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document is executed for no consideration, it cannot be enforced. But it has been said that there *was* some consideration, namely, the release of the mortgagor from payment of the rent, which otherwise would have been due from him. If this is correct, there is a transfer of ex-proprietary rights by the mortgagor in favour of the mortgagee, and that is a transaction in the teeth of s. 9 of the Rent Act. So that, whichever way we look at the matter, the contract is either unenforceable or prohibited by s. 9. I am of opinion that it is not competent for an ex-proprietary tenant, by private arrangement, to transfer his ex-proprietary rights to his landlord; and in this view I concur in the answer given to this reference by the Chief Justice. The result is, that in any decree in this suit giving possession to the mortgagee, he cannot obtain the ex-proprietary rights referred to in the deed.

BRODHURST, J.—I am of the same opinion.

TYRRELL, J.—I am of the same opinion.

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*Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight,  
 Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

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MURLI RAI AND OTHERS (PLAINTIFFS) v. LEDRI AND ANOTHER (DEFENDANTS)\*.

*Landholder and tenant—Mortgage by conditional sale of occupancy rights to zamindar—Act XVIII of 1873 (N.-W. P. Rent Act), s. 9—Act XII of 1881 (N.-W. P. Rent Act), ss. 2, 9.*

The occupancy-tenant of certain land, before the N.-W. P. Rent Act (XII of 1881) came into force, mortgaged his rights to his zamindars by a deed of conditional sale. The zamindars sued the heirs of the conditional vendee for foreclosure and possession of the mortgaged property.

*Held* by the Full Bench that the terms of the judgment of the Full Bench in *Naik Ram Singh v. Murli Dhar* (1) were directly applicable to the case, and that the transaction of mortgage, which was subsequently to become a sale, was not a transaction to which s. 2 of the Rent Act applied, because the sale would not have effect till after the Act came into operation.

In this case, the occupancy-tenant of certain land, before the N.-W. P. Rent Act (XII of 1881) came into force, executed a deed of mortgage by conditional sale of his rights and interests in favour of his zamindars. The latter brought the present suit

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\* Second Appeal No 1015 of 1884, from a decree of Babu Mrittonjoy Mukerji, Subordinate Judge of Ghazipur, dated the 14th June, 1884, reversing a decree of Babu Nil Madhab Roy, Munsif of Ghazipur, dated the 12th December, 1883.

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against the heirs of the conditional vendee for foreclosure and possession of the mortgaged property. The defendants pleaded that the property in suit, being an occupancy holding, was not legally transferable. Upon this issue, the Court of first instance held that the transfer was valid, on the ground that it had been made in favour of the zamindars, and "it would be unreasonable to hold that a landholder should not be free to cause sales in execution of his own decree of the occupancy right of his own judgment-debtor in land belonging to himself—*Umrao Begam v. The Land Mortgage Bank of India* (1)." The Court accordingly decreed the claim. The defendants appealed. The lower appellate Court reversed the decision of the Court of first instance, and dismissed the suit, in the following terms:—"The decision relied on by the lower Court seems to me to have been clearly overruled by *Phalli v. Matabadal* (2), and the mortgage of the right of occupancy, which is the subject matter in dispute in this suit, is absolutely void under s. 9 of the Rent Act. The decision of the Lower Court must therefore be reversed."

The plaintiffs appealed to the High Court, on the ground that "the lower appellate Court had misconstrued the provisions of Act XII of 1881." The appeal came on for hearing before Petheram, C. J., and Brodhurst, J., who referred the case to the Full Bench.

Munshi *Kashi Prasad*, for the appellants.

Mr. *J. E. Howard*, for the respondents.

STRAIGHT, J.—For the purpose of answering this reference, it does not appear necessary to deal with, or to discuss the propriety of the judgment of the Full Bench in *Umrao Begam v. The Land Mortgage Bank of India* (1). The ground upon which I think that the reference should be answered is, that the terms of the judgment of the Full Bench in *Naik Ram Singh v. Murli Dhar* (3) are directly applicable to the present case; and I am of opinion that we ought not to hold that the transaction of mortgage, which was subsequently to become a sale, was a transaction to which s. 2 applied, because the sale would not have effect till after the Act came into operation.

PETHERAM, C. J., BRODHURST, J., and TYRRELL, J., concurred.

(1) I. L. R., 2 All. 451. (2) Weekly Notes, 1883, p. 7.

(3) I. L. R., 4 All. 371.