PRIVY COUNCIL.

1925.

April, 8.

A. H. FORBES

v.

SIR L. E. RALLI.*

Estoppel—Lease—Representation that lease permanent—Buildings erected upon representation—Suit for ejectment—'From year to year'—Indian Evidence Act (I of 1872), section 115. In 1894 the appellant agreed in writing to give the respondent a lease of a plot of land "for the purpose of erecting buildings.....from year to year at an annual rental of Rs. 180", and the respondents took possession. In 1903 the respondents wished to build a *pakka* house upon the land, and in answer to inquiries, the appellant wrote a letter stating that the lease was a permanent lease though the rent was liable to enhancement. Acting upon that letter the respondent built a house; the appellant knew of the building and received a bonus in respect of it. In 1916 the appellant sued to eject the respondent from the land.

Held, that, whether or not the letting was a permanent one upon the construction of the agreement, the statement in the letter that it was so, was a representation of fact, not an expression of opinion, and that the appellant was estopped under section 115 of the Indian Evidence Act, from denying that the letting was of that character though subject to enhancement of rent.

Quaere, whether the words "from year to year" in the agreement of 1894 affected the permanent nature of the letting, or meant merely that the rent was variable from year to year.

Ramsden v. *Dyson* (1), *Ahmad Yar Khan* v. *Secretary of State for India* (2) and *Sarat Chunder Dey* v. *Gopal Chunder Laha* (3).

Judgment of the High Court [*Ralli* v. *Forbes* (4)], affirmed.

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*PRESENT:—Lord Shaw, Lord Carson, Sir John Edge, and Mr. Ameer Ali.

(1) (1866) L. R 1 H. L. 129, 170.

(2) (1901) I. L. R. 28 Cal. 693; L. R. 28 I. A. 21.

(3) (1892) I. L. R. 20 Cal. 296; L. R. 19 I. A. 203.

(4) (1922) I. L. R. 1 Pat. 717.

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Appeal by the plaintiff.

Appeal (no. 5 of 1924) from a decree of the High Court in its appellate jurisdiction (May 17, 1922) reversing a decree made by Ross J. (July 19, 1921) in a second appeal.

The appellant sued the respondents in the Munsif's Court to eject them after notice from a plot of land which they occupied under an agreement for a lease made in 1894.

The defences substantially relied on in the suit were (*1*) that the letting in 1894 was a permanent one. (*2*) that by reason of certain representations made during the currency of the tenancy the appellant was stopped from denying that it was permanent

The facts are fully stated in the judgment of the Judicial Committee.

The suit was dismissed by the Munsif, and that decision was affirmed on appeal to the District Judge. Upon a second appeal, Ross, J., made a decree for ejectment. He held that the lease of 1894 upon its true construction was merely a yearly letting, also that no estoppel arose. Upon a further appeal to the appellate jurisdiction the decree of Ross, J., was reversed and the suit dismissed. The learned Judges (Dawson Miller, C J and Mullick, J.) agreed with the view of Ross, J. that the tenancy as created was not permanent, but held that the present appellant was estopped under section 115 of the Indian Evidence Act, 1872, from saying that it was not.

1925. February 23, March 10, 12.—*De Gruyther, K. C.* and *Kenworthy Brown* for the appellant. The appellate Court rightly held that upon the true construction of the lease it was not permanent; moreover the appellant as executor had no power to grant a permanent lease. The appellant was not estopped under section 115 of the Indian Evidence Act, 1872, as there was no representation of an existing fact, but

merely a statement of opinion upon a question of law; *Ramsden* v. *Dyson* (1), *Beni Ram* v. *Kundan Lall* (2), *Rashdall* v. *Ford*(3), *Jordan* v. *Money*(4), *Maddison* v. *Alderson* (5), *Beattie* v. *Lord Ebury* (6), *Gopee Lall* v. *Chundrobe Buhosjse* (7). The appellate Court relied on *Narsingh Dyal Sahu* v. *Ram Narain Singh* (8) in which were applied *Cooper* v. *Phibbs* (9) and *Lord Beauchamp* v. *Winn* (10), but those decisions did not turn upon estoppel. If there was any representation of a fact it was unauthorized. Further, it was not established that the appellant had acted on the representation. No new contract can be implied, because the Transfer of Property Act requires a permanent lease to be by a registered document.

