APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

PRAG NARAIN AND OTHERS (PLAINTIFFS) *v.* KADIR BAKHSH AND OTHERS (DEFENDANTS)* 1913 *January*, 4.

Act No. IV of 1882 *(Transfer of Property Act), section* 111, *clause (g)—Landlord and tenant—Denial of title—Suit for ejectment of tenant—Landlord's intention to take advantage of denial of title to be expressed before suit.*

The denial of his landlord's title by a tenant, in order to work a forfeiture under section 111 (*g*) of the Transfer of Property Act, 1882, must be an unequivocal and unambiguous denial: mere non-payment of rent or even the mortgaging of the premises as belonging to the tenant does not necessarily constitut such a denial. A landlord wishing to take advantage of his tenant's denial a title to determine the lease must do some act showing his intention to do so before he can file a suit for ejectment.

THIS was an appeal under section 10 of the letters Patent from a judgement of a single Judge of the Court. The facts of the case are stated in the judgement under appeal, which was as follows :—

"These appeals arise out of a suit brought by the respondent for the ejectment of the appellants from a plot of land in the city of Agra. The case stated in the plaint was that the six defendants were tenants of the land, paying three annas a month as rent, that for five years preceding the suit the defendants had paid no rent, though they had been repeatedly required to do so, and that they had forfeited their lease by non-payment of the rent. There were other allegations regarding constructions on the land with which we are not now concerned. The defendants filed their written statements in June, 1910. In September, 1910, the plaintiffs applied to the court for permission to amend their plaint by inserting in it an allegation that two of the defendants had denied the plaintiffs' title to the land. The plaint was amended and the defendants were given an opportunity of filing a fresh written statement. They then denied that they had forfeited their lease either by non-payment of rent or by denying the plaintiffs' title. They pleaded that they were perpetual lessees of the land, and also that the suit was not maintainable as the plaintiffs had not given them formal notice to quit.

"The Munsif found that the plaintiffs' title in respect of half of the land had been denied by the defendant, Khuda Bakhsh, and he gave the plaintiffs a decree for the ejectment of that defendant and for possession of half of the land. On appeal the Subordinate Judge gave the plaintiffs a decree for possession of the whole of the land, holding that they had forfeited their lease both by non-payment of rent and also by denial of plaintiffs' title.

"The first question discussed in this Court was, whether the defendants held as perpetual lessees or as tenants from month to month. In the view which I take of the case it is unnecessary to decide this question.

"The next question is, whether the defendants have forfeited their lease by non-payment of rent. It is neither alleged *nor* proved that it was a

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condition of the lease that it should be forfeited in case of non-payment of rent. This ground fails.

"The next question is whether the defendants forfeited their lease by reason of their denial of the plaintiffs' title. One of the defendants, Khuda Bakhsh, mortgaged part of a house, expressly including the land. Another defendant, Kadir Bakhsh, mortgaged half the house on the land but did not expressly include the land in the mortgage. In the former case it seems that there was a denial of the plaintiffs' title to the land. In the latter it cannot be said that there was a denial of their title. It has been held that denial of a landlord's title by one of several lessees does not cause a forfeiture of the lease. But I need not discuss this question further, for in my opinion the plaintiffs' suit must be dismissed even if it be proved that the defendants denied the plaintiffs' title. Section 111 of the Transfer of Property Act, which admittedly applies to this case, provides that a lease of immovable property determines in various ways, amongst others, by forfeiture. Clause (*g*) of the section runs as follows :—'By forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person, or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease.'

"It is contended on behalf of the defendants that it has neither been alleged nor proved that the lessors did any act showing their intention to determine the lease. On behalf of the plaintiffs it is contended that the institution of the suit was sufficient to show their intention to determine the lease within the meaning of the clause. In the case of *Anandamoyee* v. *Lalchi Chandra Mitra* (1) it was held by Ghose and Pargiter, JJ., that in a suit of this kind it must be shown that the plaintiff declared his intention to determine the lease of the defendant and that such intention was declared by some act or otherwise before the institution of the suit. In my opinion that decision was correct. It is contended by Dr. *Tej Bahadur* that section 112 of the Transfer of Property Act shows that a forfeiture may be completed by the institution of a suit, but it appears to me that section 112 does not show this. The opening words of the section are 'a forfeiture under section 111, clause (*g*).' The word 'forfeiture' must mean a complete forfeiture and not merely that a tenant has incurred liability to have his lease forfeited. The closing words of clause (*g*) of section 111 seem to add something to the English law on the subject and were possibly inserted in order that there might be no doubt that an alleged forfeiture must be complete before a suit is brought. The construction adopted by the Calcutta High Court is in accordance with the general rule that a cause of action must *be complete at the date of the institution of a suit*, and cannot be completed either by the plaint or by the written statement or any other pleading in the suit. I hold that the institution of the suit was not an act showing an intention to determine the lease within the meaning of section 111, clause (*g*).

