APPELLATE CIVIL.

1890
April 24.

Before Mr. Justice Straight and Mr. Justice Young.

RADHA PRASAD SINGH (PLAINTIFF) *v.* PERGASH RAI (DEFENDANT).*

Act XII of 1881 (*North-Western Provinces Rent Act*) *s.* 189—*Act XIV of* 1886, (*amending Act XII of* 1881) *s.* 5—"*Rent payable by the tenant*"—*Appeal.*

The words "rent payable by the tenant" in s. 189 of the North-Western Provinces Rent Act (XII of 1881) (as amended by Act XIV of 1886) mean the rate of rent payable by the tenant and not merely the actual amount of money which is due at any given time by the tenant to his landlord as rent.

The facts of this case sufficiently appear from the judgment of Straight, J.

Hon. G. T. *Spankie* and Pandit *Sundar Lal*, for the appellant.

Munshi *Kashi Prasad* and Munshi *Jwala Prasad*, for the respondent.

STRAIGHT, J.—This second appeal relates to a suit brought by the plaintiff-appellant against the defendant-respondent for arrears of rent amounting to Rs. 88-1-0, in respect of 1292, 1293 and 1294 Fasli. The case was heard by an Assistant Collector of the first class, and he decreed the claim in part upon the 26th August 1887. The only question before us is with regard to the language of s. 189 of the Rent Act, as it now stands, whether any appeal lay to the Court of the District Judge. The answer to this objection, if any can be found, is contained in s. 189. Now it is material to remember in considering this question that until 1886 the words "or in which the rent payable by the tenant has been a matter in issue and has been determined," were not in the rent law then in force, and that they were introduced in that year by s. 5 of Act XIV of 1886. It is contended by Pandit *Sundar Lal* that the words "rent payable by the tenant," mean the "*rate*" of rent payable by the tenant, and that the appeal which is here in express terms given by this section is an appeal limited to cases in which the Court of first instance has determined the rate at which a

* Second appeal No. 756 of 1888 from a decree of G. J. Nicholls, Esq., District Judge of Ghâzipur, dated the 17th February 1888, modifying a decree of Maulvi Muhammad Wasi, Deputy Collector of Ghâzipur, dated the 26th August 1887.

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tenant is to pay rent. On the other side Mr. *Jwala Prasad* argues that these words give a general power of appeal and that in every case in which the "*amount*" of rent payable by a tenant comes into question, that tenant, if unsuccessful, has a right of appeal to the Judge. I cannot accept this view. It seems to me that if the Legislature had intended to throw open the door indiscriminately to appeals of that description it would have been not merely inartistic drafting but surplusage to add these amending words, when the section might have been framed in such a way as to give a right of appeal, irrespective of any question of amount or value. I think significance is to be attached to the words "has been a matter in issue and has been determined," because that would cover a case in which, though the amount claimed by a landholder was below the sum of Rs. 100, yet, if the rate of rent was in issue in that suit between himself and his tenant, and the rate of rent had been determined in that suit by a Court of first instance, there would be an appeal. It seems to me clear that according to the language of s. 189 the only instances in which an appeal lies to the District Judge are the following. (1). Where the amount or value of the subject matter exceeds Rs. 100. (2). Where the rent payable by a tenant has been a matter in issue and has been determined, and, lastly, where the proprietary title to land has been determined between parties making conflicting claims thereto. All these matters may well be made the subject of an appeal to the District Judge as involving important considerations; the question as to the rate of rent being one which would, as between the landlord and the tenant, as a matter of *res judicata*, bind them as to the rate of rent payable by the one to the other for all subsequent time. By this, of course, I mean until an alteration made by agreement between the parties or by the act of a Court properly empowered under the statute has taken place. I do not think, as at present advised, that the amendment was intended to flood the Courts of District Judges with appeals on pure questions of the amount of money in the shape of rent due from a tenant to his landlord. This being the view that I take of the matter, I am of opinion that no appeal lay from the Assistant Collector's decision to the District Judge, and that this

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appeal must be decreed, and, the decree of the District Judge being set aside, that of the Assistant Collector must be restored, with costs to the successful party in proportion to his success in all Courts.

Appeal decreed.

YOUNG, J.—I concur.

[A similar interpretation was placed upon the above-mentioned section of the N.-W. P. Rent Act by Edge, C. J., and Brodhurst, J., in the case of *Bhagwan Din* v. *Mosai*, Second Appeal, No. 431 of 1888, decided on the 4th February 1890—W. K. P.]

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June 27.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Brodhurst.

ANANDI RAM AND OTHERS (PLAINTIFFS) *v.* DUR NAJAF ALI BEGUM (DEFENDANT.)*

Mortgage—Payment of Government revenue by mortgagees in possession to save the property—Payment of mortgage-money into Court by mortgagors and relinquishment of possession by mortgagees—Subsequent suit by mortgagees to recover the Government revenue paid by them by sale of the mortgaged property—Act IV of 1882 (*Transfer of Property Act*) *s.* 83.

The plaintiffs were mortgagees in possession of certain shares in a village under a mortgage which, as to the principal amount advanced, was a simple mortgage, as to the interest a usufructuary mortgage. The mortgagees, to save the property from sale, paid up certain arrears of Government revenue. Subsequently, the defendant, who was the representative of the mortgagors, under s. 83 of the Transfer of Property Act (IV of 1882), paid the original sum due under the mortgage into Court. The mortgagees withdrew the money so paid in and deposited the mortgage-deed in Court. The mortgagees then, after relinquishing possession of the mortgaged property, sued to recover the money which they had paid as Government revenue by sale of the mortgaged property.

Held that though the mortgagees might originally have treated the amount paid by them as Government revenue as part of the mortgage-money, they did not by such payment obtain a lien independently of their position as mortgagees, and when once they had abandoned their lien on the mortgaged property by accepting the money paid into Court by the mortgagors and by relinquishing possession of the mortgaged property, they could not afterwards revive it; and their suit, which was for realization of the Government revenue paid by them, by sale of the mortgaged property, must fail.

* Second Appeal No. 1266 from a decree of T. R. Redfern, Esq., District Judge of Bareilly, dated the 1st May 1888, reversing the decree of Maulvi Abdul Kayyum, Subordinate Judge of Bareilly, dated the 15th November 1887.