APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

AMBA'BA'I (ORIGINAL PLAINTIFF), APPELLANT, *v.* BHA'U BIN RA'JA'RA'M (ORIGINAL DEFENDANT), RESPONDENT.*

1885. *September* 2.

Landlord and tenant—Yearly tenant—Notice to quit—Disclaimer of landlord's title in the course of pleadings—Transfer of Property Act (IV of 1882), *Secs.* 111 *(b) and* 116*—Not retrospective.*

The sections of the Transfer of Property Act (IV of 1882) relating to notice do not apply to suits instituted before that Act came into operation. Before that Act came into operation a tenant other than a monthly tenant, holding over on the terms of his lease, was entitled to reasonable—that is to say, in the case of lands and in the absence of usage or stipulation to the contrary—to six months' notice to quit.

Disclaimer of a landlord's title after suit brought in the pleadings does not of itself determine the tenancy and render notice to quit unnecessary.

SECOND appeal from the decision of W. H. Crowe, District Judge of Poona, in Appeal No. 97 of 1893.

In 1892 the plaintiff sued to eject the defendant from a house, alleging that the house had belonged to her husband's brother Tribhovan Jotirám, and had been leased by him to defendant under two rent-notes dated 19th May, 1867, and 28th June, 1871, respectively; that after Tribhovan's death in 1882 defendant orally agreed with the plaintiff to hold over the premises on the same terms as before, and to vacate the house on demand; that the defendant refused to deliver up possession and pay rent from 19th May, 1889.

Defendant pleaded that the house belonged to him, and not to the plaintiff or Tribhovan; that he had not executed the rent-notes referred to in the plaint, and had not rented the premises from plaintiff or Tribhovan.

The Court of first instance held that the house had belonged to Tribhovan; that plaintiff was the heir of Tribhovan; that the defendant occupied the house first as Tribhovan's tenant and after Tribhovan's death as plaintiff's tenant; and that as he refused to pay rent or quit the premises, he was liable to be ejected. A decree was accordingly passed awarding possession of the house to

* Second Appeal, No. 65 of 1894.

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the plaintiff. On appeal, this decree was reversed by the District Judge for the following reasons :—

"By section 111, clause (*b*), coupled with section 116 of Act IV of 1882 a notice to quit is necessary to determine the tenancy. Section 116 describes the effect of holding over. It is contended that the objection was not raised in the lower Court nor in the memorandum of appeal; but that point has been decided in *Vithu* v. *Dhondi* (1), where it was held that it was open to defendant to take the objection of want of proper notice even in second appeal. I find that in the absence of such notice no decree for ejectment can be passed."

Against this decision the plaintiff appealed to the High Court.

Ganpat Sadáshiv Ráo for appellant :—Sections 111, clause (*b*), and 116 of the Transfer of Property Act (IV of 1882) have no application to the present case. The present suit was filed in 1892, *i.e.*, before the Act came into force in this Presidency on the 1st January, 1893. Section 2 of the Act expressly declares that it does not affect any right or liability arising out of any legal relation constituted before the Act comes into force. The lower Court was, therefore, wrong in giving the Act a retrospective effect. Apart from the Act, the law is clear that a tenant who repudiates the title of his landlord is not entitled to a notice to quit. The disclaimer of the landlord's title works a forfeiture of the tenancy, and renders a notice to quit unnecessary—*Baba* v. *Vishvanáth* (2); *Lalu* v. *Bái Motan Bibi* (3). In the present case there is an additional reason why a notice to quit is not necessary. It is found as a fact that defendant occupied the house as a tenant of Tribhovan. On Tribhovan's death the tenancy became a tenancy-at-will. The defendant was only a tenant on sufferance. He was, therefore, liable to be ejected at any time without any notice to quit—*Krishnaji* v. *Antaji* (4). The suit, therefore, is not bad for want of notice to quit.

Mahádev B. Chanbal, for respondent :—The provisions of the Transfer of Property Act, relating to notice to quit, regulate procedure, and are, therefore, retrospective. They govern pending suits. Section 111 (*b*) of the Act is, therefore, applicable to the present case. As to the alleged disclaimer of the landlord's title,

(1) I. L. R., 15 Bom., 407.
(2) I. L. R., 8 Bom., 228.
(3) I. L. R., 17 Bom., 631.
(4) I. L. R., 18 Bom., 256.

