APPELLATE CIVIL.

Before Dawson Miller, C. J. and Foster, J.

TOFA LAL DAS

v.

T. W. PARTRIDGE.*

1924.

Dec., 1, 2, 3, 4, 10.

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *sections* 61, 62, 63 *and* 64—*valid receipt, presumption arising from*—chalan, *whether constitutes a receipt.*

Rent can be deposited in court under section 62, Bengal Tenancy Act, 1885, only when it appears to the Court that the applicant is entitled under section 61 to make the deposit; hence, if a valid receipt was given under section 62, it must be presumed that the Court was satisfied at the time the receipt was given that the applicant was entitled under section 61 to deposit the rent. A *chalan* is a valid receipt within the meaning of section 62, inasmuch as no special form of receipt is prescribed by the Bengal Tenancy Act.

Where the *chalan* bore the signatures of the Subordinate Judge and of the treasury officer but there was no seal of the Court as contemplated by section 62, *held*, that it is the duty of the Court to affix its seal to the *chalan* and if it is not done, it is the fault of the Court and this defect should not be held to deprive the defndant of his just rights.

In this appeal the only question was whether a sum of Rs. 2,889-15-0, said to have been deposited by the defendant under section 61 of the Bengal Tenancy Act, should be taken into account and credited to the defendant.

The suit was instituted by the plaintiffs to recover from the defendant, their tenant, a sum of Rs. 20,253-7-3 arrears of rent and cess together with interest for the years 1326 to 1328, *M.S.*, and for the *Baisakh kist* of 1329. The suit was instituted on the 31st May, 1921, in the Court of the Subordinate Judge of Purnea. On the 10th December, 1920, the defendant through his Vakil had deposited in the same

* First Appeal no. 215 of 1922, from an order of B. Suresh Chandra Sen, Subordinate Judge of Purnea, dated the 31st May, 1922.

1924.

TOFA LAL DAS v. T. W. PARTRIDGE.

Court to the credit of the plaintiffs for rent and cess a sum of Rs. 2,889-15-0 under a *chalan* of that date. The money appeared to have been accepted by the Subordinate Judge by directing the officer in charge of the Purnea treasury to receive the sum if tendered in the treasury by 3 P.M. the same day. The money was deposited and the treasurer's receipt was given on the face of the *chalan*. No mention was made of this matter in the judgment and no credit was given for it in arriving at the amount due from the defendant. The defendant accordingly appealed and contended that the sum deposited should be deducted from the sum found payable by the decree which amounted to Rs. 18,380-8-7.

The *chalan* appeared to have been tendered in evidence and accepted without objection. Apart from what appears on the face of the document itself there was no evidence to show under which of the clauses of section 61 the money was paid into Court. The defendant's witnesses were silent about it. From the document itself it appeared that the sum was deposited by the defendant through his Vakil, Babu Shushil Chandra Neogy, to the credit of the present plaintiffs for rent and cess with interest up to the *Kartick kist*, 1328, *M.S.*, and that it was received in the Purnea treasury on the 10th December, 1920, upon the instructions of the Subordinate Judge.

Nurul Hosain and *Lachmi Narayan Sinah*, for the appellant: There has been a valid tender under section 61, Bengal Tenancy Act, which operates as an acquittance for the money so tendered. The *chalan* which has been exhibited in this case is clear proof that I have deposited the sum to the credit of the respondents. Section 63 makes it imperative for the Court to make a publication of the deposit. Service of notice, however, is immaterial, as it is simply meant to inform the landlord so that he may be able to withdraw the money.

Khurshaid Hasnain (with him *Syed Ali Khan*), in reply: The tender is not in accordance with the

1924.

TOFA LAL DAS v. T. W. PARTRIDGE.

provisions of section 61. It has not been proved by the appellant that the rent was deposited under any of the clauses of section 61, and if there is no evidence on the record to show that the tender was validly made according to the provisions of section 61, I submit it cannot operate as an acquittance, and this Court should not take notice of it. Secondly, the *chalan* is not a receipt. There must be a formal receipt granted by the Court under its seal, and if there is no seal of the Court it cannot be a valid receipt.

