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APPELLATE CIVIL.

29 C. 231.

tural year following the year in which the notice to quit was served on the tenant had expired. Therefore it appears to us, on the authority of the ruling in the case of *Naharullah Patwari* v. *Madan Gazi* (1), that the defendant in this case is liable to ejectment from his land notwithstanding the terms of the notice served on him.

The learned pleader for the respondent cites the case of *Hemanginee Chaudhurani* v. *Srigobinda Chaudhuri* (2). But it appears to us that that case has no reference to under-raiyats. It refers to notices to quit served upon annual tenants, who are not under-raiyats. It has accordingly no application to the present case.

Then, the Subordinate Judge has held that the notice to quit was not properly served on the tenant in this case, inasmuch as it was served by the Munsiff, and not by the landlord. Now, no doubt the law does require that the notice should be served by the landlord; but we learn from the report of the Court peon, who served the notice in this case, that the plaintiff actually went with the peon and handed the notice himself to the tenant, and that the notice to quit was properly served on him in the way that summonses are usually served, that is to say, it was tendered to the under-raiyat personally, who received it and gave a receipt for it.

Now, if these are the facts of the case, then the service of notice in this case was not bad. This, however, is not a Court of fact; and we cannot go into the evidence and see whether the notice was or was not properly served under Rule 3 of Chapter I of the Government Rules under the Bengal Tenancy Act.

We must, therefore, remand the case to the lower Appellate Court to have this point decided.

[235] The pleader for the respondent raised a further question as to the form of the notice. With regard to this we need only say that the law prescribes no form of notice. The learned pleader for the respondent also says that the notice was given by the Munsiff and was not signed by the landlord. But the law does not apparently require that the notice should be actually signed by the landlord. It is sufficient, if the notice is at the instance of the landlord calling upon the under-raiyat to quit the land; and it is quite immaterial whether the notice is actually given by the landlord himself or at his instance, provided that the notice signifies to the under-raiyat that the landlord has called upon him to quit the land.

With these remarks we set aside the decree of the lower Appellate Court and remand the case to the Subordinate Judge.

The costs will abide the result.

Appeal allowed; case remanded.

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29 C. 235.

ORIGINAL CIVIL.

Before Mr. Justice Sale.

NANDO LAL *v.* CHUTTERPUT SING. * [15th February, 1902.]

Decree, transmission of—Execution—Assignee of Decree—Notice—Civil Procedure Code (Act XIV of 1882), s. 232.

* Suit No. 65 of 1900.

(1) (1896) 1 C. W. N. 133. (2) (1901) 6 C. W. N. 69.

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ORIGINAL CIVIL.

29 C. 235.

In an application by an assignee of a decree for transmission of the decree and for notice to issue under s. 232 of Civil Procedure Code.

***Held*, that such application can only be treated as one for execution.**

THIS was an application in Chambers made by an assignee of a decree upon a tabular statement, for transmission of a decree to Murshidabad, and for a notice to issue under s. 232 of the Civil Procedure Code.

Mr. *Dunne* for the assignee. I ask, in the first instance, for a notice to issue under s. 232 of the Civil Procedure Code.

[236] An application was made some time ago, and a decree transmitted with intimation that no notice under s. 232 had gone to the judgment-debtor. The Murshidabad Court has sent back all papers feeling a difficulty as to notice under s. 232 going from any other Court than the Court which passed the decree. As there is this difficulty, I ask for notice to issue under s. 232 of the Code.

[SALE, J.—It has been the practice of this Court to consider applications to transmit decrees, not applications for execution, and there is no section which says that on an application to transmit for the purpose of execution in another Court, notice must go. It is only when an application is made for execution.]

But the only section under which an assignee can come in, is under s. 232 of the Code, and that section only provides for an application to the Court which passed the decree. There is no section under which an assignee can apply to transmit for execution to another Court. As the Code now stands, I submit, the assignee must come to the Court which passed the decree. At any rate, rather than run the risk of the judgment-debtor raising this point and incurring costs in the mofussil Courts, I ask in the first place for a notice to issue under s. 232 of Civil Procedure Code.

SALE, J.—Very well, let this be treated as an application for execution under s. 232 of the Civil Procedure Code, and let notice issue under that section to the assignee and the judgment-debtor.

Attorney for the applicant: *Romesh Chandra Basu.*

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29 C. 236.

CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Gupta.

EBRAHIM SIRCAR *v.* EMPEROR.* [15th November, 1901.]

***Public Servant, Receiver appointed under Land Registration Act, whether a—Non-attendance in obedience to order from public servant—Omission to produce* [237] *document to public servant—Obstructing public servant in discharge of public functions—Disobedience to order duly promulgated by public servant —Persuasion to tenants not to pay rent to Receiver— Penal Code (Act XLV of* 1860), *ss.* 174, 175, 186, *and* 188—*Land Registration Act (VII B. C. of* 1876), *s.* 56.

***Held*, that a Receiver appointed under s. 56 of the Land Registration Act is not a public servant within the terms of ss. 174, 175, 186 and 188 of the Penal Code.**

***Held*, further, that such a Receiver was not a public servant legally competent to issue an order directing persons to attend before the Collector**

* Criminal Revision Nos. 407, 480, 546, and 547 of 1901, made against the orders passed by P. C. Mitter, Esq., District Magistrate of Rangpur, dated the 28th of March 1901.