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it is not shown to have occurred before the institution of the suit. The landlord's title was repudiated for the first time in our written statement in the present suit. Such a disclaimer does not dispense with proof of a notice to quit—*Vithu* v. *Dhondi* (1); *Abu Bakar* v. *Venkatramana*(2); *Dodhu* v. *Mádhavráo* (3). *Bába* v. *Vishvanáth*(4) is practically overruled.

JARDINE, J.:—The objection that notice to quit was necessary before suit, was taken on appeal in the District Court, and may be heard here—*Dodhu* v. *Mádhavráo*(3). The right of a yearly tenant to a reasonable notice to quit is a substantial right (Cole on Ejectment, Chapter 3) just as the right to determine such a tenancy by notice is a necessary incident. The suit having begun before the Transfer of Property Act, 1882, came into force in this Presidency, it is unaffected thereby, as provided in section 2, clause 3. The disclaimer of the landlord's title made in the written statement would not operate by itself as a forfeiture so as to render notice to quit unnecessary—*Vithu* v. *Dhondi*(5); *Dodhu* v. *Mádhavráo* (3). The Court confirms the decree with costs.

RA'NADE, J.:—The first contention raised in this appeal has reference to the question whether the District Judge was in error in applying section 111, clause (*b*), and section 116 of the Transfer of Property Act to the present case.

It was contended on appellant's behalf that as the original suit in the Bárámati Court was instituted in 1892, long before the notification extending the Act to this Presidency was issued in January, 1893, the provisions of that Act were not applicable to the present case. Mr. Chaubal, for the respondents, however, urged that the Transfer of Property Act in this connection only regulated procedure, and came into immediate operation. We are of opinion that this contention is not valid, and that the District Judge was in error in giving a retrospective operation to the provisions of Act IV of 1882 regarding notice. Section 2 of the Act expressly provides that nothing herein contained shall be deemed to affect any right or liability arising out of a legal relationship

(1) I. L. R., 15 Bom., 407.
(2) I. L. R., 18 Bom., 107.
(3) I. L. R., 18 Bom., 110.
(4) I. L. R., 8 Bom., 228.
(5) I. L. R., 15 Bom., 407.

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constituted before the Act came into force, which, in this Presidency, means before 1st January, 1893. Section 6 of the General Clauses Act I of 1868 also contains the same reservation. The power to eject is a vested right whenever it is allowed by law or valid usage, and cannot be said to be a mere matter of procedure, or a portion of adjective law (*In the matter of the Petition of Ratansi Kalidnji* (1)). In Bengal, this point was expressly considered in reference to mortgage suits brought before Act IV of 1882 came into force in that Presidency, and it was held that such suits could not be treated as being instituted under the provisions of the Act—*Baij Nath Pershád* v. *Moheswári Pershád* (2) and *Mohábir Pershád* v. *Gungádhar Pershád*(3). The point was decided similarly by the Allahabad High Court in *Sitla Bakhsh* v. *Lalta Prasad*(4). The Madras High Court took a similar view of sections 111 and 112 of the Act in a case where a question of forfeiture for non-payment of rent arose on a lease of 1849—*Nárdyana* v. *Nárayána* (5). Following these authorities we hold that section 111 (*b*) and section 116 did not apply to the present suit.

This makes it necessary to inquire whether, under the law as it stood before 1st January, 1893, a notice to quit was necessary in the circumstances of his case. Plaintiff brought this suit, as heir of one Tribhovan, to eject defendant from a house which was leased to defendant by Tribhovan in 1867 and 1871 under two rent-notes. The periods provided for in these leases expired long ago, and plaintiff contended that defendant continued in possession under an oral contract by which he agreed to vacate the house on demand, and meanwhile pay the old rent of Rs. 15 per annum for 5 khans. Defendant denied the execution of the rent-notes, and also disowned the tenancy, and claimed that he, and not Tribhovan, was owner of the house. The Court of first instance held that the rent-notes were proved, and that defendant was a tenant of the plaintiff holding over on the old terms. The question for consideration is thus whether, in this state of the pleadings, defendant was entitled to a notice before plaintiff

(1) I. L. R., 2 Bom., 148.
(2) I. L. R., 14 Cal., 451.
(3) I. L. R., 14 Cal., 604.
(4) I. L. R., 8 All., 388.
(5) I. L. R., 6 Mad., 327 at p. 330.

