1869
June 3.

Before Mr. Justice Kemp and Mr. Justice Glover.

MITRAJIT SING AND OTHERS (DEFENDANTS) *v.* BABOO TUNDAN SING (PLAINTIFF.)*

Enhancement of Rent—Presumption under s. 4, Act X, of 1859.

In a suit for enhancement of rent the ryot pleaded that he had held certain lands from generation to generation at a uniform rate; that he was therefore entitled to claim the presumption arising under section 4 Act X of 1859; that he should be allowed to date his claim from the date of the permanent settlement.

Held, that he was entitled to such presumption on showing that he had paid rent at a uniform rate for a period of twenty years previous to the suit.

Baboo *Debendra Narayan Bose* for appellant.

Moulvie *Syud Marhamut Hossein* for respondent.

THE judgment of the Court was delivered by

GLOVER, J.—This was a suit for enhancement of rent on 87 bigas 10 katas of land from the year 1275, after notice. The defendant pleaded that the land had been in the possession of himself and his predecessors from generation to generation at a uniform rate, and that he was entitled therefore to the presumption arising under section 4 of Act X of 1859; he also objected to the grounds of enhancement as stated in the notice and likewise to the amount of and which the plaintiff stated he was possessed of. His allegation was that he held 2 bigas 10 katas less than was stated by the plaintiff.

The first Court considered that there was no presumption arising in favor of the plaintiff; that a variation in the rate of rent was proved, and that there was no evidence that the defendant held below the rates prevailing in adjacent lands possessing similar advantages, but for the reasons given by him the Moonsiff gave the plaintiff a decree at the rate of 3 rupees per biga. This decision dissatisfied both parties, and two appeal were preferred to the Judge, the result of which was that the plaintiff got a decree for enhancement at the rate of 7 rupees per biga, the Judge holding that the pata by its terms showed that there had been a variation in the rate of rent subsequent to the decennial settlement, and that no presumption arose under section 4 of Act X of 1859.

The only point which it is necessary for us to notice in special appeal is the one arising under section 4, of Act X, 1859. The special appellant contends that the wording of his written statement sufficiently shows that he claimed the whole of the lands from the date of the permanent settlement especially when in that statement he made a special reference to, and claimed the benefit of section 4, of Act X of 1859. It has been ruled in several decisions of this

*Special Appeal, No. 608 of 1869, from a decree of the Judge of Patna dated the 12th December 1868, amending a decree of the Deputy Collector of that district, dated the 15th September 1868.

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Court, that where a ryot pleads that he and his family have held certain lands from generation to generation, and on the strength of that holding claims the benefit of the presumption arising under section 4. of Act X of 1859, that he should be supposed to have dated his claim from the dated of the permanent settlement; but that where a tenant fixed some particular date as the o from which his tenancy commenced, no matter how remote that date mi be, if subsequent to the permanent settlement, he was no longer entitle claim the benefit of the presumption arising under section 4.

In this case it is quite clear that the defendant did claim to be entitled to the presumption that he held from the date of the permanent settlement, d if he can prove that he has paid a uniform rate of rent for 20 years before the institution of the suit, he is entitled to that presumption. It has been argued on the other side that the wording of the patta itself shows that there was a variation in the rate of rent in the year 1249, F. S. We have had this patta read to us, and it does not appear that there was any such variation as stated by the plaintiff. The reason for executing this patta was that before the year 1249, the tenant in possession had been paying rent in kind, and the patta was to make arrangements for the payment, in future, of the rent in cash, and the deed states that a rent of 2 rupees per biga will for the future be taken in lieu of the rent in kind.

Of course it is a simple impossibility for any body to say or prove after such a long period of years what was the actual value of the rent in kind paid up to the year 1249, inasmuch as that rent must have depended on very many circumstances such as the fertility of the ground, the changes of seasons, and a hundred other things, but it seems quite clear to us that the fixing of rupees a biga in lieu of what had been paid in kind was tantamount to saying that that money represented and was equivalent to what had been paid before in another way. The law throws the burden of proving anterior variation on the party asserting it; if in this case the ryot shows that he has paid rent at a uniform rate for 20 years, he need do nothing more, and it will be for the landlord to prove that in some one of the years previous to the year 1249 the rate of rent has varied.

As the question of uniformity of payment of the rent for 20 years before suit has not been gone into by the Judge in the Court below, we think that the case must be remanded for the purpose. If the defendant can prove that for the last 20 years he has paid at a uniform rate of rent, he is entitled to the benefit of the presumption arising under section 4, of Act X. of 1859, for there is nothing in the wording of the patta showing a variation in the year 1249. Costs to follow the result.