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ground that the decree under which the plaintiff purchased was a decree obtained in a fraudulent transaction and therefore should have no force. On this point, if it be allowed that we could go behind a decree which has not been set aside, it is sufficient to say that the Judge has found that the defendant declined to give any evidence in support of the plea of fraud. As he asserted the fraud he was bound to prove it, as he did not even attempt to do so, there is an end of the plea. I would dismiss the appeal and affirm the judgment with costs.

Appeal dismissed.

Before Mr. Justice Spankie and Mr. Justice Straight.

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SAWAI RAM (PLAINTIFF) *v.* GIR PRASAD SINGH (DEFENDANT).*

Wrongful dispossession of land—Compensation for wrongful dispossession—Jurisdiction—Act XVIII of 1873 *(N.-W. P. Rent Act), s. 95, clauses* (m) *and* (n).

In an estate held by *S* as a sub-proprietor he held certain land with a right of occupancy. *G*, the zamindar, obtained a decree against *S* in a Civil Court for the possession of the estate, in execution of which he ousted *S* from the estate including the land held by him with a right of occupancy. This decree having been set aside, *S* recovered the possession of the estate including such land, and sued *G* in the Civil Court for the value of the crops standing on such land at the time he was ousted from it by *G*, and for the rents of a portion of such land which *G* had let to tenants while in possession of it. *Held* that the suit was cognizable by the Civil Courts (1) and that *G* was liable for such rents.

IN the year 1874 the plaintiff in this suit was in the possession of a certain estate paying revenue to Government, situate in the Aligarh district, of which the defendant was the proprietor. At the settlement of this estate in that year a dispute arose between the plaintiff and the defendant as to the nature of the former's possession. On the 21st December, 1874, the Settlement Officer made an order which declared that the plaintiff was the lessee of the estate for an indefinite term, and that he was also an occupancy-tenant of fifty-one bighas, ten biswas, of land comprised in the estate. The defendant subsequently instituted a suit against the plaintiff in the Court of the Subordinate Judge of Aligarh, for his ejectment

* Second Appeal, No. 991 of 1879, from a decree of C. W. Moore, Esq., Judge of Aligarh, dated the 28th July, 1879, modifying a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 29th March, 1879.

(1) See also *Kalian Das* v. *Tika Ram*, I. L. R., 2 All. 137.

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from the estate and for the cancelment of the Settlement Officer's order, alleging that the lease under which the plaintiff held the estate had expired. He obtained a decree in this suit on the 29th July, 1876. On the 31st August, 1876, in the execution of this decree, the plaintiff was ejected from the entire estate including the fifty-one bighas, ten biswas, of land. On the 7th December, 1877, this decree was set aside and the defendant's suit dismissed by the District Court, on appeal by the plaintiff, which decided that the plaintiff held the estate, not as a lessee, but as a sub-proprietor under a permanent tenure. The District Court's decree was affirmed by the High Court on the 16th May, 1878. After the passing of the High Court's decree the plaintiff, on the 4th July, 1878, recovered the possession of the entire estate. He subsequently, in November, 1878, instituted the present suit against the defendant in the Court of the Subordinate Judge of Aligarh, in which he claimed, *inter alia*, (i) the value of the crops standing on the fifty-one bighas, ten biswas, of land at the time the defendant obtained possession of such land in the execution of the decree dated the 29th July, 1876, alleging that the defendant had appropriated such crops: and (ii) the rents of forty-eight bighas of land, being a part of the fifty-one bighas, ten biswas, before mentioned, which the plaintiff alleged had been let by the defendant to tenants. The Subordinate Judge gave the plaintiff a decree in respect of these claims. On appeal by the defendant the District Judge dismissed the suit in respect of these claims for the reasons which appear in the following extract from his decision :—

"It is to be observed that the plaintiff in this suit has always had two different rights in this village ; first, his rights as lessee of the zamindars, secondly, his rights as an occupancy-tenant of fifty-one bighas, ten biswas, of land. With these latter rights the Civil Court has no concern, nor has any order been passed by, or any claim been made in, any Civil Court throughout these proceedings which could affect the plaintiff's possession as an occupancy-tenant of the fifty-one bighas, ten biswas, of land. The Civil Court's orders have always had reference to the zamindari rights held by the lessee. It follows, then, that any interference with the plaintiff's rights as an occupancy-tenant, of which the defendant may have

been guilty, was made by the defendant as zamindar in possession, and had no warrant of the Civil Court to support them. It is clear also that the defendant was in possession as zamindar from August, 1876. It appears to me that, when in August, 1876, the defendant turned the plaintiff out of his occupancy-tenancy and seized the standing crops on the lands comprised therein, the plaintiff might and should have made applications under s. 95, clauses (*m*) and (*n*), of Act XVIII of 1873. Those applications should have been made within six months of the cause of action (s. 96, *e*.), and as those applications 'might have been made', no other Court (s. 95) can take cognizance of the matter to which they would have referred. It is nothing to the purpose to say that the plaintiff was awaiting the end of the litigation in the Civil Courts. The action of the defendant in seizing the crops and turning plaintiff out of his cultivation was always wrongful. It has not become so only under the Civil Court's final decree, though that decree may throw a stronger light on the wrong. I have, therefore, no hesitation in deciding that the claim on account of the standing crops is not cognizable here, and would be, in my opinion, barred by limitation, even if the Court had jurisdiction, as this seizure of the standing crops was never ordered by the Court and was outside the litigation between the parties.

