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ments were found. Here was a *vera causa* for the existence of the coins, superior apparently to the one resting on questionable testimony produced long afterwards.

Upon evidence of this description, independently of the *alibi* set up, we think it is unsafe to rest the conviction of the appellant. All the assessors find him not guilty. The first assessor, Mr. Máhádeo Moreswar Kunté, who believes the evidence of the women as to the delivery of the coins, believes at the same time that the appellant's connection with Mahomed Imám was innocent. We think there is some basis for this view; and, reluctant as we are to interfere with the Session Judge's application of evidence, we think we must reverse the conviction and sentence, and direct the appellant Nur Mahomed to be acquitted and discharged.

Conviction and sentence reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nántbháí Haridás.

BA'BA' (ORIGINAL DEFENDANT), APPELLANT, v.

VISHVANA'TH JOSHI (ORIGINAL PLAINTIFF), RESPONDENT.*

Landlord and tenant—Notice to quit—Permanent tenancy—Tenancy from year to year—Ejectment.

Where the plaintiff sued in ejectment, and the defendant set up a right as a permanent tenant,

Held that the setting up of this right was a repudiation of the landlord's title, and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year.

THIS was a second appeal from the decision of C. F. H. Shaw, Judge of the district of Belgaum, reversing the decree of Ráv Sáheb Vithal Vináyak, Subordinate Judge of Athni.

In 1820 the British Government granted to one Náná Sáheb Chinchni the village of Jhunjurvád as *saranjám*. In 1835 Náná Sáheb granted it to his sister Durgábái. Náná Sáheb dying in 1836, the British Government resumed it, but re-granted it to Durgábái for her life. Durgábái, availing herself of the provi-

* Second Appeal, No. 318 of 1882.

sions of the Summary Settlement Act, 1863, agreed to pay the settlement, and prayed that the village might be declared heritable and transferable property. The prayer was granted, and a *sanad*, dated 1st of February, 1867, was delivered to Yashvantrāv, adopted son of Durgábái, on the 30th of August, 1873. A few months after the date of the *sanad*,—that is, on the 4th of August, 1867,—Durgábái granted in *inám* to the plaintiff twenty-seven pieces of land, one of which the plaintiff alleged he let to the defendant at an yearly rental of Rs. 11. The plaintiff further alleged that he received this rent through the village authorities, that he wished to oust the defendant from the field and gave him a notice to quit, that the defendant would not vacate, and the plaintiff, therefore, brought this suit to eject the defendant. The defendant, among other things, contended that he was a permanent tenant, not liable to ejectment as long as he paid Rs. 11 to the village authorities every year, and that the plaintiff had no right to give him any notice to quit.

The Subordinate Judge held that neither Náná Sáheb nor Durgábái, nor, therefore, the plaintiff had any right to recover possession of the land so long as the tenant paid the rent agreed on, and dismissed the claim. The District Judge, on the contrary, held that the plaintiff was entitled to oust the defendant, and had given him notice to quit. He, therefore, made a decree directing the defendant to give up the land.

The defendant appealed to the High Court.

Shivrám Vithal Bhandárkar for the appellant.—The District Judge is wrong in supposing that any notice was given by the plaintiff to the defendant. We say no notice was given. The defendant is a holder under the guarantee of a revenue survey. The notice given is neither legal, nor sufficient, in law, to entitle the plaintiff to sue. The defendant having been in possession of the land before the grant to the plaintiff, the defendant was entitled to remain in possession so long as he paid rent.

Máneksháh Jehángirsháh Taleýárkhán for the respondent.—Assuming that no notice was given, we say none was needed. The question as to notice was shut out by the defendant setting up a perpetual tenancy.

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WEST, J.—The defendant in this case being sued in ejectment set up a right as a permanent tenant. That defence raised the question of whether he had or had not a permanent tenancy, but it did not raise the question of whether he was a tenant from year to year. If this latter question had been raised, the further one would have been necessary, of whether the yearly tenancy had been legally terminated: but when the defendant did not admit a yearly tenancy, he could not claim the notice due only to a yearly tenant—*Shahābakhān v. Bālya*⁽¹⁾. Setting up a right to hold at a customary rent in answer to a claim for increased rent is a repudiation of the landlord's title, which dispenses him from giving notice to quit—*Vivian v. Moat*⁽²⁾, citing *Doe d. v. Stanion*⁽³⁾ and *Doe d. Calvert v. Frowd*⁽⁴⁾. The land being as between a landlord and tenant, originally the landlord's property, he has a right to possession, except so far as the tenant makes out a right in derogation of that. Here the right sought to be made out was one of permanent occupancy independently of the landlord's will. When the proof of this failed, there was nothing left to stand between the landlord and the recovery of his possession. It was properly awarded to him, and we confirm the decree of the District Court, with costs.

Decree confirmed.

- (1) See Printed Judgments for 1873, p. 66. (3) 1 M. & W. at p. 702.
(2) 16 L. R. Ch. Div., 730. (4) 4 Bing. at p. 560.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nānābhāi Haridās.

December 7.

BHAGVAN DAYA'LJI, PLAINTIFF, v. BA'LU, DEFENDANT.*

Jurisdiction—Difference between a Court of Small Causes constituted under Act XI of 1865 and a Court of a Subordinate Judge invested with the jurisdiction of a Judge of a Small Cause Court under section 28 of Act XIV of 1869—Decree—Execution—Transfer of decree for execution—Subordinate Judge with Small Cause Court powers—Act XI of 1865, Sec. 20—The Code of Civil Procedure, XIV of 1882, Sec. 223—Act XIV of 1869, Sec. 28.

The Courts of Subordinate Judges invested with the jurisdiction of a Judge of a Small Cause Court under section 28 of Act XIV of 1869 do not thereby

* Civil Reference, No. 51 of 1883.