

Even if the inquiry by Mr. Shaw (whose unfitness for the duty cast upon him by the Collector is painfully manifest) could be regarded as in any respect a " judicial proceeding," it is plain that the case on any merits it may be supposed to have was of the most trumpery description, and quite undeserving of the ordeal through which it has passed, and I agree with Mr. Justice Straight that the statements by the accused relied on by Mr. Shaw as showing false swearing are not, on the face of them, of that character, but if any thing little more than variations, perhaps careless variations, not necessarily of a wilfully deceitful or misleading nature, or in themselves charged with the vice of perjury. This is specially the case with respect to the alleged contradictory statements of the accused Niaz Ali, who simply adheres to his first statement, explaining that his second statement, to the effect that he did not personally witness the sale, was made when he was suffering from fever and ague, complaints not certainly calculated to sharpen the memory and intelligence of the most conscientious person. Then, besides these considerations, if regard be had to the peculiarity of the native character when acting the part of a witness, and the different languages in which the depositions, supposed to contain the false swearing were ultimately made to appear, it is reasonable to believe that the trial might not have resulted unfavourably to the accused men. Indeed, if the supposed offence of these men had not been connected with a matter relating to the revenue, as to which all Government officers are so laudably zealous, this prosecution would in all probability never have been heard of. The appeal is dismissed.

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 EMPRESS OF
INDIA
v.
NIAZ ALI.

 REVISIONAL CIVIL.

1882
July 3.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

DHIAN RAI (DEFENDANT) v. THAKUR RAI (PLAINTIFF).*

*Landholder and tenant—Ex-proprietary tenant—Rent—Damages—
Act XII of 1881 (N.- W. P. Rent Act), ss. 14, 95 (l), 206.*

T, who had acquired the proprietary rights of D in a certain mahal, sued D in a Civil Court for damages for the use and occupation of sir-land of which D,

* Application No. 224 of 1881, for revision under s. 622 of the Civil Procedure Code of a decree of Rai Raghu Nath Sahai, Additional Subordinate Judge of Ghazi-
pur, dated the 10th September, 1881, modifying a decree of Munshi Kulwant Prasad,
Munsif of Ballia, dated the 23rd May, 1881.

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DEHIAN RAI
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on losing such rights, had become by law the ex-proprietary tenant. *Held* that, *T* being *D*'s landlord, such suit was not maintainable in the Civil Courts. *Ram Prasad v. Dina Kuar* (1); S. A. No. 768 of 1881 (2); and S. A. No. 914 of 1879 (3) followed.

Held also that the provisions of s. 206 of the N.-W. P. Rent Act were not applicable, it not being possible to treat the suit as being in any respect the claim that alone *T* was entitled to make on *D*, which was a claim for rent assessed or ascertained in the mode provided in that Act.

THIS was an application by the defendants in a suit for revision under s. 622 of the Civil Procedure Code of the decrees made therein by the Court of first instance and the appellate Court. The plaintiff in the suit had acquired the proprietary rights of the defendant in a certain mahal. On losing such rights the defendant had become by law (s. 7 of Act XII of 1881) the ex-proprietary tenant of the land held by him as sir at the time of such loss. In the suit the plaintiff claimed damages for the use and occupation by the defendant of such land in 1287 fasli, assessing such damages on the value of the produce. The suit was instituted in the Court of the Munsif of Ballia. The plaintiff admitted that the defendant was in possession of the land as an ex-proprietary tenant. He claimed damages in respect of the occupation of the land on the ground that the defendant had neither paid rent for the land nor had had rent assessed on it by the Revenue Court. The defendant set up as a defence to the suit that, as the plaintiff admitted that he (defendant) was a tenant, the claim should have been brought in the Revenue Court, and was not cognizable in the Civil Court: and that, as he had applied to the Revenue Court to have rent assessed on the land, before the plaintiff had instituted his suit, and such application was pending, he could not be charged with laches in the matter of the assessment of rent on the land. Both the lower Courts held that the defendant was liable for damages for having cultivated the land, as he had cultivated it without giving notice to the plaintiff of his intention to do so, and to pay rent.

The defendant sought revision of the decrees of the lower Courts on the ground that the claim was one in reality for rent, and therefore was not maintainable or cognizable in the Civil Courts.

(1) I. L. R., 4 All. 515. (2) Not reported.
(3) Not reported.

Munshi *Hanuman Prasad*, for the defendant.

Lala *Lalta Prasad*, for the plaintiff

The judgment of the Court (TYRRELL, J. and MAHMOOD, J.) was delivered by

TYRRELL, J.—Following the rulings of this Court in *Ram Prasad v. Dina Kuar* (1), S. A. No. 768 of 1881, decided the 2nd February, 1882 (2), and S. A. No. 914 of 1879, decided 2nd July, 1880 (3), we hold that the suit of the plaintiff must fail. He was admittedly the landlord of the petitioner, who was his tenant in respect of the land, the subject of the suit, in the year 1287 fasli, and therefore he cannot sustain an action for damages assessed on the value of the crop against the petitioner as a trespasser. We have been asked to apply the provisions of s. 206 of the Rent Act to the case, admitting that it was wrongly instituted in a Civil Court. But this section will not help the plaintiff, for it is impossible to treat his claim for damages assessed on the value of the produce as being in any respect the claim that alone he is entitled to make on the petitioner, which is a claim for rent assessed or ascertained in the mode provided by law in s. 7 of the North-Western Provinces Rent Act. We decree this application with costs.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Mahmood.

BANARSI DAS AND OTHERS (JUDGMENT-DEBTORS) v. MAHARANI KUAR AND ANOTHER (DECREE-HOLDERS).*

Execution of joint decree—Application by one joint decree-holder for execution in respect of his own share—Transfer of decree to judgment-debtor—Civil Procedure Code, ss. 231, 232.

A joint decree cannot be executed by one of the several joint holders in respect only of his share of the decree. *Ram Autar v. Ajudhia Singh* (4); *The Collector of Shahjahanpur v. Surjan Singh* (5); and *Huro Sanker Sandyal v. Tarak Chandra Bhattacharjee* (6); followed.

* First Appeal No. 34 of 1882, from an order of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 24th November, 1881.

(1) I. L. R., 4 All. 515.

(2) Not reported.

(3) Not reported.

(4) I. L. R., 1 All. 231.

(5) I. L. R., 4 All. 72

(6) 3 B. L. R., 114.

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DHIAN RAI
v.
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July 4.