could bring the ejectment-suit against him. As the rent, according to plaintiff, was Rs. 15 per annum, it is clear that the tenancy was not from month to month, in which latter case the Calcutta High Court has held that a month's notice was reasonable notice —*Nogoordass Mullick* v. *Jewráj Báboo* (1). The case clearly falls within the principle of the rule laid down in *Chaturi Sing* v. *Makund Lál* (2), where it was held that there was no difference between the position of a rayot holding without a patta and that of one holding over after the term covered by a patta with the consent of the owner, and that such a tenant could not be evicted without a reasonable notice to quit. What is a reasonable notice is always a question of fact dependent on custom and contract —*Jagut Chunder Roy* v. *Rup Chand* (3), but in the absence of an express stipulation or local usage to the contrary, it has been held that six months' notice is reasonable in the case of lands—*Pándurang* v. *Yedneshwar* (4).

It is, however, contended that as defendant in this case denied plaintiff's right, that disclaimer was sufficient by itself to terminate the tenancy, and no notice was necessary. This doctrine of disclaimer was at one time carried very far, but the first case on the subject represented by the ruling in *Bába* v. *Vishvanáth* (5) was questioned in *Purshotam* v. *Dattatraya* (6) and expressly dissented from in *Vithu* v. *Dhondi* (7). This latter case was distinguished in a later ruling—*Lalu* v. *Bái Motan Bibi* (8), but the suit in this last case was brought by the purchaser of the tenant's rights against the landlord, and it is not, therefore, much to the point here. The distinction between a disclaimer prior to suit and a disclaimer in the course of pleadings, was first noticed in *Vithu* v. *Dhondi* (9) and was affirmed in *Abu Bakar* v. *Venkatramana* (10) and *Dodhu* v. *Mádhavráo* (11). On behalf of the appellant, some stress was laid upon the words "permissive possession" used in *Krishnáji* v. *Antáji* (12), and an inference was

(1) 12 Beng. L. R., 263.
(2) I. L. R., 7 Cal., 710.
(3) I. L. R., 9 Cal., 48.
(4) I. L. R., 6 Bom., 70.
(5) I. L. R., 8 Bom., 228.
(6) I. L. R., 10 Bom., 669.
(7) I. L. R., 15 Bom., 407.
(8) I. L. R., 17 Bom., 631.
(9) I. L. R., 15 Bom., 407.
(10) I. L. R., 18 Bom., 107.
(11) *Ibid.*, 110.
(12) I. L. R., 18 Bom., 253.

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drawn therefrom that defendant was only a tenant on sufferance. The word 'permissive' used in that judgment appears to us only to be used to distinguish such possession from adverse possession, and it had reference chiefly to the question of limitation. The point about notice was not touched upon in that case. In the present case, plaintiff stated that the defendant had orally agreed to vacate on demand, but there was no evidence given on this point. There was no disclaimer of plaintiff's ownership prior to the institution of the suit, and the denial in the written statement had not the effect of dispensing with the obligation of giving reasonable notice. The appellant's suit was, therefore, rightly rejected by the lower Court of appeal, though the ground assigned by it for dismissing the claim was plainly untenable.

We accordingly dismiss the appeal and confirm the decree with costs on appellant.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. *September* 2.

HARIBHA'I GANDABHA'I (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.*

Bombay Revenue Jurisdiction Act (X of 1876), Secs. 3 and 11—Bar of jurisdiction—Forest officer not a revenue officer—Forest Act (VII of 1878), Sec. 81.

The bar of jurisdiction contained in section 11(1) of Act X of 1876 does not apply to cases in which a Collector moves under section 81 of Act VII of 1878 to recover, at the request of a forest officer, the price of cut timber sold by the latter under section 81 of Act VII of 1878.

APPEAL from the decision of T. Hamilton, District Judge of Surat, in Suit No. 1 of 1893.

One Gulábkhan Ahmadkhán purchased certain wood cut in the Government forest of Nawápura in Khándesh, but as he

* Appeal, No. 169 of 1894.

(1) Section 11, Bombay Revenue Jurisdiction Act (X of 1876)—

No Civil Court shall entertain any suit against Government on account of any act or omission of any revenue officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present."