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conclusively be taken to be the relation which was intended to be created between them, and that to get at their intention no other evidence whether of contemporaneous acts or agreements ought to be admitted. But it may be that we, sitting here as a Division Bench, should not have been at liberty to question the Full Bench Ruling, if the point had directly arisen before us. In the present case however it is clear that the point does not arise. This was not the case which the plaintiff in the Courts below intended to prove. He distinctly avers that there was a parol agreement, and he only resorts to the acts of the parties, to the sufficiency of the considerations, and to the non-registration of the document, for the purpose of supporting that allegation. Therefore, having made that allegation, and having abided by that allegation up to this time, I think he ought not to be allowed now to change it.

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*Before Mr. Justice Norman and Mr. Justice E. Jackson.*

BHIRO CHANDRA MOZOOMDAR AND OTHERS (DECREE-HOLDERS) *v.* BAMUNDAS MOOKERJEE AND OTHERS (JUDGMENT-DEBTORS.)*

*Mesne Profits—Cultivating Ryot.*

When a cultivating ryot is ejected by his zemindar, the mere rent of the land realized by the zemindar from another tenant is not necessarily the measure of the damage sustained by the ryot, and recoverable by him as mesne profits.

Baboos *Mahini Mohan Roy* and *Gopal Lal Mitter* for appellants.

Baboo *Srinath Das* for respondents.

The facts are sufficiently clear from the judgment of

NORMAN, J.—The plaintiff, in this suit obtained a decree for possession with wasilat, or mesne profits. In execution, the lower Court awarded, by way of mesne profits, a sum equivalent to the fair and reasonable rent of the entire land, not only of that which was actually occupied by ryots, but also of that which was not

* Miscellaneous Special Appeal, No. 539 of 1868, from a decree of the Officiating Judge of Dinagepore, dated the 17th August 1868, amending a decree of the Subordinate Judge of that district, dated the 5th May 1868.

cultivated, but which the lower Court thinks might have been cultivated or let to tenants by the defendants.

In special appeal, it is objected that the calculation of wasilat proceeded upon a wrong principle. It is urged that the plaintiffs prior to and at the time of dispossession were cultivating ryots, and that if they had not been wrongfully dispossessed from the land, they would have realized an amount of profits far exceeding that which the defendants had realized.

It is urged very ingeniously and sensibly by the vakeel for the appellant, that in a suit by a ryot who is dispossessed by the zemindars, the mere amount of rent received by the zemindar during the period of dispossession, is no measure of the damages sustained by such ryot by being dispossessed. It was pointed out that if the ryot held at the full rate of rent capable of being realized from the land, and the zemindar after dispossessing him should let the land to other people at the same rate, and if in assessing the wasilat or damages the rent payable to the zemindar were deducted, and the sarunjami or collection charges were likewise allowed, as has been done in this case, the ryot, though he might have sustained serious injury and loss by being turned out of the land and deprived of his means of making a livelihood, would actually get nothing from his landlord. Therefore it follows that the amount of rent collected by the landlord is not necessarily the measure of damages. In Sedgwick on Damages (1) it is said that in an action of trespass for mesne profits, which is an action for damages, "the jury are not confined in their verdict to "the mere rent of the premises, but may give such extra damages, "as they think the particular circumstances of the case demand. "So in an early case in England, *Goodtitle* v. *Tombs* (2), it was said: "The plaintiff is not confined in this case to the very mesne "profits only, but he may recover for his trouble. I have known "four times the value of the mesne profits given by a jury in "this sort of action of trespass; if it were not so, sometimes "complete justice could not be done to the party injured." The difficulty which the special appellant has to contend against is, that he has not put his case in the way in which it is now put by

(1) 4th Edition, 136. (2) 3 Wils., 121.

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his vakeel. He has not asked for, or obtained any decree or order for the assessment of his damages on the footing on which, he now says, they ought to have been assessed. He has sued for and obtained a decree for mesne profits only, and has accepted without objection a remand directing an enquiry into the amount of the mesne profits. We can only take the decree, as it stands, and in so doing we give to the plaintiff the mesne profits on the rent of the land upon the usual principle. There is, therefore, no ground for interfering with the decision of the Judge on this point.

The special appellant further contended that he being a cultivating ryot ought to have received the entire rent without any deduction of the sarunjami or collection charges, because if he had been occupying the land he would have realized the rent, and the collection charges would have cost him nothing.

Unfortunately for the special appellant, there are two decisions given by the Judge on two separate appeals from the same judgment passed by the first Court. He has only appealed against one of these judgments, and it is in the judgment which is not brought before us, that the judge made an order allowing sarunjami. We need not, therefore, pronounce any opinion on that point. The appeal will be dismissed ; but under the circumstances the parties will pay their own costs.

JACKSON, J.—I also think that the appeal should be dismissed. The mesne profits awarded are the damages which the judgment-creditors sustained, as far as the evidence went. It may be that the plaintiffs might have been entitled to a higher rate, if he had produced sufficient evidence. But he has not done this.