

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.

1880
December 20.

BHAWANI (PLAINTIFF) v. ABDULLAH KHAN (DEPENDANT).*

*Tenant-at-will—Enhancement of Rent—Agreement to pay enhanced Rent—
Act XVIII of 1873 (N.-W. P. Rent Act), ss. 12, 21.*

The patwári of a village entered in his diary that a tenant-at-will had agreed with the landholder to pay enhanced rent, but the agreement was not recorded, the terms as to rent were not stated, and there was nothing to show that such tenant had assented to such entry. *Held* that there was no record of such agreement within the meaning of s. 21 of Act XVIII of 1873.

THE plaintiff in this suit, alleging that the defendant had extorted from him, by illegal confinement, Rs. 44-1-3 in excess of the rent previously payable by him for certain land, claimed to recover that amount, and Rs. 200, compensation for such extortion. The defendant alleged in defence of the suit that the plaintiff had agreed to pay such excess and had paid the same willingly. It appeared that the plaintiff had agreed with the defendant's agent to pay enhanced rent for such land, in the presence of the patwári of the village, and the defendant's agent had signed the jamabandi in which the enhanced rent had been entered. The patwári recorded these facts in his diary. The Court of first instance decided the issues arising out of the allegations of the parties in favour of the defendant, and dismissed the suit. On appeal by the plaintiff the lower appellate Court held, on the question whether the plaintiff's rent was liable to enhancement, that it was so liable, regard being had to s. 12 of Act XVIII of 1873, a written agreement by the plaintiff to pay enhanced rent having been recorded before the patwári. It also held that the excess rent had been willingly paid; and it affirmed the decree of the Court of first instance. On appeal by the plaintiff to the High Court it appeared that it was doubtful whether the plaintiff was an occupancy-tenant or a tenant-at-will. The Division Bench before which the appeal came for hearing (STUART, C. J., and OLDFIELD, J.) observing that, if the plaintiff was a tenant-at-will, the provisions of s. 12 would not apply to him,

* Second Appeal, No. 1260 of 1879, from a decree of H. G. Keene, Esq., Judge of Meerut, dated the 3rd September, 1879, affirming a decree of G. I. Lalraman, Esq., Assistant Collector of the first class, Bulandshahr, dated the 23rd July, 1879.

1880

BHAWANI
v.
ABDULLAH
KHAN.

remanded the case to the lower appellate Court to determine the issue, amongst others, whether the plaintiff was an occupancy-tenant or a tenant-at-will. The lower appellate Court found that the plaintiff was a tenant-at-will. On the return of this finding the plaintiff objected that he was not liable to pay enhanced rent, as no agreement by him to pay such rent had been recorded by the patwári, within the meaning of s. 21 of Act XVIII of 1873.

Mr. Conlan and Babu *Barodha Prasad Ghose*, for the appellant.

Pandits *Bishambhar Nath* and *Nani Lal*, for the respondent.

The Court (STUART, C. J., and OLDFIELD, J.,) made the following order :—

OLDFIELD, J.—The Judge has found on the issues remitted that the plaintiff is a tenant-at-will, and in consequence he will not be liable, under the provisions of ss. 12 and 21 of the Rent Act, to pay rent in excess of the rent payable by him in the previous year, unless the landlord and he have agreed as to the rent to be paid, and such agreement has been recorded by the patwári of the village or the kánúngo of the pargana in which the land is situate. There is no record of an agreement such as the section requires, for the entry in the patwári's diary cannot be held to meet the requirements of the law. The entry is only to the effect that the karinda of the village signed the jamabandi of 1286 fasli, after causing a record to be made of an agreement on the part of the plaintiff and other tenants. But no agreement is recorded, the terms as to rent are not stated in the entry in the diary, and there is nothing to show that plaintiff consented to the entry. The plaintiff is therefore entitled to recover the excess rent paid by him with interest from date of payment. The lower appellate Court is directed to ascertain the date of such payment, and to try the issue whether plaintiff is entitled to damages on account of the rent having been extorted from him by illegal confinement or other duress, and, if so, what amount. We remand the case again for trial of the above issues and allow ten days for objections on submission of the finding.