Sir John Simon, K.C., Dunne, K.C., and *Hyam*, for the respondents. Whether or not the lease was permanent, the Indian authorities supported the view that it was so, or at least made that a reasonable belief; *Promoda Nath* v. *Govindo Chowdhury* (11), *Ismail Khan Mahomed* v. *Joygoon* (12). The inquiry giving rise to the representation was to relieve that doubt, and it clearly was acted upon. Under *Ramsden* v. *Dyson* (13) and other English authorities an estoppel is raised against a landlord if he merely stands by knowing that his tenant is building in the belief that he has a lease which entitles him to do so safely. Even if that is not so under section 115, the facts as found bring the case within that section. For the purpose of raising an estoppel a statement as to the

(1) (1866) L. R. 1 H. L. 129.
(2) (1899) I. L. R. 21 All. 496; L. R. 26 I. A. 58.
(3) (1866) L. R. 2 Eq. 750, 754.
(4) (1854) 5 H. L. C. 185, 214.
(5) (1883) 8 App. Cas. 467, 475.
(6) (1872) L. R. 7 Ch. 777.
(7) (1872) 11 B. L. R. (P. C.), 391, 395.
(8) (1903) I. L. R. 30 Cal. 882, 893.
(9) (1847) L. R. 2 H. L. 149.
(10) (1873) L. R. 6 H. L. 223.
(11) (1905) 9 Cal. W. N. 463.
(12) (1900) 4 Cal. W. N. 210.
(13) L. R. 1 H. L. 129.

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existence of a legal right is a statement of fact. That is so in English law; *Cooper* v. *Phibbs* (1), *Lord Beauchamp* v. *Winn* (2), *Jones* v. *Clifford* (3); and the same principle applies under section 115: *Narsingh Dyal Sahu* v. *Ram Narain Singh* (4), *Sarat Chunder Dey* v. *Gopal Chunder Lal* (5), *Ahmad Yar Khan* v. *Secretary of State for India* (6).

De Gruyther, K.C., replied.

April 3. The judgment of their Lordships was delivered by—

MR. AMEER ALI.—This appeal arises out of a suit brought by the plaintiff-appellant in the Court of the Munsif at Araria in the district of Purnea to evict the defendants from certain lands he had leased to them in the year 1894.

The suit was dismissed by the Munsif, as will be more particularly mentioned later in the course of this judgment. The Munsif's order was affirmed by the District Judge. The plaintiff preferred an appeal to the High Court, which was heard by a single Judge, Ross, J., who reversed the judgment of the District Judge, and decreed the plaintiff's claim. On the defendants' appeal under the Letters Patent, a Division Bench, consisting of the Chief Justice and Mullick, J., reversed the decision of Ross, J., and agreeing with the District Judge, dismissed the suit of the plaintiff. He now appeals to His Majesty in Council on the grounds that the High Court misconstrued the terms of the lease under which the defendants were let into possession, and have wrongly applied, under the circumstances of the case, the doctrine of estoppel in respect of his claim.

(1) L. R. 2 H. L. 149, 170.
(2) L. R. 6 H. L. 223, 234.
(3) (1876) 3 Ch. D. 779, 792.
(4) (1903) I. L. R. 30 Cal. 894.
(5) (1892) I. L. R. 20 Cal. 296; L. R. 19 I. A. 203.
(6) (1901) I. L. R. 28 Cal. 696; L. R. 28 I. A. 211, 218.

A brief narration of the facts which have led to this unfortunate litigation will explain the position of the parties.

Mr. Forbes, the plaintiff, owns considerable landed property in the district of Purnea. The defendants are Greek merchants trading largely in country produce in India under the name and designation of Ralli Brothers. On the 22nd June, 1894, the defendants' agent, one Acatos, obtained from the plaintiff a lease of four *bighas* of land :

" for the purpose of erecting buildings, putting up presses, etc., for trading."

