

on the stamp paper the name of Ram Ghulam as the purchaser, the offence of fabricating false evidence was completed, and Durga Charan Gir clearly abetted Daulat in the commission of that offence. This case is very similar to that of *Queen-Empress v. Mula* (1). In that case it was held under similar circumstances that Mula had abetted the fabrication of false evidence. I dismiss the application.

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EMPEROR

v.
DURGA-
CHARAN
GIR.

APPELLATE CIVIL.

1902

*August 6.**Before Mr. Justice Know.*

WARIS KHAN AND OTHERS (DEPENDANTS) v. DAULAT KHAN (PLAINTIFF).
Act No. XII of 1881 (N.-W. P. Rent Act), section 31—Landholder and tenant—Relinquishment of part of holding—Relinquishment not made in writing.

A relinquishment made by a tenant of his holding, when he does not hold under a lease, need not necessarily be in writing, nor need such relinquishment necessarily extend to the whole of the tenant's holding, although, if the relinquishment is not in writing, the tenant may still be liable for the rent of the holding.

THIS was a suit in ejectment brought under the following circumstances. The father of the defendants was at one time an occupancy tenant of the plaintiff in respect of a holding measuring 10 biswas, 5 dhurs. Some twenty years before suit the defendants' father ceased to cultivate 6 biswas, 5 dhurs of this holding, which was accordingly entered in the revenue papers as sir of the zamindar and continued to be so recorded for many years. In the year 1900, some years after the death of the defendants' father, the defendants made an application to amend the rent-roll; their application was granted, and in virtue of the order passed thereon they took possession of the disputed land. The Court of first instance (Munsif of Muhammadabad Gohna) dismissed the suit, holding that the plaintiff had not proved his possession of the disputed land. The plaintiff appealed. The lower appellate Court (District Judge of Azamgarh) found that the defendants' father had orally

* Second Appeal No. 623 of 1901, from a decree of J. H. Cuming, Esq., District Judge of Azamgarh, dated the 23rd day of March, 1901, reversing the order of Babu Murari Lal, Munsif of Muhammadabad Gohna, dated the 16th day of November, 1900.

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relinquished the land to the plaintiff, which relinquishment, not having been disputed by the parties within limitation, was good in law, and that the defendants had wrongfully dispossessed the plaintiff, and accordingly allowed the appeal and decreed the plaintiff's claim. The defendants thereupon appealed to the High Court.

Mr. *Abdul Raooif*, for the appellants.

Mr. *Karamat Husain*, for the respondent.

KNOX, J.—There are two pleas taken in this second appeal. The first is, that the suit out of which this appeal has arisen was not cognizable by a Civil Court; and the second is that, the relinquishment not being according to law, the tenancy has not determined. To ascertain what Court had jurisdiction the safest way is, as a rule, to look at the plaint. The plaintiff in the present case states that he is zamindar of the village, and that the father of the defendants was in days gone by a cultivator. He adds that the defendants twenty years ago and more relinquished this holding, or rather 6 biswas and 5 dhurs of it. He adds that the defendants have gone to the Revenue Court, and in the guise of a petition to amend the rent-roll, taken possession of this land. In other words, he formulates his case against the defendants as pure trespassers, and the action before me is laid by the plaintiff as an action by the zamindar against trespassers. I have examined the judgment, dated the 21st of June, 1900, and I find it is a judgment passed in an ordinary case for alteration of the village papers. It is not a judgment on an application under section 10 of the Rent Act. The suit as laid is clearly, therefore, not within the jurisdiction of the Rent Court. As regards the second plea, the contention is, that the so-called relinquishment is bad for two reasons: *firstly*, that it is not in writing; and *secondly*, that it was not a relinquishment of the whole of the holding. Reliance is placed upon section 31 for this contention. Section 31 nowhere says that the only means by which a tenant, not holding under a lease, can relinquish, is by giving a notice in writing to the landlord or his recognised agent. What section 31 lays down is that, if he does not do so, he will continue to be liable for the rent; but that is very different from saying that this is the only legal method by which he can

relinquish his holding. The same difficulty extends to the second contention. A tenant who wishes to relinquish a holding and to be no longer liable for the rent of the same can do so by a notice in writing only, and by relinquishing the whole of the land under his lease; but this section does not say that such a tenant cannot relinquish a portion of his land in any other way. He does so at his peril, and may continue liable for the rent, as the zamindar may refuse to take over a portion only of the holding; but where the zamindar takes over a portion of the holding and re-lets or occupies it, as in the present case, the tenant is no longer liable for the rent of the portion so let or occupied. This plea also fails. The appeal is dismissed with costs.

Appeal dismissed.

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v.
DAULAT
KHAN.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkill.
SHEO PRASAD (DECREE-HOLDER) v. BEHARI LAL (JUDGMENT-DEBTOR).
Act No. IV of 1882 (Transfer of Property Act), sections 89, 90—Execution of decree—Mortgage—Decree for sale of part only of the mortgaged property—Property sold insufficient to satisfy the mortgage debt—Application for decree over under section 90.

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A mortgagee holding a simple mortgage by which certain immovable property was hypothecated, sued for, and obtained, a decree for the sale of part only of the mortgaged property. Such portion having been sold, and the net proceeds of the sale having proved insufficient to satisfy the mortgage-debt, the decree-holder applied for a decree over under section 90 of the Transfer of Property Act against the unhypothecated property of the mortgagor.

Held that the original decree having been in fact passed, whether rightly or wrongly, for sale of a part only of the mortgaged property, and the sale of that part having realized an amount not sufficient to satisfy the mortgage-debt, there was, under the circumstances, no objection to the mortgagee obtaining a decree over under section 90.

Semble that there is nothing to prevent a mortgagee relinquishing his claim against a portion of the mortgaged property, and, if the sale of the remaining portion proves insufficient to satisfy the mortgage-debt, obtaining a decree under section 90 of the Transfer of Property Act against the unhypothecated property of the mortgagor.

IN this case the respondent Behari Lal mortgaged to the appellants Sheo Prasad his ancestral share in certain property

* Second Appeal No. 1292 of 1900, from a decree of Pandit Ram Autar Pande, District Judge of Mainpuri, dated the 8th day of August 1900, reversing an order of Pandit Rajnath Sahab, Subordinate Judge of Mainpuri, dated the 26th day of November 1898.