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KING-EMPEROR v. JAN MAISTRY AND OTHERS.

BAGULEY, J.

for other people to commit offences under section 11 and not *vice versâ*.

A reference to the two sections will show that the law regards the offence of the *daing* as far greater than the offence of the mere gambler. If the maximum fines which can be inflicted are looked at, it will be seen that the *daing* can be punished five times as heavily as the gambler. If the maximum sentences of imprisonment are looked at, the *daing* can be punished three times as heavily as the gambler, and this clearly shows that the *daing* under ordinary circumstances should be punished very much more heavily than the ordinary gambler.

In this case the Magistrate has fined the ordinary gamblers Rs. 10 each, and the ordinary *daing* Rs. 15. It would be far more reasonable if the *daing* had been punished four or five times as heavily as the gambler.

APPELLATE CIVIL.

Before Mr. Justice Carr.

DAYALAL & SONS
v.
KO LON AND ANOTHER.*

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July 23.

Estoppel—Tenant in possession from landlord cannot deny his title, however defective—Suit by tenant claiming as owner—Surrender essential before suit—Evidence Act (I of 1872), s. 116.

Plaintiff came into occupation of a house as tenant of defendant-appellants who claimed to have bought it from its former owner but without a registered conveyance. Plaintiff, occupying the property all the time as tenant of the appellants, obtained a registered conveyance of the house from a legal representative of the former deceased owner, and sued the appellants for a declaration of his ownership and for an injunction against them to restrain them from recovering any rent from him.

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* Civil Second Appeal No. 769 of 1927 against the judgment of the District Court of Toungoo in Civil Appeal No. 123 of 1927.

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DAYALAL & SONS v. KO LON AND ANOTHER.

Held, that a tenant who has been let into possession cannot deny his landlord's title however defective it may be so long as he has not openly restored possession by surrender to his landlord. Plaintiff was in possession as tenant and as he had not delivered possession to the appellants, he was estopped from denying their title.

Bilas Kurwar v. *Desraj*, (P.C.) 37 All. 557—*followed*.

P. B. Sen for the appellants.

So Nyun for the respondents.

CARR J.—The house in dispute in this case originally belonged to one U Tun U who appears to have lived in it along with his daughter Ma Dun until he died. It seems that he occupied one floor while the defendant-appellants occupied the other. When U Tun U died Ma Dun left the house leaving the defendants in possession of it. The defendants claim that they had, in fact, bought the property from U Tun U before his death, but had not obtained from him a registered conveyance. The plaintiff came into occupation of the house as tenant of the defendants in 1924. This has been found in the present suit by the Subdivisional Court and had previously been found in two suits for rent brought by the defendants against the plaintiff.

After he had entered into occupation of the property as tenant of the defendants, the plaintiff obtained a registered conveyance from Maung Tha Dun as the legal representative of Ma Dun, who by then had died. The plaintiff has remained in occupation of the property ever since he entered into it as tenant of the defendants. He now in this suit prays for a declaration of his ownership, for a declaration that the defendants have no right to the property, and that they have no right to claim rent from him and for an injunction to restrain them from continuing the second suit for rent abovementioned, which has been decided since the institution of the present suit.

The question that arises in this appeal is whether the plaintiff is estopped under section 116 of the Evidence Act from bringing this suit and denying his landlord's title. Both the Courts below have held that he is not estopped. In my opinion, both the decisions are wrong and are based on an entire misconception of the law of estoppel. The Subdivisional Judge held that if the plaintiff could prove that by his conveyance from Tha Dun he acquired the legal title to the property it would show that his tenancy had determined as from the date of that conveyance. He also argued that since the date of that conveyance the plaintiff has been in possession as owner of the property and not as tenant. The District Judge took very much the same view. He referred to the decision of their Lordships of the Privy Council in the case of *Bilas Kurwar* v. *Desraj Ranjit Singh* (1) in which their Lordships held that "a tenant who has been let into possession cannot deny his landlord's title however defective it may be so long as he has not openly restored possession by surrender to his landlord". The District Judge further held that if the plaintiff was able to prove that by his conveyance he had obtained legal title that would show that the tenancy had determined from the date of that conveyance. I am unable to follow fully the agruments by which the Judge was able to hold that this present case did not come within the ruling of the Privy Council above quoted. In my opinion, it clearly does come within that ruling.

The whole case of the plaintiff depends on the allegation that the defendants, his landlords, never had any title at all and that the property belonged to U Tun U and passed on his death to Ma Dun and

(1) (1915) 37 All. 557.

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on her death to the administrator Tha Dun who, in his turn, conveyed it to the plaintiff. This clearly amounts to a denial of the defendants' title at the time of the commencement of the tenancy, and it also, in my opinion, clearly comes within the very explicit rule laid down by their Lordships of the Privy Council. Admittedly the plaintiff came into possession as tenant of the defendants and he has never surrendered possession to them. He is, therefore, still a tenant, and, even if his lease itself has actually determined, he is still holding on under that lease and is still in possession of it as a tenant. He is very clearly estopped from bringing this suit and will continue to be estopped unless and until he delivers possession of the property to the defendants. I allow this appeal, set aside the judgments and decrees of the Courts below and dismiss the plaintiff's suit with costs in all Courts.

APPELLATE CIVIL.

Before Mr. Justice Mya Bu.

1928

July 23.

MAUNG KAN GYWE
v.
CHETTYAN AND ANOTHER.*

Provincial Small Cause Courts Act (IX of 1887), s. 15 (1) and 2nd Sch, Art. 8—Suit for 'laizu' not a suit for rent—Competency of a Court of Small Causes to try such suit.

Plaintiff-respondents agreed to allow defendant to work three plots of land on the understanding that seed-grains would be supplied by the plaintiffs and that the defendant would give plaintiffs half of the produce as *laizu* which literally means "share for land."

Held, that a Court of Small Causes was competent to entertain a suit for recovery of the value of such share by way of damages for a breach of contract. Such suit was not a suit for 'rent.'

Jadab Chandra v. *Gopal Chandra*, 28 C.WN. 848—*referred to.*

* Civil Revision No. 46 of 1928 (at Mandalay) against the judgment of the Township Court of Wetlet in Suit No. 134 of 1927.