The lease (*Exhibit 5*) is in English. Acatos executed a *kabuliyat* which is identical in terms with the lease. As the question for determination turns, in a great measure, on the words of this lease, their Lordships think it desirable to give, so far as is necessary, the actual language of *Exhibit 5*. It is as follows :—

" That whereas land is required by Mr. C. Acatos, Agent of Messrs. Ralli Brothers, Merchants, of Calcutta, for the purpose of erecting buildings, putting up presses, etc., for trading, I, A. T. Ricketts, Manager for A. H. Forbes, Executor to the Estate of the late A. J. Forbes, agree to give a lease of four *bighas* of land to the aforesaid Mr. C. Acatos for the above purpose from year to year at an annual rental of Rs. 45 *per bigha* or total annual rental of Rs. 180."

Admittedly the defendants took possession of the leased lands for the purposes stated in *Exhibit 5*. In 1903 a gentleman of the name of Carras took the place of Mr. Acatos as the local agent of Ralli Brothers at Purnea. So far as appears from the record, he resided at a place called Forbesganj, which had been established by the plaintiff or his father as the centre of his estate. A railway station had been opened close by, and Forbesganj acquired a certain importance.

About this time circumstances appear to have arisen which necessitated the erection of a *pakka* or masonry building for the residence of Mr. Carras. As the lease, to use the language of the District Judge, was somewhat vaguely phrased, the defendants, Ralli Brothers, considered it expedient to obtain the

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plaintiff's express permission for the purpose of erecting the structure they proposed for their agent. At this time a Mr. Duff was acting as Mr. Forbes' manager or agent.

After going carefully through the evidence, their Lordships have no doubt that both the Munsif and the District Judge have correctly held that at the interview which took place in consequence of the defendants' applications for permission to raise the structure they proposed, and at which the terms of the lease of 1894 were discussed, Mr. Forbes was personally present. In his evidence in the Munsif's Court the plaintiff states that he does not remember whether he was present or not. Mr. Carras positively swears that he was present and, in fact, took part in the discussion. Mr Duff, for some reason or other, has not been examined on behalf of the plaintiff. If, as it is said, he was ill at the time and unable to attend, he could have been examined, as the lower Courts point out, on commission.

Their Lordships are thus left face to face with two statements, one by Mr. Forbes saying that he does not remember, the other by Mr Carras, who positively swears that Mr. Forbes was present.

In their Lordships' opinion, the Courts which were by law vested with the jurisdiction to deal with the facts have properly come to the conclusion that Carras' statement should be accepted. The letter of the 31st December, 1903 (*Exhibit A*), which Duff wrote to Carras, is clear and precise on this point. Mr. Duff, writing as manager of the Sultanpur Estate, namely, the plaintiff's estate, says as follows :—

" My dear Carras,

Referring to your conversation of this morning with Mr. Forbes and myself, I write (?) at your request to say that the lease executed by Mr. C. Acatos, dated the 22nd June, 1894, is a permanent lease and gives you the right to erect buildings, but it does not entitle you to hold at fixed rate, and the rent is liable to enhancement after proper legal notice. If your firm desires to have a permanent lease at a fixed rate of (torn) will be glad to see the proposed draft of lease and to show it to Mr. Forbes. In the meantime, you can commence the house if you like to do so."

With reference to this letter the plaintiff has raised a number of objections which appear to their Lordships to be feeble and untenable. In the first place, he says that it was a private letter. The District Judge held, as their Lordships think rightly, that it is an official letter written by Duff in his capacity as manager. It is precise in its language and tells the defendants that the lease of June, 1894, is

"a permanent lease and gives you the right to erect buildings, but it does not entitle you to hold at fixed rate and the rent is liable to enhancement."

The defendants appear to have paid a bonus or *nazarana* for the permission to raise the structure they proposed, and on the 10th January, 1904, a "*parwangi*" was issued from the plaintiff's *zamindari katcheri* in the Hindi language, the vernacular of the province, giving the sanction for the erection of the building. The *parwangi*, as it is called, requires some attention. Its translation is as follows:

"To the Manager,

Permission granted to Messrs. Ralli Brothers, *goledar* of *gola* at station Forbesganj, *pargana* Sultanpur.