"Turning now to the claim of the plaintiff to the rent of the "*khud-kasht*" land, no doubt the defendant had the right to collect the rents of that land from the plaintiff (if the defendant had not ousted plaintiff), as long as he (defendant) was in possession as zamindar, and now that defendant's possession as zamindar has been restored as lessee, the plaintiff is entitled to receive from defendant what defendant was entitled to collect and could accordingly have collected. The lower Court has found as a fact that the land in question was let by the defendant in 1285 fasli for Rs. 175, and from this fact has deduced that the rent for the rabi of 1284 fasli should have been Rs 72-14-0. These, however, are rents which the defendant collected from tenants at will, with whom, so far as the Civil Court is concerned, he had no right to deal in connection with plaintiff's "*khud-kasht*" land. These sums in fact represent the damage resulting to plaintiff, not only from his ejectment from his

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lease, but also from his "*khud-kasht*" lands. As already remarked by this Court, the Court below has no concern with the latter ejectment and resulting damage.

"The question is how much the defendant received from the land (*khud-kasht*) as zamindar and by virtue of the rights held to be his by the Civil Court.

"There is no evidence to show. In fact, as regards 1284 fasli, if the plaintiff is to be believed, defendant received nothing but the crops standing on the land, a matter I have already disposed of."

The plaintiff appealed to the High Court.

Pandits *Ajudhia Nath* and *Nand Lal*, for the appellant.

Pandit *Bishambhar Nath* and Munshi *Kashi Prasad*, for the respondent.

The judgment of the High Court (SPANKIE, J., and STRAIGHT, J.), so far as it is material for the purposes of this report, was as follows:—

SPANKIE, J.· The facts of the case are very clearly set forth by the first Court in the elaborate judgment in favour of the plaintiff. In appeal the Judge modified the first Court's judgment, finding that, when plaintiff has been dispossessed from the lands comprising his occupancy-right as tenant, he should have made an application under clauses (*m*) and (*n*), s. 95, Act XVIII of 1873, and, as this application might have been made, the Civil Court had no jurisdiction to hear this part of the claim, which, indeed, if the Civil Court could have entertained it, was barred by limitation.

It is contended by the plaintiff that the Civil Court had full jurisdiction: the plaintiff in bringing this suit had adopted the only course open to him, his ejectment having been carried out in execution of a decree of Court, and this decree having been subsequently set aside: the Judge too had erred in holding that the claim was barred by limitation, and in dismissing the claim on account of the "*khud-kasht*" lands.

We are of opinion that the applications referred to in letters (*m*) and (*n*), for compensation for wrongful dispossession, or for

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recovery of possession of land of which a tenant has been wrongfully dispossessed, do not apply to the present case, in which there was no wrongful dispossession within the meaning of the Rent Act, and that the claim of the plaintiff was not one for which a remedy was available under s. 95 of that Act, and, therefore, the Civil Court had jurisdiction. Holding this view, it follows that the limitation of s. 96 of the Rent Act does not apply. So, we think that the Judge was wrong in dismissing the claim for the rent of the "*khud-kasht*" land which defendant let to tenants. The effect of the decree against the present plaintiff, when executed, put him out of possession of the entire estate which he held as lessee, and defendant took possession of all the lands. Therefore plaintiff is clearly entitled to a refund of all rents to which the lessee alone had a claim, if he had chosen, as defendant did, to let a portion of his sir.

Appeal allowed.

Before Mr. Justice Pearson and Mr. Justice Straight.

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RAM LAKHAN RAI (PLAINTIFF) *v.* BANDAN RAI AND OTHERS (DEFENDANTS).*

Vendor and Purchaser—First and Second Purchasers.

The proprietor of certain immoveable property conveyed it first to one person and then to another. The first purchaser sued the vendor and the second purchaser for the possession of the property, alleging that he had been put in possession of it but had been ousted by the second purchaser. *Held* that the first sale was not void by reason of the non-payment of the purchase-money, and that, the second sale being invalid as having been made by a person who had no rights and interests remaining in the property, the second purchaser was not a representative of the vendor and entitled to receive the purchase-money found to be still due to him from the first purchaser, and to retain possession of the property until the receipt of that purchase-money.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshi *Hanuman Prasad* and *Sukh Ram*, for the appellant.

Lala *Lalta Parshad* and Babu *Lal Chand*, for the respondents.

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* Second Appeal, No. 725 of 1879, from a decree of Maulvi Abdul Majid Khan, Subordinate Judge of Ghazipur, dated the 27th March, 1879, modifying a decree of Maulvi Mir Badshah, Munsif of Saidpur, dated the 21st December 1878.