1920

BINDHYA CHAL SINGH v. NAWALRAJ KUNWARI.

The ruling in *Sripat Narain Rai* v. *Tirbeni Misra* (1) has no application to the present case. That was a case in which a decree was passed against a dead person and its execution was sought against the representatives of that person. Those representatives had no opportunity of preventing the decree from being passed. In the present case, the respondents had an opportunity of bringing about the abatement of the appeal, and some of those respondents are the objectors in execution. I hold that the validity of the decree can not be questioned by the objectors, and disallow the objection with costs."

The objectors appealed to the High Court.

Pandit *Rama Kant Malaviya* for the appellants.

Munshi *Jang Bahadur Lal*, for the respondent.

PIGGOTT and WALSH, JJ.:—We think the court below had jurisdiction to inquire into and to determine the question of fact which it has refused to determine. We send down the following issue:-

Was Baz Bahadur Singh, the minor son of Mahesh Singh, living or dead on the date on which the appeal, pending in his name before this Court, was heard and determined and a decree passed in his favour on the 1st March, 1918?

On receipt of the finding, ten days will be allowed for objections.

Issue remitted.

Before Mr. Justice Piggott and Mr Justice Walsh.

1920.
December, 9.

SHANKAR LAL (DEFENDANT) *v.* BABU RAM (PLAINTIFF).*

Act No. IV of 1882 *(Transfer of Property Act), section* 106—*Landlord and tenant—Notice to quit—Notice adding that on failure to vacate, tenant would be liable for a certain enhanced rent—Construction of document.*

A notice of ejectment served by a landlord on his tenant contained, besides the usual terms of a notice to quit, a further statement that if the tenant did not vacate the house by the time specified, the landlord would hold him liable from that date to rent at an enhanced rate. The tenant did not attempt to treat this latter statement as an offer to renew the tenancy at the enhanced rate of rent.

*First Appeal No. 56 of 1920 from an order of Shams-ud-din Khan, Additional Subordinate Judge of Meerut, dated the 13th of February, 1920.

(1) (1918) I. L. R., 40 All., 423.

Held that the notice was a good notice and the landlord was entitled to a decree for ejectment. *Bradley* v. *Atkinson* (1) and *Ahearn* v. *Bellman* (2) referred to.

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

Babu *Piari Lal Banerji*, for the appellant.

Mr. *B E. O'Conor* and Munshi *Ram Nama Prasad*, for the respondent.

PIGGOTT and WALSH, JJ.:—The defendant in this case was the tenant of the plaintiff in respect of a certain shop with buildings appertaining to the same. The suit was one in ejectment against the defendant, and the courts below have differed on the question whether a certain notice served by the plaintiff on the defendant was valid to terminate the tenancy, under the provisions of section 106 of the Transfer of Property Act, No IV of 1882. The first court held that it was not, and that consequently the plaintiff was not entitled to a decree for ejectment, or to any decree except one for arrears of rent. The lower appellate court has held that the notice was valid to terminate the tenancy and has remanded the case to the first court, because on this view of the matter there remain other questions to be determined before a final decree could be passed. The appeal before us is against the order of remand. One point taken is that, inasmuch as the law requires a notice expiring with the end of a month of the tenancy, the reference in the notice to the vacating of the house by the 30th of June, 1919, rendered it invalid, as the reference should have been to the day following, namely the 1st of July. There is no force in this contention, indeed it could not be seriously pressed. On the wording of the notice as a whole it is obvious that the tenant was given until the expiration of the month of the tenancy, that is to say, until midnight of the 30th of June, to vacate the house and so far as this point goes the notice was unquestionably valid and in accordance with the requirements of the law. The other point taken is a somewhat more arguable one. The landlord did not confine himself to giving his tenant notice to quit. He certainly did this, and up to a certain point he did so in unequivocal terms; but he went on to add that he desired the tenant to

(1) (1885) I. L. R., 7 All., 899. (2) (1879) L. R., 4 Exch. D., 201.

1920

SHANKAR LAL v. BABU RAM.

take notice further that, if he did not vacate the house by the date mentioned in the notice, he, the landlord, would hold the tenant liable from the 1st of July, 1919, to rent at a certain enhanced rate. The contention before us is that the addition of this clause to the notice left it undetermined whether the landlord did or did not desire to terminate the tenancy, or in any case gave the tenant an option to stay on as a tenant at the higher rent named in the latter portion of the notice. On behalf of the plaintiff respondent it has been contended before us that the concluding words of the notice in no way affect the former portion; that they did not amount even to the offer of a new tenancy, but are merely an indication of the rate at which the landlord will claim damages in the event of the tenant's disregarding the notice and staying on as a trespasser. We do not think it necessary to go quite this length in order to determine the present appeal. The principles governing the decision in a case of this sort have been laid down by a Full Bench of this court in *Bradley* v. *Atkinson* (1). We find in an English case, *Ahearn* v. *Bellman* (2), certain remarks of BRAMWELL, L. J., which seem precisely to cover the state of affairs created by the notice now before us. It is there said that, if an offer is made by the landlord which the tenant may conceivably accept, the question will then be whether that offer was or was not accepted. The precise words in the report at page 204, which we desire to quote, are as follows :—"Had he" (*i.e.* the tenant) "done so" (*i.e.* accepted the offer) "the notice to quit would have been as efficacious as it was before, and would have put an end to the old tenancy, but there would, at the same time, have been created a new tenancy. I think there would have been no difference if the notice had been given in one letter and the offer made in another letter at a subsequent time. I cannot understand how it can be said that an offer of a new tenancy in any way affects the validity of the notice to determine the old one; if anything it corroborates it, because it supposes that the old tenancy is gone, otherwise there would be no competency to enter into a new one." Another point of view from which this case and similar cases can be looked at is this. We may ask

(1) (1885) I. L. R., 7 All., 899. (2) (1879) L. R., 4 Ex. D., 201.

whether the notice actually issued by the plaintiff to the defendant would or would not have bound the plaintiff if the defendant had acted upon its terms. In the present case that question admits of no answer but one. If the defendant had complied with the notice and vacated the premises on the 30th of June, the plaintiff would have been bound, and by no possibility could he have suggested that the old tenancy continued, or that a new tenancy had been created. With regard to the suggestion that a new tenancy at Rs. 100 a month is offered by the concluding words of the notice, it seems sufficient to say that the defendant, so far from accepting that offer, has up to this moment strenuously repudiated it. Something has been said in argument to-day by way of a suggestion that the defendant should be allowed the option of accepting this offer now, but we see no reason why any such indulgence should be extended to him. There is one more point taken in the memorandum of appeal as to which we ought to say a few words. The plaintiff claimed damages from the 1st of July, 1919, up to the date of the actual vacating of the house, whether in execution of the decree of the court or in anticipation of such decree, at the rate of Rs. 100 a month. In the memorandum of appeal before us it is assumed that this question is concluded in favour of the plaintiff by the judgment of the lower appellate court, but this is obviously not so. The case goes back to the court of first instance for the trial of this question along with others still left open. It will be for the court to determine whether or not, under the circumstances and in view of the equities of the case, it is proper that the defendant should be bound to pay damages at the rate which the plaintiff had warned him in the notice of ejectment that he would claim. Subject to these remarks we dismiss this appeal with costs.

Appeal dismissed.