Before Mr. Justice Tottenham and Mr. Justice Agnew.

LALA BHARUB CHANDRA KARPUR (ONE OF THE DEFENDANTS) *v.* LALIT MOHUN SINGH (PLAINTIFF).* 1885 *August* 14.

Regulation VIII of 1819, *s.* 13—"*Profits*"—*Adjustment of accounts between defaulting tenure-holder and person who has held possession as mortgagee under Regulation VIII of* 1819, *s.* 13.

The word "profits" in the 4th clause of s. 13 of Regulation VIII of 1819 means that which is left to the tenure-holder after payment of the rent of the tenure.

A person who enters into possession of a tenure as mortgagee under the provisions of that section is bound in the first place to pay the rent due to the landlord out of the collections before applying the same to the liquidation of his own debt, and the defaulter is not to be liable for the rent of the tenure during the period of the possession by the person so holding it as mortgagee.

THE defendant No. 1 was the putnidar of a certain taluk named Lot Sarangpur, a mehal belonging to the Raja of Burdwan and the plaintiff, and Baboos Chukun Lall Roy and Soshi Bhusan Roy were the durputnidars. The putni taluk having been advertised for sale for arrears for rent due to the zemindar, the plaintiff, in order to stay the sale, deposited the sum of Rs. 988-14-5 with the Collector on the 1st Joisto 1279 (13th May 1872), and thereupon the sale was stopped, and the plaintiff obtained possession of the putni tenure on the 21st Bhadro 1279 (5th September 1872), under the provisions of s. 13 of Regulation VIII of 1819).

Afterwards the defendant No. 2, having purchased the tenure from defendant No. 1, deposited the sum of Rs. 1,028-7 with the Collector on the 13th Bysack 1288 (24th April 1881) being Rs. 988-14-5, the amount advanced by the plaintiff, with interest thereon from the 1st Joisto 1279 to the 21st Bhadro following, and under the orders of the Collector obtained possession of the tenure on the 26th April 1881. The plaintiff preferred a claim in the proceeding before the Collector, but that claim was disallowed, and he, therefore, instituted the present suit to recover the

* Appeal from Appellate Decree No. 2214 of 1884, against the decree of S. H. C. Tayler, Esq., Judge of Burdwan, dated the 20th of August 1884, reversing the decree of Baboo Jogesh Chundra Mitter, Second Subordinate Judge of that District, dated the 15th of May 1883.

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sum of Rs. 3,206-6, which he alleged to be still due to him, and to have the putni mehal, and the defendant made liable for that amount.

The first defendant contested the suit, upon the ground that the plaintiff was not entitled to the amount sued for by reason of the same including compound interest and collection charges, and being calculated on an erroneous principle. He also pleaded tender of Rs. 881-15-6, but the evidence upon that plea was disbelieved.

The first Court considered that the rule to be observed in adjusting the accounts was that ordinarily the profits of the tenure should go first to the satisfaction of the interest on the deposit; second of the deposit money itself; and that in cases where the plaintiff had to pay rents due to the zemindar from his private funds he would be entitled to interest from the date of payment to the date of realization from the durputnidar, and that this money should also be satisfied from the profits. That Court held further that the "profits" consisted of the difference between the rent realized from the durputnidar and the rent paid to the zemindar, and that was the only money which the plaintiff could apply in the above manner.

That Court disallowed the collection charges upon the ground that under the circumstances of the case the plaintiff had incurred no expense on that account, and directed a decree to be drawn up in favor of the plaintiff, for the amount to be found due upon the account being adjusted in the manner above indicated.

Against that decree the plaintiff appealed, and the lower Appellate Court reversed the decree of the lower Court, and gave the plaintiff a decree for the full amount claimed with costs.

The latter Court held that the word "profits" was not restricted to the balance of receipts left after deducting all costs and liabilities, which would be equivalent to saying it meant "net profits," but must be construed to include all the money realized from the particular holding, and that therefore a creditor, when holding a tenure as security for his claim under the provisions of s. 13 of Regulation VIII of 1819, was entitled to recoup

himself from any sums he might receive from such holding. The Court also held that the plaintiff standing in the position of putnidar, though possibly bound to pay the rent due from the putnidar, was not bound to apply the rents received from the durputnidar to that purpose, but might apply them to the payment of his own claim and pay the rent due to the zemindar out of his own pocket. The decision of the Court below was also reversed upon the question of the plaintiff's right to recover the collection charges claimed, and the method of adjusting the account adopted by the plaintiff was held to be the correct one.

Against that decree the first defendant preferred a special appeal to the High Court.

Baboo *Srinath Dass*, and Baboo *Jogendro Chunder Ghose*, for the appellant.