"I was asked by the learned advocate for the plaintiffs to follow the course taken by the Calcutta High Court in the case cited, namely to remit an issue to the court below for a finding as to whether an intention to determine the

(1) (1906) I. L. R., 33 Calc., 939.

tenancy was declared by the plaintiffs before the institution of the suit. In the present case, I think, I ought not to do so. As already stated, the allegation that a forfeiture had occurred by denial of the landlord's title was not in the plaint when it was filed, but was added several months afterwards. The petition begins with the words '*Daryaft karne se malum hua.*' If these words mean anything, they mean that the plaintiffs have come to know of the denial after the institution of the suit. If the plaintiffs were not aware of any act having been committed by the tenants, which rendered the lease liable to be forfeited, they could not have indicated an intention to determine the lease on that account. To frame and remit an issue would, under the circumstances, be an encouragement to the production of false evidence. I allow the appeal, set aside the decree of the courts below and dismiss the plaintiffs' suit with costs in all three courts. The plaintiffs are at liberty to withdraw the sum deposited in the court below on account of rent. Mr. *Ghulam Mujtaba* states on behalf of his clients that they have no objection to this."

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellants.

The denial of the landlord's title took place when the tenant mortgaged the house with the land, and the tenant was, therefore, liable to ejectment. The deed hypothecated the land which the mortgagor said belonged to him, along with the house. The point for decision was whether the filing of the suit was sufficient intimation for determining the lease, within the meaning of section 111 (*g*) of the Transfer of Property Act. It was submitted that it was. Section 111, clause (*a*), was to be read with section 112. It was not necessary to do any act other than that of filing a suit to determine the lease. There was a denial of title, and there was nothing to show that there was any act of waiver on the part of the landlord.

Maulvi *Ghulam Mujtabi*, for the respondents, was not called on to reply.

RICHARD, C. J., and BANERJI, J.:—This appeal arises out of a suit in which the plaintiffs sought to recover certain household property situate in the city of Agra. The plaintiffs based their claim on an alleged forfeiture. The acts which the plaintiffs contended constituted a forfeiture were, first, non-payment of rent and secondly, a denial of the plaintiffs' title. So far as non-payment of rent is concerned, the court below has held, and we think rightly, that mere non-payment of rent is not, in itself, sufficient to work a forfeiture of a tenant's interest. The other act was the making of two mortgages. In one of these mortgages the house without the land is mortgaged. In the other mortgage the house as well

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as the land is mortgaged. The mortgagor states in the mortgage, that he mortgages the house together with the land, which belong to him, without the participation of any other sharers. No further evidence of acts by the lessees denying the plaintiffs' title has been given, nor has it been shown that the lessors, prior to the institution of the suit, did any act showing their intention to determine the tenancy as the result of the alleged denial of their title by the tenants. It may well be doubted whether the mere making of the mortgages, in more or less ambiguous terms, amounted in fact to a denial of the plaintiffs' title at all. They were acts which might very well have been explained by the tenants, had they been allowed an opportunity of doing so. The denial in our opinion ought to be an unequivocal and unambiguous denial of the plaintiffs' title. The learned Judge of this Court, however, accepted the contention that the making of the mortgage, in which the land as well as the house was mortgaged, did amount to a denial of the plaintiffs' title. But he held that the plaintiffs had no right to institute the present suit until they had complied with the provisions of section 111 of the Transfer of Property Act, which provides that where the lessee has denied his landlord's title the lessor must do some act showing his intention to determine the lease. It was contended at the first hearing in this Court, as also in this present Letters Patent appeal, that the institution of the suit was sufficient compliance with the section. In our opinion the learned Judge of this Court was right in holding that the institution of the suit was not a sufficient compliance. In our judgement the act showing the intention to determine the lease must have been done before the suit was instituted. We accordingly dismiss the appeal with costs.

Appeal dismissed.