Before Mr. Justice Mitter, Offg. Chief Justice, Mr. Justice White and Mr. Justice Macpherson.

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July 31.

PRASIDHA NARAYAN KOER (PLAINTIFF) *v.* MAN KOCH (DEFENDANT.*)

Occupancy, Right of, in Assam—Act X of 1859*—Ejectment, Suit for.*

Per MITTER and WHITE, JJ (MACPHERSON, J., dissenting).—Act X of 1859 does not apply to lands situated in the Assam valley district.

In a suit brought to eject a tenant of certain land situated in Assam on the ground that he was a trespasser, where it was shewn that he had held the land direct from the Government for a considerable time, and that the land had been made over during his tenancy to the plaintiff in exchange for certain other lands made over to the Government, and where the tenant claimed to have acquired a right of occupancy under Act X of 1859, and not to be liable to ejectment in the manner sought for,

Held, per MITTER and WHITE, JJ., that as that Act did not apply to lands situated in Assam, no such right could be claimed, and the suit being properly framed, the plaintiff was entitled to the relief he asked for.

IN this suit the plaintiff sought to eject the defendant from certain land situated in mouzahs Durgagon and Barowtola, in the sub-division of Mungaldai, Darrang, in the province of Assam. The land in question was formerly Government kheraj land, but at the time of the survey operations in 1283 (1876,) it was transferred to the plaintiff by the Government in exchange for an equal quantity of land belonging to his estate. The appeal originally came on for hearing before a Division Bench composed of WHITE and MACPHERSON, JJ., and the judgment of that Bench, which sufficiently states the facts, was as follows :—

WHITE, J.—This is an appeal by the plaintiff against the decree of the Judge of Assam, affirming a decree of the Extra Assistant Commissioner of Mungaldai dismissing the plaintiff's suit.

The suit is to eject the defendant from 5*b*, 4*c*, 17½*d*, of rupit land, occupied by him in mouzah Mungaldai. The defendant

*Appeal from Appellate Decree No. 825 of 1880 against the decree of W. E. Ward, Esq., Judge of the Assam Valley Districts, dated the 4th February 1880, affirming the decree of Baboo Guru Persad Das, Extra Assistant Commissioner, vested with the powers of a Munsiff of Mungaldai, dated the 25th June 1879.

originally held the land under Government, executing annual pottahs for the same at varying rents, and sometimes holding less, and sometimes a larger quantity of land than the land in suit. In 1283 (1876) an exchange of lands took place between the Government and the plaintiff, on which occasion the land in suit was by Government made over to the plaintiff. The defendant's last annual Government pottah expired in 1875. The suit was brought in 1879, and the defendant has paid no rent in the interval.

The plaintiff alleges in his plaint that, after the exchange was effected, he repeatedly asked the defendant to make some settlement with him or quit the land, and that in 1284 (1877) the defendant refused to come to a settlement.

The defendant, on the other hand, alleges in his written statement that he had from a long time before the British Government came to the country been in possession of the land in dispute from generation to generation; that he had got a pottah from Government and a right of occupancy in the land; and that he has a right to hold the land in dispute under the plaintiff in the same way that he held it under Government.

The pleadings of both the parties leave it vague as to the rate of rent or description of rent, about which the parties are disputing; but it appears from the judgment that the defendant is willing to accept the plaintiff as his landlord, provided he exacts no higher rent than he (the defendant) paid to Government, before the exchange was made. The plaintiff insists that the defendant must come to a new settlement with him, which means submit to an increased rent or to some new description of rent, or on the other hand must quit possession. The plaintiff has applied to him to take one or the other course, but he will do neither.

The first Court has dismissed the suit because, in its opinion, having regard to the annual pottahs which the defendant used to receive from Government, and to the Assam settlement rules, the defendant stands as regards the liability to ejectment, at least in as high a position as, and in some respects in a better position than, a Bengal ryot having a right of occupancy.