Whereas you prayed through the agent of the said *gola* for permission to erect a *pakka* house in your *bandobasti* (settled) *gola*. As on enquiry and measurement you wish to erect a house on 2 *K*. 15 *dhurkis* of land on payment of Rs. 21 as *nazarana per mensem*, and the said sum has under a *chalan* been deposited through your agent in the estate. Therefore permission is granted to you to erect a masonry house on 2 *K*. 15 *dhurkis* of land in your *bandobasti* (settled) *gola*. A *nazarana* (bonus) of rupees twenty *per katha* will be taken in case more land is occupied in constructing the *pakka* house. All rights which you possess in your *bandobasti* (settled) *gola* land under the *patta* and *kabuliyat* will remain intact. No other right will be created under this permit. This *parwangi* (sanction) or permission is intended for the said house only. Dated the 10th January, 1904. Sultanpur."

Considerable stress was laid by plaintiff's counsel on the words which appear towards the end of this document—"No other right will be created under this permit"; and it was urged that the intention of the plaintiff was to restrict the rights of the lessee within the limits imposed by the original lease of 1894. Mr. Carras deposes that he does not know the Hindi

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language and did not, therefore, know of the terms of this document until some time after, and that he took it to be an acknowledgment of the bonus that he had paid. This statement has been accepted by both the Munsif and the District Judge. In their Lordships' opinion, in whatever way this document may be understood, it does not affect in any degree the effect of what took place at the interview with Mr. Forbes and Mr. Duff, the result of which is embodied in (*Exhibit A*) the letter of the 31st December 1903.

Acting on the suggestion contained in the letter of Mr. Duff of the 31st December, 1903 (*Exhibit A*), viz. that if the defendants desired to have a permanent lease at a fixed rate (of rent), he would be glad to see a proposed draft of lease and to show it to Mr. Forbes, the defendants appear to have instructed their solicitors, Messrs. Sanderson and Company, to prepare the necessary draft.

From the document, to which reference will be made presently, it appears that Sandersons' applied to Mr. Forbes for the production of a number of papers which they wished to inspect before preparing the draft.

The defendants have put in the reply of Mr. Duff to this application of Messrs. Sanderson and Company, but not the letter Sanderson and Company wrote to Mr. Forbes.

The plaintiff's advisers appear to have produced in the Munsif's Court a certain paper which, for purposes of identification, appears to have been marked "*X*." It was alleged that that was the communication in question, but they failed to prove the signature and naturally it was not admitted in evidence.

Another effort was made in the first Court to introduce the paper in question among the exhibits. They again failed to prove it. No question regarding the non-admission of this paper was raised before the

District Judge or in the High Court. Although in the appeal to the High Court twenty-three grounds were taken, not one relates to it; nor is there any reference to this rejected letter in the grounds for leave to appeal to His Majesty's Council in the case lodged by the plaintiff before the registrar.

Their Lordships are of opinion that there is no substance in the present contention relative to what is called "*X.*"

Coming to the letter addressed by Duff to Messrs. Sanderson (*Exhibit A 1*), it bears date the 23rd January, 1904, and is in these terms:—

"Sirs,

With reference to your no. 392 of 13th instant to the address of Mr. A. H. Forbes, I am desired by him to inform you that matters of greater importance than the lease of a few *bighas* of land are constantly transacted in this estate without the production of such papers as you wish to inspect. There are no special title deeds for the plot of land which Messrs. Ralli Brothers have held for the last nine years, and if Mr. Forbes had no title, it follows that Messrs. Ralli Brothers have also had no title for the past. Mr. Forbes, therefore, declines to produce such valuable papers as he holds, and considers that the existing lease, with the addition of the sanction recently given to erect the building, is sufficient for all requirements."

This being the position of the parties, the point for determination resolves itself into a simple question of fact. There can be no question that upon the letter (*Exhibit A.*) of the 31st December, 1903, the defendants commenced the building for the residence of their agent and completed it at considerable expense. Mr. Forbes knew of it and frequently visited the place. No question was raised until 1916. In that year the plaintiff's *zamindari katcheri* (estate office) was burnt down. He demanded contributions from his tenants to rebuild the *katcheri*. They all agreed to pay except the defendants, who stood on their rights. It was then that the question of their eviction was first mooted. His evidence, long and involved as it seems to their Lordships, appears thoroughly consistent with the view taken by the District Judge.

