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was open to the judgment-debtor to appeal from that part of the order under which the Court allowed the amendment of the application for execution and ordered that the execution would be proceeded with for costs of the lower Court also.

On these grounds this appeal must be dismissed with costs. Hearing-fee three gold mohurs.

CUMING J. I agree.

S. M.

Appeal dismissed.

LETTERS PATENT APPEAL.

Before Walmsley and Chakravarti JJ.

JOGESH CHANDRA ROY

v.

ANNADA CHARAN CHAUDHURY.*

Lease—Holding over—Right to renewal.

In a lease for six years with liberty to the lessee to renew the same for another six years and on the expiration of those six years for another renewal upon similar terms, the heirs of the original lessee continued to be in possession after the expiry of the original lease and transferred the leasehold interest to others :—

Held, that the successors-in-interest of the original lessee are not entitled to ask for a renewal of the lease which they could exercise after the expiry of the first six years of the lease.

Jardine, Skinner & Co. v. Rani Surut Soondari Debi (1) explained.

* Letters Patent Appeal No. 56 of 1925, in Appeal from Appellate Decree No. 1542 of 1923, against the decree of A. H. Cuming, one of the Judges of this Court, dated April 22, 1925.

LETTERS PATENT APPEAL by the plaintiff.

The suit, out of which this appeal arose, related to a certain plot of land in the town of Chittagong. In 1894, the estate to which this piece of land belonged was under the Court of Wards. The Collector representing the Court of Wards granted a six years' lease of this plot to one Mobarak Ali Mistri with a proviso "that if after the expiration of the term of this or any subsequent lease, the said Mobarak Ali Mistri or his heirs or assigns shall be willing to renew this lease or any subsequent lease he or they shall be entitled to do so at such rental as may be fixed by the Collector of Chittagong." At the expiry of six years the lease was not renewed, but the lessee and his heirs and then their assigns continued to be in possession as tenant. The estate was subsequently released by the Court of Wards and the plaintiff, who is the proprietor, sought to eject the defendant on the ground that the lease had expired and that the lessee had not exercised his option of renewal of the lease. The defence was that the defendant had held over and the relationship of landlord and tenant still subsisted between them and that the present tenants were entitled even then to exercise the option of renewal for six years and the plaintiff was not entitled to eject them.

The trial Court gave the plaintiff a decree. On appeal to the District Court, the learned Additional District Judge held that the plaintiff was not entitled to eject the defendants, as they were protected by the renewal clause. The plaintiff appealed to the High Court. Mr. Justice Newbould, sitting singly, heard the appeal and dismissed it. Then there was a Letters Patent Appeal and the learned Acting Chief Justice, Mr. Justice Mookerjee, sitting with Mr. Justice Fletcher, ordered the case to be remanded. The order of

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remand ran thus: "The ground upon which the learned Additional District Judge modified the decree of the primary Court involved a mixed question of fact and law. This question had not been raised in the Court of first instance and had not been tried out. Consequently no decision could be pronounced thereon by the lower Appellate Court. We are therefore of opinion that the decree should not have been confirmed by Mr. Justice Newbould. The result is that the appeal is allowed. The decree of the learned District Judge in so far as it varied the decree of the Court of the first instance is set aside and the case remitted to the Court of first instance to be tried out with regard to the legal effect of the renewal clause in the lease. The events which have happened will be investigated in evidence to be adduced by both parties." On that remand, the trial Court once more decreed the plaintiff's suit and on appeal to the District Court, the learned Judge once more dismissed the suit of the plaintiff. The plaintiff again appealed to the High Court and the appeal was heard by Mr. Justice Cuming, sitting singly, who dismissed the appeal.

The plaintiff, thereupon, preferred this Letters Patent Appeal.

Dr. Jadu Nath Kanjilal (with him *Babu Nripendra Chandra Das*), for the appellant. As to due service of notice and the sufficiency of the notice, the findings of fact are in favour of the appellant. The defendant was given full benefit of the renewal clause and he held for another period of six years. After that he did not ask for a fresh renewal and the lease was legally determined. The willingness must be on the part of the lessee; *Lewis v. Stephenson* (1), *Secretary of State for India in Council v. A. H. Forbes* (2), *Ram*

(1) (1898) 67 L. J. Q. B. 296.