The lower Appellate Court draws a distinction between a ryot who has held under an annual pottah from Government, and one

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who has held under a ten years pottah, and puts a totally different construction upon the annual pottah and the Government rules, and arrives at a totally different conclusion as to the rights enjoyed by the defendant, but agrees in dismissing the suit on a not very intelligible ground, having regard to the above conclusions. He says "the Government may," in the case of a tenant holding under an annual pottah, as the defendant did, "rackrent up to any limit it pleases, and in this way if it was so minded would compel the cultivator to relinquish his land. As is well known Government doubled the rates all round ten years ago, and it may double them again to-morrow."

We had an abstract prepared of the annual pottahs which had been granted by Government to the defendant and his predecessors prior to the exchange, and it fully bears out this statement of the Judge.

The Judge proceeds to say that "though the annual tenant in Assam has no legal property in the lands held by him, there is no doubt that for a long series of years he has been practically given to understand that it will recognize his right to have his pottah renewed every year, so long as he consents to pay the Government revenue demanded of him." This demand, as is evident from the previous passage, may be an increased demand, or even an exorbitant one according to the Judge. What would be the remedy if the defendant refused to pay the increased demand? Or if he refused to come to a new settlement at the increased rent? I can see no other than an action of ejectment. His annual pottah having expired, he is holding on without a pottah; and although he is entitled to have another annual pottah offered to him at the expiration of the former pottah, yet if the rent in the new pottah may be an increased one, his right of re-settlement amounts to nothing more than a right to have the renewed pottah offered to him in the first instance, and if he won't accept the renewed pottah because the rent is increased, he must make way for some person who will agree to pay the increased rent, and if he will not quit, the Government must sue to eject him.

The District Judge, however, agrees with the First Munsiff in dismissing the suit on the ground that the plaintiff is not entitled to

treat defendant as a trespasser, and this conclusion he came to in consequence of some hazy agreement which is to be collected from the evidence of the Extra Assistant Commissioner, and which the Judge himself states was unfortunately not put into writing. This agreement is in the early part of the judgment stated in these words: "The plaintiff was given clearly to understand that the exchange would not be permitted unless he respected the rights of the Government tenants in the lands made over to him." Now this is merely a statement of the position in which the plaintiff would after the exchange stand to the tenants of Government according to law. The exchange would not affect their rights in any way. They would acquire no fresh rights by the exchange, but what rights they had before the exchange they would retain.

Towards the end of the judgment this supposed agreement assumes a rather different shape. It is stated thus: "The plaintiff agreed to respect that *guaruntee* by receiving the same rent from defendant as the defendant would have been called upon to pay Government had no exchange been effected." This guarantee in a few lines above is described as "an implied guarantee from Government that their lands shall be re-settled with them every year subject to the condition of paying the Government revenue demanded. This sets the whole thing at large again, for Government may, as the Judge has found, increase the rent, and accordingly their demand, as it likes.

I can make nothing of this hazy agreement. It appears to me not to affect the question at all. The effect of the exchange was to put the plaintiff in the place of Government having the same rights as Government possessed, neither more nor less.

I see no reason to differ from the construction put by the Judge upon the form of the annual pottah and upon the settlement, and as the defendant will not take out an annual pottah at an annual rent, or at such a rent as the plaintiff may fix, and will not adopt the alternative of quitting possession as he has been requested to do, I think the present suit will lie, and I would reverse the decree of both Courts, and decree that the plaintiff recover from the defendant possession of the land in dispute.

It is argued by the Government pleader, who appeared for the defendant, that the latter had a right of occupancy under Act

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X of 1859. If this be so, I agree with the Government pleader that the plaintiff could not succeed in this suit, but would be confined to bringing a suit for enhancement. Neither of the judgments of the Court below proceeded upon this point; but the Government pleader contended that he is entitled to support the judgment appealed from, on any ground on which it can be supported. This appears to be so, and we have heard some argument on the question whether Act X of 1859 is in force in Assam. That Act, although in the title (which however is no part of the Act) mention is made of a limited part of India, has no clause in the body of the Act confining its operation. *Primâ facie*, therefore, it applies over the whole of India—I mean that part of it for which the Legislature is empowered to legislate; but this extended operation may be confined, if it can be gathered from the context that its operation is intended to be limited, or if the circumstances of the locality and the incidents of the tenures prevailing there are so peculiar that a comparison of them with the clauses of the Act shows that it could not be intended to extend to such locality. As regards the circumstances and incidents of the occupiers of the land in Assam, we have not sufficient materials before us to enable us to form an opinion.

