Before Mr. Justice E. Jackson and Mr. Justice Mitter.

GRISH CHANDRA GHOSE (PLAINTIFF) *v.* ISWAR CHANDRA MOOKERJEE AND OTHERS (DEFENDANTS.)* 1869 *July* 20.

Act X of 1859, s. 13—Notice of Enhancement—Evidence—False Statement of Defendant.

A notice under section 13, Act X. of 1859, for enhancement of rent upon land held by a ryot in excess of the land for which he pays rent to the zemindar, must state the quantity of land so held in excess. The mere statement of "excess land" is not a sufficient compliance with the provisions of the law.

A plaintiff cannot take advantage of a statement made by a defendant which at most amounts to a piece of evidence, and not to an admission, but which is found to be untrue, unless it be shown that the *status* of the plaintiff had been affected, or that he had been misled by such statement.

Baboos *Kali Mohan Das* and *Srinath Das* for appellant.

Baboos *Ashutash Dhar* and *Bangshi Dhar Sen* for respondents.

MITTER, J.—I am of opinion that this special appeal ought to be rejected. With reference to the first point I observe that the lower Appellate Court has distinctly found that the special appellant has failed to prove that the productive powers of the land held by the defendant, respondent, have increased otherwise than by his agency. This is a finding on a disputed question of fact, and we have no power to interfere with it in special appeal. With reference to the second point which relates to the "excess lands," I see no reason whatever to interfere with the judgment of the lower Appellate Court. It is true that the special appellant did state in the notice of enhancement that the defendant was holding "excess land," in his possession, but the notice is altogether silent as to the amount of such "excess land." No information is given as to the quantity of land for which the defendant was already paying rent, or as to the quantity which he was found to be in possession of by actual measurement. Such a notice is not, in my opinion, sufficient

*Special Appeal, No. 168 of 1869, from a decree of the Officiating Additional Judge of Jessore, dated the 6th November 1868, reversing a decree of the Deputy Collector of that district, dated the 26th September 1869.

1869

GRISH CHANDRA GHOSE v. ISWAR CHANDRA MOOKERJEE

to meet the requirements of section 13, Act X. of 1859. That section distinctly provides that the notice must specify the rent to which the ryot will be subject for the ensuing year, and the ground on which the enhancement is claimed.

Now in specifying the ground of enhancement, the landlord is bound, in my opinion, to state the particulars, of which that ground is composed. The ground of enhancement which relates to "excess lands" is described in section 17 of the Act as follows: "that the quantity of land held by the ryot has been proved "by measurement to be greater than the quantity for which "rent has been previously paid by him." This description, no doubt, is a very general one, but the Legislature could not have possibly adopted a particular description when it was laying down a general rule to be applied to an infinite variety of particular cases. It would be highly unreasonable to argue from the generality of the above description that when a particular landlord wishes to enhance the rents of a particular ryot, it would be as sufficient compliance on his part with the requisitions of section 13, if the notice served by him under the provisions of that section is a mere repetition of the general words used in section 17, without any reference whatever to the facts and circumstances of the particular case. Thus, for instance, the party whose rent is to be enhanced is described in section 17, by the general expression "the ryot" and it would be simply absurd to contend that that general description would be sufficient to meet the provisions of the law, without specifying in the notice the name of the particular ryot whose rent is sought to be enhanced. When the Legislature laid down so imperatively that no ryot who holds land without a written engagement shall be liable to pay any higher rent than the rent payable for the previous years, unless a notice has been served upon him on or before the month of Chaitra specifying the rent to which he will be subject for the ensuing year, and the ground upon which the enhancement is claimed, it must be as a matter of course admitted that it had a particular object in view. This object, as far as I can judge, appears to have been that the ryot should be furnished in due time with the fullest information regarding the nature, the extent, and the ground of the claim for enhancement,

1869

GRISH CHANDRA GHOSE v. ISWAR CHANDRA MOOKERJEE.

in order that he might be placed in a position to exercise his discretion as to whether it would be advisable for him either to submit to that claim, or to resist it wholly, or in part; or to avoid it altogether by giving up his holding on or before the commencement of the year for which he is called upon to pay the enhanced rent. The question therefore reduces itself to this: does a notice which merely states that the ryot is in possession of "excess land" fulfil the object indicated above? I am clearly of opinion that it does not. The ryot is not told what the "excess" is, nor is he supplied with any information as to how it is made out. How then is he to judge whether the demand of his landlord is reasonable or otherwise. How is he to ascertain before the month of Chaitra expires, whether it would be advisable for him to submit to the demand, or to contest its legality before a Court of Justice, or to avoid it by giving up the lands in his possession on or before the commencement of the year for which he is called upon to pay the enhanced rent. It may be said, that the ryot is at least expected to know for what quantity of land he has been hitherto paying rent. Admitting the correctness of this argument as far as it goes, how is the ryot to know that his landlord is also agreed as to this quantity? Suppose the ryot knows that he has been paying rent for 50 bigas; but the landlord chooses to think that he has been paying rent for 25 bigas only, and that he is therefore bound to pay enhanced rent for the remaining 25 bigas in his possession. If the landlord does not choose to specify either of these particulars in the notice, how is the ryot to know whether the demand is reasonable or otherwise, and in the absence of such knowledge how is he to ascertain in proper time what line of action would be the best for him to adopt? At any rate, it is beyond all dispute that the ryot's knowledge in respect of this particular would afford him no criteria or data for ascertaining the quantity of "excess land" which his landlord supposes he is in possession of, and for which he is called upon to pay enhanced rent. In the absence of all information on this important point, he is almost as much in the dark, as if he were never served with any notice at all; and to hold that a notice which does not supply that information is sufficient in law, would be to perpetuate

