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The result is that we set aside the decree of the lower appellate court and alter the decree of the court of first instance as follows :—The suit is dismissed altogether as against the defendants Chettan Das, Bhikhu Mal, Jagdish Saran and Bisheshar Dayal, sons of Sagun Chand. The sum decreed is reduced from Rs. 778-5-3 to Rs. 462-5-6, on which simple interest will be allowed at 6 per cent. per annum from to-day's date. We fix a period of six months from to-day within which this sum is to be paid by those defendants against whom the decree remains good, with a direction that, in the event of their failure to pay within the stipulated period, the proprietary rights in the mahal in suit as specified at the foot of the plaint shall be brought to sale. We add to the decree a declaration that, out of the sum of Rs. 462-5-6, three-elevenths, being the *malikana* allowance for three years prior to the institution of the suit, is enforceable as a personal liability against the defendants jointly, in the event of the whole money not being realized by the sale of the mortgaged property; but that the balance, that is to say, eight-elevenths of the sum decreed, is not recoverable as a personal liability from any of the defendants. This appeal has succeeded only upon a point not taken in the memorandum of appeal which was argued by permission of the Court. We therefore think that the appellants (other than Chettan Das, Bhikhu Mal, Jagdish Saran and Bisheshar Dayal) must pay the costs of the appeal. The defendants named above, against whom the suit has been dismissed, are entitled to their costs throughout, if they can show that they have incurred separate costs.

Decree modified.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

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December, 19.

UMRAI SINGH AND OTHERS (DEFENDANTS) *v.* EWAZ SINGH (PLAINTIFF).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 25, 31 *and* 57; *schedule IV (C), article* 18—*Civil and Revenue Courts—Jurisdiction—Appeal—Suit to eject exproprietary tenant.*

Plaintiffs sued in a Revenue Court to eject certain exproprietary tenants and their lessee upon the ground that the tenants had given a sub-lease of their holding for a period of more than 5 years in contravention of section 25 of the Agra Tenancy Act, 1901.

* Appeal No. 132 of 1917, under section 10 of the Letters Patent.

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The lessee pleaded that his document of title was in fact not a lease, but a mortgage, which, having been executed before the coming into force of the Agra Tenancy Act, 1901, was valid and gave him a good title to possession.

The Court of Revenue overruled this plea and gave the plaintiffs a decree for ejectment of the defendants.

Held that the suit was brought being one falling within article 18 of group (C) of the fourth schedule to the Agra Tenancy Act, no appeal lay to the District Judge. *Deo Narain Singh* v. *Sitla Bakhsh Singh* (1) referred to.

THIS was an appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court. The facts of the case sufficiently appear from the judgment under appeal, which was as follows:—

"In this case the plaintiff sued two sets of defendants in the court of an Assistant Collector. He alleged that defendants 1, 2,3 and 4 were exproprietary tenants of a certain holding and that they had sublet the holding to defendant 5 for a period of more than five years, in contravention of section 35 of the Agra Tenancy Act, No. II of 1901. They accordingly claimed an order of ejectment under section 57 (*d*) of Act II of 1901. To this defendant 5 replied that there had been no sub-lease of the holding in his favour; that the document under which he held, though described as a *zar-i-peshgi*, or premium lease, was in reality a mortgage, and that it gave him a valid right to possession by reason of the fact that it had been executed prior to the coming into force of the Local Tenancy Act, No. II of 1901. Incidentally a plea arising out of the facts above stated was taken that the plaintiff was not entitled to eject him otherwise than by a suit before a competent Civil Court. The Assistant Collector overruled all the objections taken by the defendants and decreed the plaintiff's suit. The defendants appealed to the District Judge and were promptly met by the objection that no appeal lay to that court. The learned District Judge held that an appeal lay to him by reason of section 177 of the Tenancy Act No. II of 1901. He then went on to deal with the case on its merits and dismissed the plaintiff's suit. Coming here in second appeal, the plaintiff raises the point that no appeal lay to the District Judge. In my opinion this plea is well founded and must prevail. No question of jurisdiction, properly so called, had been decided by the Assistant Collector. The plaintiff came into court upon certain allegations, which, if established, gave him a clear right of suit in virtue of sections 25, 31 and 57 of the Tenancy Act, and that suit, being of the description referred to in item no. 18, schedule IV(C) to the same Act, was one cognizable by the Revenue Court and by the Revenue Court alone, and moreover, it was one in which an appeal lay from the decision of the Assistant Collector only to Revenue Courts of superior jurisdiction. The plaintiff's claim was met by allegations of fact which, if established, would disentitle the plaintiff to any relief. When it was stated in paragraph 4 of the additional pleas in the written statement filed by defendant No. 5 that he was not a sub-tenant but a mortgagee, and that consequently

(1) S. A. No. 429 of 1915.

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the suit was not cognizable by a Revenue Court, the plain meaning of the plea taken is that, if the defendant can establish the facts to be as alleged by him and as alleged in the plaint, then the plaintiff will not be entitled to the remedy claimed by him in the Revenue Court. There was nowhere any plea that the suit as brought was not cognizable by a Revenue Court, that is to say, that assuming the allegations made in the plaint to be true, the Assistant Collector had no jurisdiction to entertain that plaint. In any case the question is covered by recent authority. I refer to the unreported decision of a Bench of this Court in *Deo Narain Singh* v *Sitla Bakhsh Singh* (1), decided on the 25th of May, 1916. The present case is in my opinion a stronger one in favour of the plaintiff appellant. In any event I, sitting as a single Judge, am bound to follow the decision above referred to. The result is that I so far accept the appeal that I set aside the decree of the learned District Judge and remand the case to his court, with directions to return the memorandum of appeal to the defendants appellants for presentation to the proper Revenue Court having jurisdiction to entertain it. Costs here and hitherto will be costs in the cause."

The plaintiff appealed.

Pandit *Mohan Lal Sandal*, for the appellant.

RICHARDS, C. J. and BANERJI, J.:—We agree with the view taken by the learned Judge of this Court and dismiss the appeal.

Appeal dismissed.

REVISIONAL CRIMINAL.

1918
December, 20.

Before Mr. Justice Muhammad Rafiq.

EMPEROR, *v.* KIFAYAT.*

Act III of 1867 (*Public Gambling Act*), *sections* 4 *and* 8—*Conviction for being found in a common gaming house—Forfeiture of money found in the house legal.*

A conviction under section 3 or section 4 of the Public Gambling Act, 1867, differs from a conviction under section 13, in that in the case of the latter the forfeiture of money found with the persons convicted is not lawful, but in the case of the former the forfeiture of money or securities for money found in a common gaming house is lawful. *Emperor* v. *Tota* (2) referred to.

THIS was a reference made by the Sessions Judge of Meerut in the case of one Kifayat convicted under section 4 of the Public Gambling Act, 1867. The facts of the case are set forth in the referring order, which was as follows:—

"This is an application for revision of an order of Babu Jai Narain, Special Magistrate, convicting the applicant under section

* Criminal Reference No. 835 of 1918.

(1) S. A. No. 419 of 1915. (2) (1904) I. L. R., 26 All., 270.