

Pandit *Sundar Lal* (for whom *Babu Jivan Chandar Mukerji*) for the appellants.

Munshi *Ram Prasad*, for the respondent.

BLAIR and BURKITT, JJ.—This appeal, one ground only, the third, being urged upon us, is based on the contention that the purchase of the mortgagor's interest in land subject to a mortgage is a purchase of an actionable claim within the meaning of section 135 of the Transfer of Property Act. We are not prepared to accede to so novel a contention for, which no authority is produced. In our opinion, what was effected by the purchase was the transfer of the land itself subject to the mortgage. It seems to us a totally different thing from and bears in our mind no analogy whatever to the purchase of a mortgagee's interest in a mortgage after the mortgage has become due and payable. We dismiss the appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Banerji.*

YUSUF ALI KHAN AND OTHERS (PLAINTIFFS) v. HIRA AND OTHERS  
(DEFENDANTS).\*

*Landholder and tenant—Act No. XII of 1881 (N. W. P. Rent Act), section 93 (b)—Suit to eject a tenant—Act inconsistent with the purpose for which the land was let—Sub-lease to a theatrical company.*

An agricultural tenant, at a time when there were no crops growing on his holding, let part of it temporarily to a theatrical company for the purpose of their holding performances thereon. *Held*, that this was not an act sufficient to cause a forfeiture of the tenancy within the meaning of section 93, clause (b) of Act No. XII of 1881.

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

*Kunwar Parmanand*, for the appellants.

The respondents were not represented.

BANERJI, J.—This was a suit brought under clause (b) of section 93 of the Rent Act (No. XII of 1881) to eject an occupancy

1896

TOTA RAM  
v.  
LALA.

1898

June 16.

Second Appeal No. 473 of 1897 from a decree of C. Rustamji, Esq., District Judge of Moradabad, dated the 25th March 1897, confirming a decree of A. W. McNair, Esq., Assistant Collector of Moradabad, dated the 13th November 1897.

1898

---

YUSUF  
ALI KHAN  
v.  
HIRA.

tenant from his holding on the ground that he had committed an act detrimental to the land in his occupation and inconsistent with the purposes for which it was let. The act complained of was that in the month of October, when, according to the learned Judge of the lower appellate Court, there were no crops on the land, and none could have been grown, the defendants had let the land to a theatrical company for erecting a temporary pavilion for the purpose of their theatre. Both the Courts below have dismissed the suit, and I think rightly. The act was not detrimental to the land or inconsistent with the purpose for which it was let, within the meaning of clause (b). The tenant, having at a time when the land could not be sown with crops let it to a theatrical company for the purpose of a theatre for a short period only, did not do an act detrimental to the land, and although, technically speaking, they did an act inconsistent with the purpose for which it was let, namely, cultivation, it does not seem to me that the Legislature contemplated that a tenancy would be liable to forfeiture if the tenant did an act of this kind for a temporary purpose only, at a time when the land in the tenant's holding could not be cultivated. It is evident from the provisions of section 149, as the learned Judge has pointed out, that the Legislature intended to give a tenant a *locus penitentie* and an opportunity to repair the damage done by him. In this case at the time when the Court of first instance made its decree the land had been restored to its former condition and crops had been grown on it. The Courts below have, in my judgment, rightly held that the defendant's act did not entail the forfeiture of their occupancy holding. I dismiss the appeal, but without costs, as the respondents are not represented.

*Appeal dismissed.*