But upon a consideration of the various clauses of the Act, I incline to think that at the time when the Act was framed, its operation was confined to the Regulation Provinces of the Bengal Presidency of which Assam was not one. Another question then arises as to whether it has, since its date, been legally extended to Assam. I have been referred to a notification on the subject, but am not satisfied that the Act has been so extended, or if as a matter of fact it has been so, that it was legally extended.

We have been referred to a recent case decided by a Division Bench, in which it appears to have been the opinion of the two learned Judges composing that Bench that the Act was in force in Assam, but that decision was an *ex parte* one and the point was not argued (1). It also appears from an earlier case that

(1) *Konaram Gaonburah* v. *Dhatoram Thakoor*, I. L. R., 6 Calc., 196.

Dwarkanath Mitter, J., was of opinion that the Act had been extended to Assam (1), but a long search has failed to unearth a notification (if any one exists) which supports that learned Judge's statements. The question, no doubt, is of considerable difficulty, and I should prefer not to decide it, but if I must decide it, then my decision is that the Act is not in force. My brother Macpherson is inclined to think that the Act is in force.

Under these circumstances this question will have to be re-argued before a third Judge or before another Bench. Subject to the result of that re-argument, and also of the determination of the further question whether, supposing Act X of 1859 is in force, the defendant has acquired a right of occupancy under that Act, my brother Macpherson agrees with me that the judgment of the lower Appellate Court should be reversed, and the plaintiff's suit decreed. Costs of this hearing reserved.

The appeal was accordingly subsequently re-argued before MITTER, J. (*Offg. C.J.*)

Mr. Piffard and Baboo *Bykuntnath Dass* for the appellant.

The Senior Government pleader (Baboo *Annoda Persad Banerjee*) for the respondent.

The judgment of the Court was as follows :—

MITTER, J.—I am of opinion that in the Assam Valley Districts, Act X of 1859 is not in force. That Act was passed by the Legislative Council of India which was constituted by the 16 and 17 Vic., Cap. 95. There is no clause in the body of the Act to show that its operation was limited only to a particular portion of British India. *Primâ facie,* therefore, it applies to the whole of British India, unless it can be shown from the context that its operation was intended by the Legislature to be limited to any particular portion of British India. But from the provisions of the Act itself it is quite clear that it does not apply to the whole of British India. For instance, the systems of land tenures and the settlements of Government revenue prevailing in the Presidencies of Bombay and Madras would make the provisions of this Act

(1) *Jullow Surma Patwaree* v. *Madhub Ram Atoi Boorha Bhukut*, 16 W. R., 202.

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wholly inapplicable to those Presidencies. We have, therefore, to determine to what portion of British India the Act in question was intended by the Legislature to apply.

The preamble of the Act says :—

"Whereas it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of ryots, with respect to the delivery of pottahs and the occupancy of land to the prevention of illegal exaction and extortion in connection with demands of rent and to other questions connected with the same ; to extend the jurisdiction of Collectors and prescribe rules for the trial of such questions, as well as of suits for the recovery of the arrears of rent and of suits arising out of the distraint of the property for such arrears ; and to amend the law relating to distraint, it is enacted as follows." Therefore, it is clear that the object of the Act was three-fold—first, to *re-enact*, with certain modifications, the existing laws regulating the rights of landlord and tenant regarding certain specified subjects ; secondly, to extend the jurisdiction of Collectors ; and, thirdly, to prescribe a law of procedure for the trial of the questions relating to those rights as well as for the trial of rent suits. Therefore, the provisions made in the Act for the carrying out of the first object can only apply to those districts in which the laws, which were re-enacted with certain modifications, were in force. Now these laws are the Regulations on the subjects in question which were repealed by the Act under our consideration. These regulations are specified in the repealing section of the Act, *viz.* section 1.