Both the Munsif and the District Judge, in view of the purpose for which the lease was granted and the

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surrounding circumstances to which they refer in their judgments, were of opinion, that the demise in its inception was of a permanent character, save and except as to the rate of rent; and that the words "from year to year" did not affect the permanent character of the lease, but only gave expression to the provision that the rent was variable from year to year upon proper notice. They also held that the plaintiff was estopped by his acts and representations from questioning the permanency of the tenure.

In the view their Lordships take of the case, they do not think it necessary to determine whether in its inception the lease created a permanent tenure, for they fully agree with the Courts in India that the plaintiff is estopped from interfering with the defendants' right to hold the land.

The doctrine of estoppel which the Courts in India, save and except Ross, J., have applied to the claim of the plaintiff is embodied in section 115 of the Indian Evidence Act of 1872. It is as follows:

"When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing."

The Munsif and District Judge have rightly held, in their Lordships' opinion, that the statement in *Exhibit A* is a statement of fact and not an expression of opinion, as is contended by the plaintiff. The plaintiff distinctly represented to the defendants' agent, Carras, that the lease granted in 1894 was a permanent lease, and that under it he was entitled to erect buildings, as the lease distinctly stated; but that there was no fixity of rent. It has been urged on behalf of the plaintiff that it was a yearly tenancy, and to hold that the plaintiff was estopped by his conduct as evinced by the letter of the 31st December, 1903, from enforcing eviction, would be tantamount to creating a new contract. It is said also that the contract of 1894 was a registered document, and no

variation or alteration or change can be made in it except by a registered contract. The defendants did not contend that it was a new contract or ask for a new contract; nor have the Courts in India held that estoppel creates a new contract. Estoppel prevents the plaintiff from evicting from their holding the defendants, whom he, the plaintiff, induced by his representation and conduct to believe that they had a fixity of tenure, although not of rent, in the lands that had been leased to them. It gives effect to the representation that induced them to act as they did.

In the case of *Ramsden* v. *Dyson*(1), the principle which governs this class of case is stated by Lord Kingsdown in the following terms:—

"The rule of law applicable to the case appears to me to be this: If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory* v. *Mighell*(2), and, as I conceive, is open to no doubt."

This principle has been accepted by this Board in the case of *Ahmad Yar Khan* v. *Secretary of State for India*(3).

The exposition by Lord Shand in *Sarat Chunder Dey* v. *Gopal Chunder Laha*(4) of the rule of equitable estoppel embodied in section 115 of the Indian

(1) (1866) L. R. 1 H. L. 129, 170.

(2) (1811) 18 Ves. 325.

(3) (1901) I. L. R. 28 Cal. 693; L. R. 28 I. A. 21.

(4) (1892) I. L. R. 20 Cal. 296; L. R. 19 I. A. 203.

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Evidence Act has been quoted *in extenso* in the judgment of the learned Chief Justice in the present case, and does not need repetition. Their Lordships desire to record their full concurrence with the principle there laid down.

They do not consider it necessary to refer to all the authorities that have been cited on both sides, as they think that the views expressed by Lord Kingsdown and Lord Shand completely answer the contentions of the appellant.

Upon a review of the facts as well as of the authorities, their Lordships have come to the conclusion that the judgment of the High Court is right and that this appeal should be dismissed with costs, and their Lordships will humbly recommend His Majesty accordingly.

Solicitors for appellant: *Barrow, Rogers,* and *Nevill.*

Solicitors for respondents: *Sandersons* and *Orr-Dignams.*

REVISIONAL CIVIL.

Before Mullick and Ross, J.J.

1925.

April, 8. 1925.

RAGHUNANDAN PANDEY

v.

GARJU MANDAL.*

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *section* 174—*Order refusing to set aside a sale, whether appealable—auction-purchaser a stranger—decretal amount paid out of Court—deposit of damages only—section* 174, *whether sufficient compliance with.* In execution of a decree for rent passed under the Bengal Tenancy Act, 1885, the tenant's holding was sold and was purchased by a third party. Within

* Civil Revision no. 42 of 1925 and Miscellaneous Appeal no. 34 of 1925, from an order of C. H. Reid, Esq., I.C.S., District Judge of Bhagalpur, dated the 12th January, 1925, reversing an order of B. Braj Bilas Prasad, Munsif, Second Court, Bhagalpur, dated the 21st August, 1924.