The *Advocate-General* (The *Hon. G. C. Paul*), and Baboo *Rash Behary Ghose*, for the respondent.

The nature of the arguments appear sufficiently from the judgment of the High Court (TOTTENHAM and AGNEW, JJ.) which was as follows :—

The defendant-appellant was the putnidar of Lot Sarangpur, a mehal belonging to the Maharaja of Burdwan. The plaintiff-respondent in this Court is a durputnidar. To protect the putni from sale for arrears of rent under Regulation VIII of 1819 the plaintiff in the month of Joisto 1279 paid in the amount due for putni rent, and in Bhadro following he obtained possession of the putni under the provisions of s. 13 of the Regulation, which gave him a lien on the tenure in the same manner as if the amount had been advanced upon mortgage, in order to recover that amount from any profits belonging thereto. He retained possession until the commencement of 1288, when the Collector ordered the putni to be released in favour of defendant No. 2, who, having purchased the rights of defendant No. 1, paid in to the Collectorate the sum originally advanced by plaintiff with interest to the date on which the latter obtained possession of the putni. The plaintiff brought this suit to recover Rs. 3,206-6 as being still due to him, and the lower Appellate Court has

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decreed that amount which the first Court had cut down upon considerations urged by the defendants.

The second defendant purchaser of the putni from defendant No. 1 is not a party to this appeal.

The question upon which the case mainly turns is as to the proper construction of the word "profits" in the 4th clause of s. 13 of Regulation VIII of 1819. The plaintiff claimed to be entitled to appropriate the whole of the collections of the putni during his possession, in the first place to the satisfaction of his claim for the interest and principal of the sum by advancing which he had entitled himself to possession, and to treat all subsequent payments of the putni rent as disbursements from his own pocket on behalf of the defendant and as ever adding to the sum of the latter's debt to him bearing interest.

On the other hand the defendant-appellant contends that the word "profits" means that which remains to the putnidar after the payment of the rent of the putni. He submits, therefore, that the plaintiff being in possession as mortgagee under s. 13 was bound to pay the putni rent first from the gross collections, and was not entitled to charge the defendant with any portion of such rent accruing and paid during the period of his possession. It seems to us that this construction urged by the defendant is the true one, and that it is the only one consistent with the context. The District Judge drew a distinction between "profits" and "net profits," but we consider that in this section the meaning is what the Judge terms "net profits." For the section gives the the plaintiff the right of possession only for the purpose of recovering the amount advanced by him as described in the earlier part of the clause; and it goes on to provide that the defaulter may recover the tenure by repayment of the entire sum advanced with interest at the rate of 12 per cent. per annum *up to the date* of possession having been given as above, or by proving in a regular suit that the full amount so advanced with interest has been realised from the usufruct of the tenure. It thus seems clear to us that the law does not contemplate that the defaulter is also to be held liable for the rent of the tenure during the period of the possession of him who holds it as under a mortgage.

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And there is authority for holding that when the subject of a mortgage is leasehold property, and the mortgagee is put in possession under circumstances which amount to an assignment of the leasehold interest, the mortgagee becomes liable as a rule to pay the rent. See *Kannye Loll Sett* v. *Nistoriny Dossee* (1).

We think, therefore, that the lower Appellate Court committed an error in law in permitting the plaintiff to calculate the amount due to him upon the principle adopted in his account.

The appellant has taken two other objections, *viz.*, that the plaintiff has charged him compound interest, and that he has made him liable for collection charges in respect of the period during which plaintiff held possession of the putni. As to compound interest we are satisfied that the appellant was under a misapprehension: for it has been shown to us that each instalment of interest claimed by plaintiff was credited to defendant in the account, and there is no claim for interest upon interest.

As to collection charges we think that in any account rendered by the plaintiff to defendant of the profits of the tenure during the period of his possession, plaintiff is entitled to take credit for moderate collection charges, but that would only be if the defendant were claiming a refund of the surplus profits over and above the debt for which the plaintiff had possession of the putni. And it hardly seems to be a question in the present suit what amount of collection charges should be allowed. For in the view we have taken of the case the plaintiff was not entitled to claim anything from the defendant in respect of the putni rent paid, while he was himself in possession under s. 13 of the Regulation.

We must, accordingly, set aside the decree of the lower Appellate Court, and inasmuch as appellant seems to have acquiesced in the decree passed against him by the first Court, and admitted in that Court that the plaintiff was entitled to recover from him on a different principle from that of the claim, we shall restore that decree.

The appellant will get his costs of both the Appellate Courts.

Appeal allowed.

(1) I. L. R., 10 Calc., 443.