Referring to those Regulations, it is quite clear that they were not in force in the Assam Valley Districts. These districts were conquered in the year 1826. After their conquest, the upper portion was granted to certain Chiefs who were to govern them in accordance with the conditions of certain treaties concluded with them : see Aitchison's Treaties, Vol. I, page 126. The Government of the lower portion was assumed by the E. I. Company :—The administration of justice in these provinces was entrusted to certain officers appointed by the Governor-General in Council. They were never brought within what were called the Regulation districts of the Presidency of Fort William. The whole of Upper Assam, for certain reasons,

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to which it is not necessary to refer here, was gradually brought under the British rule, and the same system of administration of justice was introduced there as was in force in Lower Assam. By a Government Resolution of 1834, it was directed that the Commissioner of Assam shall, from the 1st October next, be subject to the Courts of the Sudder Dewany and Nizamut Adawlut in all matters connected with the Civil and Criminal Administration, and to the Sudder Board of Revenue at the Presidency in revenue matters. The 4th paragraph of this Resolution contained the following direction: "The Assistants will continue to perform their duties at present entirely under the direction and control of the Commissioner." By the 5th paragraph it was directed that certain special rules, which had been sanctioned for the Sagur and Nurbudda Districts, should be forwarded to Captain Jenkins, who was then the local head in charge of the administration of the district, to enable him to submit a draft of rules which he might consider best suited for the district of Assam. These rules were subsequently framed and sanctioned by the Governor-General in Council, and I shall refer to them hereafter.

It is clear from Regulation I of 1829, by which the office of Commissioner of Revenue was created, that it was not the intention of Government to extend to Assam the system of administration of justice prevailing in the Regulation Districts. It has been contended before me, that by the Regulation in question a Commissioner of Assam was appointed with powers similar to the Commissioners in the Regulation Districts constituted by it. This contention is not correct, because the Commissioners of Revenue and Circuit, constituted by the Regulation in question, and vested with the powers recited in s. 4, were the Commissioners enumerated in s. 2. Assam is not one of the districts recited in this section. Section 9 says, that the Commissioners of Arracan and Assam shall possess and exercise within the districts of Bengal, which are by this Regulation attached to their respective divisions, the same powers as belonged to the Commissioners of Cuttack, modified as above. By this provision the Commissioners of Arracan and Assam, who were not appointed under the provisions of Regulation I of 1829, and

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whose powers were not defined by s. 4 of the Regulation, were declared to be *ex officio* Commissioners in certain Regulation Districts, *viz.*, Chittagong, Noakhally, Sherepore and Sylhet, exercising the power in these districts defined by s. 4. But so far as Arracan and Assam were concerned, they were not appointed under the provisions of Regulation I of 1829, and their powers were not defined by s. 4. This Regulation, therefore, instead of showing that Assam was brought in any respects within the Regulation Districts, shows just the contrary.

Then next Act passed by the Governor-General in Council relating to Assam was Act II of 1835. This Act only embodied the provisions of the Government resolution already referred to. It declared "that the functionaries who are or may be appointed in the provinces of Assam * * * * * * be henceforth placed under the control and superintendence in civil cases of the Court of the Sudder Dewany Adawlut, in criminal cases of the Court of the Nizamut Adawlut."

Then rules for the administration of Civil and Criminal justice in Assam were from time to time framed. The last set of rules on this subject were prepared and sanctioned in the year 1847. They form a complete Code providing for the trial of all kinds of suits. By the 9th rule, the assistant in charge of a district was empowered to try, in his capacity of Collector, suits for arrears of rent or undue exactions of rent. These rules and not any of the regulations mentioned in the repealing section of Act X of 1859, *i.e.* s. 1, were in force in Assam in 1859. It is therefore clear that the provisions of Act X of 1859, which were intended to replace the Regulations repealed by s. 1, were intended to apply only to the districts in which those Regulations were in force. Those provisions of Act X of 1859 which deal with the subject of relative rights of landlords and tenants cannot, therefore, apply to the Assam Valley Districts. These reasons are sufficient to warrant the conclusion that s. 6 of Act X of 1859 at least is not applicable to the districts in question.