(2) (1912) 16 C. L. J. 217

Lal Dubey v. Secretary of State for India in Council (1), *Manilal Dalpatram v. Nandlal Kesharlal* (2). I rely on *Jardine, Skinner & Co. v. Rani Surut Soondari Debi* (3). The remand order which asked the lower Appellate Court to take additional evidence was not complied with.

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Babu Paresh Chandra Sen, for the respondents. The renewal clause is for the benefit of the respondent. The plaintiff-appellant ought to have offered the defendants an opportunity of taking a renewal before an ejectment suit. It was open to the defendants even after the expiry of the renewal period of six years to claim it: Woodfall on Landlord and Tenant, 21st Edition, pp. 471-2, *Moss v. Barton* (4), *Rider v. Ford* (5), *Buckland v. Papillon* (6), *Allen v. Murphy* (7). A tenant holding over is an annual tenant after expiry of the term of the lease. Here the original lessee, after the expiry of the first term, continued to be a tenant and therefore he is entitled to exercise the option of renewal at any time as long as the relationship of landlord and tenant subsists between him and the plaintiff. The renewal is to be on the same terms and for the same period as the original lease except as to the covenant for renewal. See *Secretary of State for India in Council v. A. H. Forbes* (8).

CHAKRAVARTI J. This is an appeal by the plaintiff and it arises out of a suit for ejectment of the defendants after service of notice to quit. The facts, shortly stated, are these: on the 10th April, 1894, the Collector of Chittagong, representing the Court of

(1) (1912) 29 C. L. J. 314.

(2) (1919) 22 Bom. L. R. 133.

(3) (1878) L. R. 5 I. A. 164.

(4) (1866) L. R. 1 Eq. 471.

(5) [1923] 1 Ch. 541, 545-6.

(6) (1866) L. R. 2 Ch. 67, 70.

(7) (1917) 1 Ir. R. 487.

(8) (1912) 15 C. L. J. 217.

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Wards, granted a lease of the land in suit to one Mobarak Ali Mistri for six years—the estate to which the said land belonged having been in the possession of the Court of Wards. The estate was subsequently released in July, 1897. It appears that Mobarak Ali and, after his death, his heirs continued to be in possession of the land even after the expiry of the lease and they transferred the leasehold interest to one Pitambar, who in his turn transferred it to the defendants Nos. 2 to 4 in 1913. The plaintiff served a notice on the defendants to quit in 1914 and the present suit was brought on the 26th July, 1915. The defendants' answer was that no notice was served on them and that the notice purported to have been served was not sufficient. Next, it was said that the plaintiff was not entitled to eject the defendants, as the defendants had a right to ask, under the terms of the lease granted by the Collector in 1894, for a renewal of the same for another six years, and, on the expiration of those six years, for another renewal upon similar terms. The case was originally tried by the Munsiff and was decreed on the 21st September, 1916. On appeal, that decree was set aside on the 18th June, 1917, and the plaintiff's suit was dismissed. The plaintiff then filed a second appeal to this Court and on that, the judgment of the lower Appellate Court was affirmed on the 7th May, 1919. Then, there was an appeal under the Letters Patent, which was successful and the judgments of the lower Courts were set aside and the case was sent back for retrial by the Munsiff. This order was passed on the 21st April, 1920. The Munsiff on the 30th May, 1921, again decreed the suit in favour of the plaintiff and, on appeal to the lower Appellate Court, that judgment and decree were set aside by the learned District Judge. Thereupon, the plaintiff filed a second appeal

to this Court which was heard by my learned brother Mr. Justice Cuming and was dismissed on the 22nd April, 1925. The present appeal is preferred by the plaintiff against this judgment of Mr. Justice Cuming.

The learned advocate who appeared for the plaintiff-appellant contended first, that the plaintiff was entitled to a decree on the finding that the notice to quit was served and that the notice was a valid one. The learned advocate next contended that the tenancy of the defendants was merely a tenancy from year to year and was liable to be terminated on the service of a proper notice, which, as a matter of fact, was served by the plaintiff. It was further contended that the defendants, after the expiry of twelve years from the date of the lease, had no right to rely upon the clause for renewal of the lease and that, therefore, they had no answer to the suit for ejectment after the service of a proper notice on them to quit.

