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other than denial of execution,) the previous step must have been taken of appealing against the Sub-Registrar's order of refusal.

The last case, which will be found in the same volume at page 851, is the case of *Lakhimoni Chowdhrain* v. *Akroomoni Chowdhrain* (1). That case appears to decide substantially the same thing. It is exactly similar to the Allahabad case.

Now those cases appear to us to establish exactly the conclusion which we should be disposed to arrive at on the construction of ss. 72 to 77, but we do not think that they support the propositions laid down in the Courts below, namely, that deficiency of stamp duty will invalidate the presentation, or that the non-attendance of the executing party within four or eight months is fatal to a suit in the Civil Court under s. 77, or that registration cannot be made after eight months.

For these reasons we think that the decree of the lower Court cannot be sustained. The case has been dealt with only on this preliminary point, the merits have not been gone into. The case must, therefore, go back to the Munsiff's Court for trial on the merits with this statement of the law.

Costs of this appeal will abide the result.

Appeal allowed and case remanded.

Before Mr. Justice Field and Mr. Justice O'Kinealy.

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July 1.

PEARI MOHUN MUKHERJI (PLAINTIFF) *v.* BANSHI MAJHI (DEFENDANT.)*

Landlord and tenant—Enhancement of rent, Suit for—Beng. Act VIII of 1869, s. 4—Presumption of Evidence.

In a suit for arrears of rent at enhanced rates where the defendant relies on the presumption contained in s. 4 of Beng. Act VIII of 1869, it is not sufficient, in order to do away with that presumption, to show that the land has not been in cultivation from the time of the permanent settlement. It must be shown that the land has not been *held* since the time of the permanent settlement.

* Appeal from Appellate Decree No 2563 of 1883, against the decree of J. G. Charles, Esq., Additional District Judge of 24-Pergunnahs, dated the 23rd of June 1883, affirming the decree of Baboo Bepin Chundra Rai, Munsiff of Diamond Harbour, dated the 30th of June 1882.

(1) I. L. R., 9 Calc., 851.

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PEARI MOHUN MUKHERJI v. BANSHI MAJHI.

THIS was one of a series of suits instituted by the plaintiff against his tenants for arrears of rent at enhanced rates. The case is thus stated by the District Judge: "These appeals being analogous have been tried together with the consent of all the parties. The plaintiff-appellant, sued in the Munsiff's Court, for rent at enhanced rates from the defendants, who are admittedly tenants with occupancy rights, but the Munsiff dismissed all these suits upon the ground that the notices of enhancement served upon the defendants were insufficient and bad in law, and also because he found that in instituting these suits the plaintiff had improperly split up the consolidated holdings of some of the defendants, and lastly because all the defendants hold their tenures at fixed rents, and as such are not liable to enhancement of rent. The plaintiff's appeals in this Court are directed against all these findings of the lower Court, and it will be convenient to consider the findings of the Munsiff in the order in which they appear in his judgment. The Munsiff considers that the notices of enhancement are bad in law, because they do not state precisely to what extent the productive power of the land and the value of the produce have increased. Both of these grounds of enhancement are included under the same heading in s. 18, Beng. Act VIII of 1869, and therefore, in my opinion, when the total increase under this general heading is shown in the notices served upon the defendants, I consider that these notices are sufficient in law to enable the defendants to comprehend the cases which they have to meet: *McGiveran* v. *Hurkhoo Singh* (1). In this Court, moreover, with a view to obtain a final decision on the merits, the pleader for the defendant waives the point, and I accordingly hold that the notices served upon the defendants are sufficient. In the next place the Munsiff finds that suits Nos. 1219, 1225, and 1228, are untenable, because the plaintiff has split up the consolidated holdings of the defendants in those suits. The plaintiff has objected to this finding on the ground that the written statements filed by the defendants in these cases, as well as the *pottahs* and annual accounts submitted by them, all acknowledge the existence of separate holdings at several rents, for if it had been the intention

(1) 18 W. R., 203.

of the parties that the holdings should be consolidated, it was superfluous to retain a record of the separate rentals. In my opinion, however, the finding of the Munsiff on this point is correct, and the wording of the annual accounts, as well as of the *pottahs* filed by the defendants, seem to me to show that both at the time these *pottahs* were granted, and subsequently when payments were made, the parties treated these holdings of the defendants not as separate holdings, though for convenience a list of the original plots was kept. In all the suits which have been appealed, uniform payments of rent for upwards of twenty years has been proved to the satisfaction of the Munsiff, and indeed is admitted by the plaintiff on appeal. The main issue, therefore, in all these cases is, whether the presumption of law raised by s. 4, Beng. Act VIII of 1869, has been rebutted by the evidence on the record." The Judge went into the evidence on this issue, and, finding in favour of the defendants, dismissed the appeals with costs.

