendas Maniklal to the plaintiffs who had a shop there. The defendants obtained a decree in ejectment against the firm of Ramkissendas Maniklal and took steps to execute it. Thereupon, the plaintiffs filed the present suit asking for an injunction restraining the defendants from ejecting them on the ground that they were not made parties in the ejectment suit in which the decree was obtained.

At the hearing, the claim to an injunction was given up and only the question of costs was discussed.

*Mr. M. N. Kanjilal*, for the plaintiff, referred to *Ezra* v. *Gubbay* (1) and contended that the plaintiffs were justified in bringing this suit.

*Mr. H. D. Bose* and *Mr. S. M. Bose* appeared for the defendants.

PAGE J. The only question in this case is in respect of costs. It arises in this way. The plaintiffs were in possession of the premises in question as sub-tenants of the defendants. The defendants obtained a decree in ejectment against the plaintiffs' landlords, and that decree having been obtained, by section 115 of the Transfer of Property Act, all rights of sub-lessees who held under the defendants were at an end, for the simple reason that a landlord cannot give to a tenant or to a sub-tenant something which he does not possess himself. If his rights are gone, those who claim under and through him lose their rights also. The effect of that decree was that the present defendants, who were the head landlords of the plaintiffs, were entitled to possession of these premises as against the plaintiffs and as against the

(1) (1920) I. L. R. 47 Calc. 907.

plaintiffs' landlords, and the plaintiffs have not, and have never suggested that they had, a shadow of right to remain in possession after the decree had been passed against their immediate landlords. What they say is this, that, although it is perfectly true that they had no legal ground for resisting the execution of that decree, yet, as they had not been made parties to the action, they were not bound by the decree. Or, in other words, unless a landlord chooses to make all the sub-lessees and every body who may have acquired an interest through those under-tenants, parties to the action, he can only execute his decree against those persons against whom decrees have been obtained, with the result that he may have to bring any number of suits ultimately against other persons who remained in possession. If that were so, it would, I think, tend unduly to multiply the number of suits. I quite agree that it is convenient that actions for possession based on forfeiture should be brought against all the parties interested in the premises. It is a convenient practice, but I apprehend that Mr. Justice Rankin, who in the case cited to me by counsel for the plaintiffs, was dealing with a different matter, namely, an application in respect of resistance to delivery of possession under Order XXI, did not intend to decide—and, in my opinion, having regard to section 115 of the Transfer of Property Act it would not have been possible for his Lordship to have decided—that the effect of not making every tenant and sub-tenant a party was to limit the right which the landlord would have, on obtaining his decree, to obtain possession of the premises by executing the decree.

Therefore the question arises in this way. Were the plaintiffs in this action justified in bringing a suit for which they had no legal ground whatever, a suit

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PAGE J.

to restrain the present defendants, their head landlords, from obtaining possession of these premises? In my opinion there was no justification at all for taking any such proceedings. I do not pretend, and it is no part of my duty, in this particular case, to consider the effect of Order XXI, rules 99 and 101, and I do not propose to express any opinion about the meaning of those sections. But for the purpose of deciding the question as to whether the plaintiffs were justified in bringing this action, and in claiming now, when they have given up possession, that they are entitled to say "We do not propose to go on with the action, but we were perfectly justified in bringing it, and are entitled to our costs," in my view it is sufficient for me to hold that they are taking up a wrong position, that they never had any justification for bringing this action, that they never had any justification for resisting the execution of the decree, and, in my opinion, the costs of this action should be borne not by the defendants but by the plaintiffs. The suit will be dismissed with costs on scale No. 2. Interest on costs at 6 per cent.

Attorney for the plaintiffs: *A. N. Das.*

Attorney for the defendants: *N. C. Bose.*

N. G.