So far as the question of notice was concerned, it appears that it was held to be valid and properly served and no question as regards this notice was raised before this Court in second appeal. On the question as to the right of the defendants for a renewal of the lease even after the expiration of twelve years from the date of the lease it was held that such a right did exist and that the plaintiff was not entitled to demand ejectment without giving the defendants an opportunity of asking for a renewal of the lease as provided for in the lease granted by the Collector in 1894. It appears that the case of *Jardine, Skinner and Company v. Bani Surut Soondari Debi* (1) was relied upon by the plaintiff-appellant in support of the contention that,

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assuming that the defendants had a right of renewal which they could exercise, they had no subsisting right based on the contract, as the term of such a renewal after the termination of the original lease had expired. The learned Judge of this Court in dealing with that question says this: "The learned " vakil has referred to the case of *Jardine, Skinner " and Company v. Rani Surut Soondari Debi* (1), and " he relies on that portion of the judgment where it is " held that it is too late for them to rely upon their " title to a renewal of the lease, which, if it had " been granted, would now have expired. But the " facts of that case are quite different from the " facts of this case, because, as has been pointed out " by Mr. Justice Newbould, the case rested on the " fact that the plaintiff had issued notice on the " defendant calling upon him to renew the lease " at the rates mentioned in the notice and the " defendant had not applied for renewal". Speaking with due respect to the learned Judge, it appears to me that the judgment of the Judicial Committee in the case referred to above was not based upon that distinction. Their Lordships held there that although the defendants were not bound to accept the renewal, "if the rent at which the plaintiff offered the lease were too high," yet "in that case it lay upon them to take measures to compel the plaintiff to renew at a proper rate"; that the defendants could not compel a renewal of the lease for more than five years, the original term; and that it was too late to rely upon a right of renewal at a time when, if it had been granted, the renewed lease would have expired. I do not think that the fact that the plaintiff omitted to offer a renewal of the lease after the expiration of the original

(1) (1878) L. R. 5 L. A. 164.

term of six years has any bearing on the question in issue in the present case. If the plaintiff had offered a renewal of the lease to the defendants, all that the defendants could obtain was, as is pointed out by their Lordships of the Judicial Committee, a renewal or six years from the date of the expiry of the original lease. The defendants could not ask for a condition of renewal to be inserted in the renewed lease. The utmost right that they had under the renewal clause was the right to ask for a lease for an additional term of six years after the expiry of the original lease. When the landlord did not disturb the possession of the defendants for six years after the expiry of the lease, the defendants had no ground of complaint. They had got all that they were entitled to under the terms of the original lease. After the expiry thereof, the defendants were tenants from year to year with a right to renewal for six years from the date of the expiry of the lease. If the plaintiff had sought to eject the defendants within six years from the date of the expiry of the lease, the defendants might have set up the defence that they were entitled to a renewal. But, after the term of the possible renewal had expired the defendants could not ask for a fresh renewal. The learned vakil for the respondents contended that, after the expiry of the lease and also after the expiry of six years from that date, the defendants were entitled to a renewal for another six years. This certainly was not the contract between the parties. The learned vakil also relied upon certain English cases in support of his contention that this right of renewal can be exercised by the defendants at any time after the expiration of the lease, even though the term for such renewal provided by the renewal clause has also expired. None

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of the cases which were placed before us bears out this contention. The question was raised before the expiration of the term of the renewal. I do not think it necessary to discuss them at any length. As has been pointed out by the Judicial Committee in the case of *Watson and Company v. Ramchund Dutt* (1), "in Bengal", to quote their Lordships' own words, "the courts of justice, in cases where no specific rule exists, are to act according to justice, equity and good conscience," etc. etc. Now there is no specific rule of law upon the present point, I think it would be unjust to allow the defendants to continue to hold the land after the expiration of twelve years—the utmost limit to which the contract provided that the defendants could occupy the land. I think, therefore, that the plaintiff was entitled to the relief prayed for. The result, therefore, is that the decree of this Court, dated the 22nd April, 1925, as well as that of the lower Appellate Court are set aside and that of the Munsiff, dated 30th May, 1921, is restored with costs to the plaintiff-appellant in all Courts.

WALMSLEY J. I agree.

S. M.

Appeal allowed.

(1) (1890) I. L. R. 18 Calc. 10 ; L. R. 17 I. A. 110.