Nurul Hosain, in reply: It was for the Court which issued the *chalan* to see whether the application for deposit was within the terms of section 61 or not. The presumption is that the Court considered the matter and decided that the requirements of section 61 were complied with. The *chalan* is technically a receipt by the Court and if there is no seal of the Court thereon, it should be taken to be a mistake of the office for which I should not be made to suffer.

S. A. K.

Dec., 10.

DAWSON MILLER, C.J. (after stating the facts set out above, proceeded as follows): It was argued on behalf of the respondents that there was nothing to show under which of the provisions of section 61 the money had been paid into Court or whether the facts were such as to entitle the defendant to pay the money into Court under that section. Section 62, however, provides in effect that the money shall only be received by the Court if it appears to the Court that the applicant was entitled under section 61 to make the deposit and if the Court is so satisfied it shall receive the rent and give a receipt for it under the seal of the Court. Once the receipt is given under this section it it provided that it shall operate as an acquittance for the amount of the rent paid by the tenant and deposited, in the same manner and to the same extent as if the amount of rent had been received by the person entitled thereto. It follows therefore that if the *chalan* produced is a valid receipt given under section 62 it must

1924.

TOFA LAL DAS v. W. W. PARTRIDGE

be presumed that the Court was satisfied at the time the receipt was given that the applicant was entitled under section 61 to deposit the rent and we cannot now at this stage consider that matter afresh.

DAWSON MILLER, C.J

It was contended, however, that the *chalan* does not bear the seal of the Court and cannot be regarded as a receipt within the meaning of section 62. Apart from the fact that the *chalan* does not bear the seal of the Court it would appear to be a valid receipt for the money deposited. It bears the signature of the Subordinate Judge and of the Treasury Officer who acknowledges receipt of the money. No special form of receipt is prescribed by the Bengal Tenancy Act and it was the duty of the Court to affix its seal thereto. If this was not done it was the fault of the Subordinate Judge and I do not consider that this defect should be held to deprive the defendant of his just rights. Once the money was received it was also the duty of the Court under section 63 to notify the receipt by notice in the Court house and to serve notice upon the persons specified in the application free of charge as provided in that section. If within fifteen days the money was not paid to the person appearing to be entitled to it under section 64, the Court may either pay the amount of the deposit to any person appearing to it to be entitled to the same or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled and if the money is not paid under this section within three years of the deposit the Court may in the absence of any order of a Civil Court to the contrary refund the money to the depositor on return of the receipt.

In my opinion the defendant was entitled in the circumstances to have the deposit taken into account in determining his liability in the suit and it follows that the amount of the decree should be reduced by the sum of Rs. 2,889-15-0 and the interest and costs payable under the decree will be reckoned upon the reduced amount and the decree will be varied accordingly.

1924.

TOFA LAL DAS v. T. W. PARTRIDGE.

DAWSON MILLER, C.J.

It is further ordered that the amount on deposit be directed to be paid to the plaintiffs upon their application to the proper officer.

With regard to the costs of this appeal it appears to me that the appellant's grievance has arisen solely owing to his neglect to draw this matter to the notice of the Subordinate Judge at the trial. Had he done so the matter would undoubtedly have been dealt with in the judgment and credit for the amount deposited would have been given to the appellant. In the circumstances it is ordered that each party bear his own costs of this appeal.

FOSTER, J.—I agree.

Decree varied.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Foster, J.

JOGINDRA NARAYAN CHAUDHURI

v.

CHINAI MUHAMMAD SIRCAR.*

1924.

Dec., 10.

Limitation Act, 1908 (*Act IX of* 1908), *Schedule I*, *Articles* 89, 115 *and* 116—*Principal and agent, written agreements between—Accounts, suit for—Limitation.*

The plaintiff engaged the defendant as his agent to look after two villages and collect the rents, rendering an account to the plaintiff. There were two written agreements in the case, one relating to each of the villages. The first was executed in 1905 and the other in 1906. The defendant was dismissed sometime in September or October, 1917. He had rendered no accounts and the present suit for accounts was instituted on the 26th May, 1920. The trial Court took the view that as the relations between the plaintiff and the defendant depended on a contract the case was governed by Article 115, and dismissed the suit on the preliminary point. On appeal, *held*, that the proper Article applicable was Article 89; and that the suit having been brought within three years from

* First Appeal no. 240 of 1921, from a decision of B. Suresh Chandra Sen, Subordinate Judge of Purnea, dated the 27th April, 1921.