The plaintiff appealed to the High Court.

The *Advocate-General* (the Hon. *G. C. Paul*), Baboo *Pran Nath Pundit*, and Baboo *Biprodass Mookerjee*, for the appellant.

Baboo *Gurudas Banerjee* and Baboo *Koruna Sindhu Mookerjee*, for the respondent.

The judgment of the Court (FIELD and O'KINEALY, J.J.), was delivered by

FIELD, J.—Two points have been taken in this appeal. The suit was brought to enhance the rent of a certain holding. The Judge in the Court below held that the enhancement notices and the proceedings taken thereupon were bad because a number of holdings were treated as separate, and separate notices were issued in respect thereof, while the evidence showed that these holdings were consolidated. The Judge relies upon the accounts filed by the plaintiff. He also relies upon certain *pottahs*. These *pottahs* in a subsequent part of his judgment he holds not binding upon the parties, but although they were not binding upon the parties, inasmuch as they were granted by a Hindu widow, it might be contended that they are evidence on the particular point. Whether they are or are not evidence, the Judge

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is clearly wrong in finding that the annual accounts kept by the plaintiff showed that he treated the holdings as consolidated. This being so, we think that the findings of the Judge below on the point of consolidation should be set aside; and it would have been necessary for us to remand the case in order that the Judge below, after excluding from his consideration the annual accounts which were not evidence, might, upon the rest of the evidence, come to a finding whether the holdings had been consolidated or not. It is, however, agreed by the Counsel for the parties that this question shall remain open. We, therefore, set aside the findings of the Court below upon the question of consolidation, and this question will remain an open one between the parties.

The second point argued is concerned with 'twenty years' presumption. It is found as a fact that the payment of rent for twenty years at the same rate has been proved, and this being so there arises a presumption according to s. 4, Beng. Act VIII of 1869, that the land has been held at this rate from the time of the permanent settlement. It is then sought to rebut this presumption by showing that this tenure or holding has come into existence since the time of the permanent settlement. If this could be shown, no doubt the presumption would be rebutted. The facts are these: In the year 1197 (1790) a taluk containing three mouzahs—Srikissenpúr, Lakhiparainpur and Ramlochanpur together with other villages,—was settled for ten years from 1197 to 1206 (1790 to 1799), and was number 73 in the Collector's *towji*. On the expiry of that decennial settlement, a second settlement was made with a person who had purchased at a revenue sale the rights of Komalprosad, with whom the first settlement was made. In 1818 a measurement was made, and as the result of this measurement there was in 1823 a settlement made for a large portion of excess land (Towfeer). This Towfeer or excess land was found to be no less than 10,492 bighas. This excess land was separately settled in 1823 under a separate number 796; and it therefore became a separate revenue-paying estate. It is admitted by both parties that the lands which form the subject of this and other cognate suits are included within the Towfeer Estate No. 1076. The plaintiff's contention is that

it must be assumed that the land settled as Towfeer in the year 1823 was not under cultivation in 1793, that is, the time of the permanent settlement. It is contended that if it were cultivated land, it must have been included in the settlement of 1197 or in that of 1206. If that is a proper contention, it is then further contended that the defendants' holding must have come into existence not earlier than 1823.

Now, in the first place, we may observe that, in order to maintain the presumption of section 4 of the Act, cultivation is not essential. What the law says is, that it must be presumed that the land was *held* from the permanent settlement, and land may be held without being cultivated. It is impossible for us to assume that if the tenures which form the subject of dispute in these suits were cultivated lands in 1793, they must have been included in one of the two settlements of 1197 or 1206. There is admittedly no evidence to show the condition of the land at that early period. Both settlements were made as well for waste as for cultivated lands, and we cannot hold that the land omitted from the earlier settlement and afterwards settled must have been uncultivated in 1197 and 1206, and therefore during the intervening years, and therefore at the time of the permanent settlement.

We think, therefore, it is impossible to say that it has been proved that these holdings came into existence not earlier than in 1823; and therefore the twenty years' presumption has been rebutted and does not apply.

Under the circumstances the appeal must be dismissed with costs.

Appeal dismissed.