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father had left a will. They had mortgaged and sold the property and dealt with it entirely as their own; and the present applicant for revocation of the Letters of Administration is the purchaser of a large portion, if not the bulk, of the father's property, under decrees in mortgage suits in respect of mortgages made by the two sons. The mortgages and the decrees in the mortgage suits were anterior in point of date to 21st of June 1892, though the actual date of the purchase was subsequent to that time. Under these circumstances, the only question submitted for our decision is, whether the applicant had any *locus standi* to apply for revocation of these Letters of Administration. I think he had. He stood virtually in the shoes of the two sons, who claimed to be the heirs, and who had dealt with the property, as the sole owners of it. The applicant was the purchaser from the heirs, and, if the heirs could have applied for revocation of the Letters of Administration, I do not see why the purchaser could not do so, he being in the same position as they were. He was not in the position of an ordinary creditor, but was the purchaser from the heirs. I think, therefore, that, if the heirs were entitled to sue for revocation of the Letters of Administration, the purchaser from them had a *locus standi* to make a similar application. This view seems to me to be consistent with certain decisions of this Court, namely, the case of *Komol Lochun Dutt v. Nil Ruttun Mundle* (1), and also the very recent case of *Muddun Mohun Sircar v. Kali Churn Dey* (2). On these grounds I think the appeal fails and must be dismissed with costs.

BANERJEE, J.—I am of the same opinion.

Appeal dismissed.

28 C. 590.

[590] *Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Banerjee.*

TAMASHA BIBI (*Defendant*) v. MATHURA NATH BHOWMIK AND OTHERS (*Plaintiffs*).* [18th June, 1901.]

Notice to quit, service of—Suit for ejectment against more than one tenant—Bengal Tenancy Act (VIII of 1885), s. 49, Ch. I, Rule 3.

In a suit for ejectment against the under-riayats the notice to quit, when addressed to more persons than one, should be made by Proclamation, and beat of drum according to Rule 3 of Chapter I of the Rules made by the Government of Bengal, dated the 21st December 1885.

THIS appeal arose out of a suit for ejectment. The plaintiffs stated that the defendants were their under-riayats, that they were served with a notice of ejectment according to the provisions of s. 49 of the Bengal Tenancy Act. Notwithstanding that they did not give up the lands, hence the suit was brought for ejectment. The defendants *inter alia* pleaded that they were occupancy raiyats and therefore they were not liable to be ejected; that they were not served with any notice under the law; and that there was no custom of ejecting the under-riayats. The Court of First Instance, having found that the notice was served upon the defendants according to the provisions of s. 49 of the Bengal Tenancy

* Appeal from Appellate Decree No. 2873 of 1899, against the decree of Babu Prasunno Coomar Ghose, Subordinate Judge of Nuddea, dated the 7th of August 1899, affirming the decree of Babu Upendra Chunder Chatterjee, Munsif of Kuste, dated the 24th of January 1899.

(1) (1878) I. L. R. 4 Cal. 860.

(2) (1892) I. L. R. 20 Cal. 37.

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Act, and that the defendants were mere under-raiyats, decreed the plaintiff's suit. On appeal the learned Subordinate Judge confirmed the decision of the first Court. Against this decision one of the defendants appealed to the High Court.

Babu *Sharat Chunder Roy Chowdhry* for the appellant.

No one appeared for the respondents.

MACLEAN, C. J.—This appeal must succeed upon the ground that no sufficient notice was served upon the defendants. There is only one appellant, but there were four defendants. It appears [591] from the statement in the judgment of the lower Court that notice was served personally upon the appellant, but, if the notice was addressed, as it was in this case, to four defendants, then it seems to me that Rule 3 of Chapter I of the Rules made by the Bengal Government, dated the 21st December 1885, has not been complied with, and the provision that personal service shall be effected in the manner prescribed for service of summons on a defendant under the Code of Civil Procedure does not apply to the case: that only applies to the case where the notice is addressed to a single person. That being so, the whole suit fails, and the appeal must be allowed with costs, in all the Courts.

BANERJEE, J.—I am of the same opinion.

Appeal allowed.

28 C. 591.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Banerjee.

HARISH CHUNDER NEOGY (*Defendant*) v. NISHI KANTA BANERJEE (*Plaintiff*).* [11th June, 1901.]

Malicious prosecution—Onus of proof—Innocence—Reasonable and probable cause—Malice—Judge of law and facts.

In a suit for malicious prosecution, in order to enable the plaintiff to succeed, he must prove, first, that he was innocent of the charge brought against him; secondly, that the defendant acted without reasonable and probable cause in instituting the prosecution; and, thirdly, he must satisfy the Court that the defendant was actuated by feelings of malice in the course which he took.

The question of reasonable and probable cause is, if the case is tried by a Judge with a jury, a question for the Judge and not for the jury: but in India, where there is no jury, the Judge becomes himself the Judge of the law and the facts.

Pestonji Mody v. The Queen Insurance Company (1) referred to.

THIS appeal arose out of a suit brought by the plaintiff for damages for an alleged false and malicious prosecution. The allegation of the plaintiff was that the defendant Haris Chunder [592] Neogy appointed him in Baisak 1300 B. S. a *naib* for the property in the Backergunj District, which he, the defendant, looked after on behalf of his father; that he held this appointment till the 11th Magh 1302 (24th January 1896), when he was dismissed; that on the 7th Sraban 1302 (27th July 1895) he came to Calcutta, the defendant having sent for him to render accounts, and having remained there for three weeks he

* Appeal from Appellate Decree No. 1828 of 1899, against the decree of J. Pratt, Esq., District Judge of 24-Pergunnahs, dated the 16th March 1899, reversing the decree of Babu Rajendra Kumar Bose, Subordinate Judge of that District, dated the 8th of June 1898.