It seems to me further that the provisions of Act X of 1859, which were intended to carry out the second and the third

objects mentioned in its preamble, also do not extend to the Assam Districts.

The second object was to extend the jurisdiction of Collectors. I have shown above that in 1859 there were no such officers as "Collectors" in existence in Assam. The assistants in charge of districts only *exercised* the powers of Collectors. If by the use of the word "Collectors" in Act X of 1859 the Legislature had intended to include these officers, we should have found in the Act an interpretation clause to that effect.

Then as regards the last object, it appears to me from s. 67 of Act of 1859, that the provisions relating to it were not intended to apply to Assam. Act X of 1859 does not contain any provision relating to the examination of witnesses, for procuring their attendance, &c. The section referred to above provided that the provisions of Regulations and Acts and all other rules for the time being in force relating to the subjects mentioned above in *cases before the Civil Court in the Presidency of Bengal*, shall, with a certain exception, apply to suits under Act X of 1859. The section does not refer to the Assam Rules on the subject. It is therefore clear to me that the procedure laid down in Act X of 1859 for the trials of suits under that Act, was not intended to apply to similar suits in Assam.

Furthermore, if it had been the intention to extend Act X of 1859 to Assam, we should have found in the repealing section a provision for the repeal of the Assam Rules in force in 1859 relating to the trial of suits similar to those which were declared exclusively cognizable by the Collectors of land revenue under s. 23 of the Act. Then, again, by Act XIV of 1863, Act X of 1859 was amended so far as it related to the territories under the Government of the Lieutenant-Governor of the North-Western Provinces. The 19th section of this Act provides that it shall be lawful * * * * * for the Lieutenant-Governor of the North-Western Provinces to extend Act X of 1859 to any territories under his government in which the said Act was not then in force. This section does not give to the Lieutenant-Governor of Bengal any such power.

If Act X of 1859, when it was passed, was intended to extend to the whole of the territories under the Lieutenant-Governor

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of the North-Western Provinces and Bengal, this provision would not have been necessary. It is clear to me, therefore, that it was intended when it was passed to apply only to what are called Regulation Districts.

Then the next question is, whether this Act has been, since 1859, extended to Assam. The only notification that I have been able to trace on this subject is one of the Bengal Government dated 28th May 1864. It is published in the *Calcutta Gazette* of that year, page 1133. It says: "For carrying out the provisions of Acts VIII and X of 1859, the officers employed in the Civil Administration of Assam and Chota-Nagpore Division are hereby vested with the following powers." Then certain officers are vested with the powers of Zillah Judge, of a Collector and of a Deputy Collector. This notification does not purport to extend the provisions of Act X of 1859 to Assam. It assumes that that Act is in force there. If it be assumed even that it was intended to extend the Act to Assam, then the notification cannot be acted upon, because it was not in the power of the Lieutenant-Governor of Bengal to extend the Act by a simple notification. There is no provision to that effect in Act X of 1859, and in the subsequent Act of 1868, referred to above, no such power was given to the Lieutenant-Governor of Bengal.

For these reasons I am of opinion that Act X of 1859 is not in force in the Assam Valley Districts. As upon the other questions raised in this appeal, the learned Judges who heard this case first are agreed that if Act X of 1859 is not in force in the Assam Valley Districts, the judgment of the lower Appellate Court should be reversed, and the plaintiff's suit decreed, the result is that a decree should be made in this Appeal in accordance with that opinion. Accordingly, the judgment of the lower Appellate Court is reversed, and the plaintiff's suit is decreed with costs.

Appeal allowed.