1869

GRISH CHANDRA GHOSE v. ISWAR CHANDRA MOOKERJEE.

the very mischief which the Legislature has been so anxious to prevent, namely the mischief of a ryot being suddenly called upon to meet an unknown and an undefined demand when it is too late for him to avoid it by giving up the holding on account of which it is made. But be this as it may, the appellant is not entitled to obtain any enhanced rent for any "excess land," inasmuch as he has given no evidence whatever to prove what that excess is. It is true that the Ameen, who was deputed to hold a local investigation in this case, has found that the defendant is in possession of the particular quantity of land; but without expressing any opinion on the proceedings of the Ameen, as I am sitting here in special appeal, and assuming that the result of his measurement is correct, the mere fact that the defendant is in possession of a particular quantity of land, taken by itself, is mathematically insufficient to prove the "excess." In order to prove such "excess" the landlord is bound to show, in the first place, for what quantity of land the ryot has been hitherto paying rent, and then to establish the quantity of land which he is actually occupying. It is admitted that the special appellant has given no evidence whatever on the first point, and even if the Ameen's report is taken as proof of the second, it is perfectly clear that the existence of the alleged excess would not be made out.

It has been said that the defendant having admitted in his written statement that he was in possession of a certain quantity of land, the difference between that quantity and the quantity found in his possession by the Ameen must be taken as the "excess" for which the appellant is entitled to obtain enhanced rent. But, in the first place, it is clear that the statement made by the defendant to the effect that he was in possession of a certain quantity of land does not necessarily go to show that he was actually paying rent for that quantity, and for no more; and in the next place it is equally clear that the utmost use which the appellant can make of that statement is to treat it as a piece of evidence in the cause. Unfortunately, however, for the appellant, this statement has been rejected as untrue by the lower Appellate Court, and indeed it would necessarily follow that if the Ameen's report, which the appellant cannot dispense with

1869

GIRISH CHANDRA GHOSE v. ISWAR CHANDRA MOOKERJEE.

for the purposes of his argument, be accepted as true, the statement above referred to must be rejected as false. The appellant is not therefore in a position to ask us to couple that statement with the Ameen's report in order to find out for him the quantity of "excess land" for which he is entitled to obtain an enhancement of rent, even if we had any jurisdiction to arrive at such a finding, which would be, undoubtedly, a finding on a disputed question of fact. It has been said that although the statement above referred to has been found to be false, the defendant is, nevertheless, bound or estopped by it, inasmuch as it is his own statement, and that the appellant has every right to use it for the purposes of his own case. This contention is manifestly absurd. The question about the "excess lands" is a question of fact, and for the purpose of arriving at a true solution of such a question we cannot rely upon a piece of evidence which we know to be false. A true finding cannot rest upon false evidence, and if a particular statement or piece of evidence is found to be false, it must be treated as false for all the purposes of the suit, unless the opposite party can show that his own status has been affected thereby, or that he has been misled by it—a consideration wholly inapplicable to the present case. The party who makes that statement, or produces that piece of evidence, might by so doing give rise to a general presumption against the truth of this case, but it would be simply absurd to hold that what is false for the defendant is true for the plaintiff or *vice versa*. I am aware of no law which lays down such an extraordinary doctrine, at least none that we are bound to follow; and in the absence of such a law, I cannot, on the mere *ipse dixit* of the appellant's pleader, accept it for my guidance, when I find it to be manifestly contrary to reason and common sense. The appellant is not willing to give to the defendant the benefit of the statement above referred to, for in that case his whole claim would at once fall to the ground, and he is not therefore competent in my opinion to use that statement for the purpose of supplying a defect of proof in his own case. I have already observed that that statement does not necessarily prove that the defendant has been paying rent for the quantity mentioned therein, and

1869

GRISH CHANDRA GHOSH v. ISWAR CHANDRA MOOKERJEE.

for no more; and even if it were within our jurisdiction to deal with matters of evidence in special appeal, we should exercise that jurisdiction beyond all justifiable limits, if we were to accept an admittedly false statement as the sole basis of our conclusion upon a disputed question of fact. Whichever way, therefore, we look at the appellant's case, it is perfectly clear that he has completely failed to make it out.

I would reject this special appeal with costs.

E. JACKSON, J.—I concur with Mr. Justice Dwarkanath Mitter that this appeal ought be be dismissed with costs. The Judge has given the plaintiff a decree for enhanced rent at the old rate on a certain quantity of excess lands which the defendants admit that they hold. But he has dismissed the claim of the plaintiff to an enchanced rate of rent, and also to rent for the extent of land which he claimed. As the plaintiff did not satisfy the lower Court that he was entitled to any enchanced rate of rent, I think that Court was right to award enhanced rent for excess lands only at the old rates. As to the amount of such excess lands it is said that the defendants admitted a much larger quantity to be in their possession than the Court has decreed. It is quite clear to me, taking the defendants' written statement and oral depositions and documents all together into consideration, that the defendants made no such admission at all, that the larger amount of land alluded to consisted of their alleged lakhiraj as well as their rent-paying land.

I concur generally also in the remarks of my learned colleague as to the manner in which notices for enhanced rent for excess lands should be drawn up. But it appears to me unnecessary for the determination of this appeal to decide that point.