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mortgagee after 1872 to continue in possession and pay rent to him direct did not keep alive the tenancy at fixed rates of the mortgagor which had already determined, and it did not create in favor of that mortgagor any right of tenancy whatever. The case is similar to that of a landlord who ejects his tenant, the tenant having sublet. If the sub-tenant's title depends upon his immediate lessor's title, it falls to the ground with that lessor's title; but the landlord is not bound to eject the sub-tenant, if he prefers to keep him on as a tenant and to allow him to attorn to himself.

The first Court decreed the claim in part. The lower appellate Court dismissed the suit entirely. This is the plaintiff's appeal. We dismiss the appeal.

*Appeal dismissed.*

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*April 14.*

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.*

MIHIN LAL AND OTHERS (DEFENDANTS) v. IMTIAZ ALI AND OTHERS (PLAINTIFFS).\*

*Procedure — Parties — Appeal — Civil Procedure Code, section 32 — Party added in appeal who was not a party to the suit nor a representative of such party.*

When a Court hearing an appeal is of opinion that a person not a party to the suit and not entitled to be brought on the record in a representative capacity should be a party to the record, its proper course is to remand the case to the Court of first instance, and to direct that Court to bring on the particular person as a defendant, or as a plaintiff if he consents, give him time to file his statement and opportunity to produce his evidence, and try the issues raised between him and the opposite side.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu Satya Chandar Mukerji for the appellants.

Pandit Sundar Lal for the respondents.

EDGE, C.J. and BLENNERHASSETT, J.—The plaintiffs brought their suit for possession and for damages. They made certain persons defendants. The plaintiffs obtained a decree. The defend-

\* Second Appeal No. 146 of 1894, from a decree of Maulvi Muhammad Anwar Husain, Subordinate Judge of Farakhabad, dated the 19th November 1893, confirming a decree of Pandit Raj Nath Sahib, Munsif of Farakhabad, dated the 19th December 1890.

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ants to the suit appealed. In the appellate Court the Judge, considering that one Mihin Lal should be a party to the appeal, made him a party to the appeal as a defendant-appellant. He had not before been a party to the suit. The Judge delivered a judgment in which he found all the issues against the defendants-appellants including Mihin Lal. This appeal is from the decree founded upon that judgment. Mihin Lal is one of the appellants. It turns out on examination of the record that no decree was made as against Mihin Lal in the Court below. He consequently had no right of appeal from the decree below, and his appeal must be dismissed. There is nothing in the appeal of the other appellants. The fact of Mihin Lal being made a party in the Court below did not prejudice them. The appeal so far as it concerns the other appellants must be dismissed.

Before disposing of this appeal, we think it right to say that a person who has been a stranger to the suit in the Court of first instance ought not to be brought on to the record of an appeal, unless he is brought on as a representative under the sections applying to the bringing on to the record of a representative in case of the death of a party to the suit or the devolution of title. When an appellate Court thinks it is necessary to have as a party before it in appeal a person not appearing in a representative capacity and who is not a party to the suit in the Court of first instance, the appellate Court should, in our opinion, remand the case to the Court of first instance, direct that Court to bring on the particular person as a defendant, or as a plaintiff if he consented, give him time to file his statement and opportunity to produce his evidence and try the issues raised between him and the opposite side. It was the intention of the Legislature that in cases which might go in second appeal to the High Court, or which might go to Her Majesty in Council the parties to the suit should have the benefit of their issues of fact and of law being tried by two Courts. In the present case, if the decree below had been made against Mihin Lal, he would have had the benefit of the decision of only one Court on the facts, as by reason of section

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584 and section 585 of the Code of Civil Procedure this Court could not in second appeal try the issues of fact.

This appeal is dismissed with costs.

*Appeal dismissed.*

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April 17.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.*  
MUHAMMAD BAKHSH AND OTHERS (PLAINTIFFS) v. MANA AND OTHERS  
(DEFENDANTS)\*

*Occupancy tenant—Partition—Right of joint occupancy-tenants to partition—  
Civil and Revenue Courts—Jurisdiction.*

*Held* that a joint occupancy-tenant is entitled to sue for, and a Civil Court is competent to grant a decree for partition of the joint occupancy-holding, though, if the zamindar is not made a party to the suit for partition, such decree will not affect the mutual rights and liabilities of the zamindar and the occupancy-tenants as they stood prior to the partition. *Sundar v. Parbati* (1), *Baring v. Nash* (2), *Oomesh Chunder Shaha v. Manick Chunder Bonick* (3) and *Bhagi v. Girdhari* (4) referred to.

THE facts of this case, so far as they are necessary for the judgment of the Court, appear from the judgment of the Court.

Pandit *Madan Mohan Malaviya* for the appellants.

Mr. *Abdul Raof* for the respondents.

EDGE, C. J., and BLENNERHASSETT, J.—The plaintiffs in this case sought a decree for partition of an occupancy-holding. The plaintiffs and the defendants were co-sharers in the holding. It has been found that they were joint tenants of the holding. The zamindar was not a party to the suit. The suit was brought in the Court of the Munsif of Muzaffarnagar, who decreed the claim. On appeal, the Judge of Saharanpur dismissed the suit, being apparently of opinion that joint tenants of an occupancy-holding could not obtain partition. The plaintiffs have brought this appeal.

Mr. *Malaviya* for the appellants has contended that all joint tenants are entitled as of right to partition. He has relied upon a dictum of their Lordships of the Privy Council in the case of

\* Second Appeal No. 115 of 1894, from a decree of H. Bateman, Esq., District Judge of Saharanpur, dated the 28th November 1893, reversing a decree of Maulvi Maula Bakhsh, Munsif of Muzaffarnagar, dated the 13th December 1892.

(1) L. R. 16 I. A., 186.

(2) 1 Vesey and Beames, 551.

(3) 8 W. R., 128.

(4) Weekly Notes, 1895, p. 143.