exactly the cause for which the landlord demands that excess. The section says that where it is shown that the rate of rent paid by a ryot is less than that paid by ryots having similar rights for the same description of land in the vicinity, the rent can be enhanced up to the rates paid by those ryots. In this case there is no such wording to be found in the notice. We think therefore, that the Judge was quite right in saying that this notice was insufficient and informal, and on this notice alone the plaintiff's suit for enhancement could have been dismissed.

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There are no grounds, therefore, on which this special appeal can be maintained, and it must be dismissed with costs.

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*Before Mr. Justice Kemp and Mr. Justice Glover.*

1871 *June* 6.

GARBHU BHAGAT AND OTHERS (DEFENDANTS) *v.* RANGLAL SING AND OTHERS (PLAINTIFFS).*

*Fictitous Sale—Right of a subsequent Mortgagee with Notice—Issue.*

*Munshi Mahomed Yusaff* for the appellants.

Baboos *Kali Krishna Sen* and *Lakhi Charan Bose* for the respondents.

THE facts of the case are sufficiently stated in the judgment of the Court, which was delivered by

GLOVER, J.—The plaintiffs in this case sued for confirmation of possession in certain property purchased from their brother Lachmi Prasad on the 3rd of December 1868; the deed of sale was registered, it appears, on the next day,—*viz.*, the 4th. The defendants were mortgagees from Lachmi Prasad on a deed dated the 16th of December 1868. They sued on their mortgage-bond, and got a decree, and, in execution thereof, attached the property which is now in dispute. Thereupon, the plaintiffs intervened, saying that the property was theirs by purchase from Lachmi Prasad by a purchase prior to the defendants' mortgage. The Court, before whom the application came, held that Lachmi Prasad had, notwithstanding the alleged sale, always remained in possession of the property, and that the sale was fictitious; it therefore ordered the sale to proceed. The plaintiffs now bring this suit for confirmation of possession, and to declare that the sale is a good sale, and that the property is not liable under the defendants' decree on the mortgage.

The defendant alleges as he did before, that the sale is fictitious; that no consideration passed; that the purchasers were never in possession; and that possession has remained all along with Lachmi Prasad. The Court of first

* Special Appeals, Nos. 9 and 27 of 1871, from the decrees of the Judge of Patna, dated the 27th October 1870, reversing the decrees of the Subordinate Judge of that district, dated the 12th July 1870.

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instance found on all these allegations in favor of the defendant,—namely, that the sale was fictitious; that possession had remained all along with Lachmi Prasad; that no consideration passed; and that the defendant was entitled to retain the property. The Judge, on appeal, reversed this decision. He held that, so far as regarded the defendant, there had been no fraud practiced by Lachmi Prasad, inasmuch as the plaintiffs' deed of sale (which, the Judge says, is admitted to be genuine) was executed before the mortgage to the defendant. He found also that the defendant either knew, or had the means of knowing, that, when he took his mortgage, the property had already passed by sale to other parties.

It appears to us that this decision cannot be sustained. The question between the parties was not as to the genuineness of the plaintiffs' deed of sale; that might have been genuine, and for all that might, so far as third parties were concerned, be a fictitious transaction. The question was whether the sale by the plaintiffs' brother to them was a real and *bonâ fide* sale made for due consideration, and whether the possession of the property passed to the purchasers. The Court of first instance raised, we consider, what was a proper issue in this case, and decided all these points adversely to the plaintiffs. We think that the Judge, before reversing that decision, ought to have fixed similar issues, and to have found thereon. The Judge appears to think that because the deed of sale was not executed in fraud of the defendant, that therefore the defendant had no right to question it. This appears to us to be a mistake. In the first place, there is nothing to show that it was not executed in fraud of the defendant, as well as of everybody else, in as much as the deed of sale was made only a very few days before the mortgage. It might be that Lachmi Prasad intended giving a mortgage of his property, and that before doing so, he had taken good care to dispose of it to others, but in any case the defendant had a right in virtue of his decree on the mortgage to attach and sell this particular property, if he could show that, at the time of his attachment, it was not encumbered by any other lien. He was therefore clearly entitled to show, if he could, that this sale, made a few days before the property was hypothecated to him, was a fictitious sale, and that possession never left his mortgagor. The Judge lays considerable stress on the fact that the defendant had knowledge at the time he advanced the money of the state of affairs. We presume that he comes to this finding, because the deed of sale was registered, and that, therefore, the defendant had the means of knowing that the property no longer belonged to Lachmi Presad; but, supposing this to be the case, and granting that the defendant, who had the means of knowledge, may be legally supposed to have known of the existence of the deed of sale, it by no means follows that he was in any way hindered in this suit by that knowledge. Suppose, for instance, that he knew of the deed of sale, and that he knew also or suspected that it was a fictitious transaction made in fraud of creditors or of himself, would that prevent his afterwards bringing a suit to have it declared that the property was bound by his mortgage, and that, when

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he took his mortgage, it was still the property of his mortgagor? Clearly it would not.

The case must therefore go back to the lower Appellate Court, in order that the Judge may find on the evidence whether the deed of sale propounded by the plaintiffs is a *bonâ fide* one; whether consideration for that sale passed; and whether possession followed the plaintiff's purchase. If he finds these three things in favour of the plaintiffs, of course his decree will stand. Costs to follow the result.

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*Before Mr. Justice Loch and Mr. Justice Ainslie.*

PRASANNA CHANDRA BOSE (DEFENDANT) *v.* PRASANNA CHANDRA ROY AND ANOTHER (PLAINTIFFS).*

1871
*April* 4.

*Jurisdiction—Venue—Act X of 1859, s. 24.*

The defendant was appointed a superintendent of two estates, one called Chalmari within the Sub-division of Diamond Harbour; and the other, Alipore, within the Sub-division of Alipore. By his kabuliat he agreed to make good any retrenchments his employer, the zemindar, might make in his accounts. Some retrenchments were made, and to recover the balance which appeared due, the zemindar brought this suit.

*Held*, that as the defendant had agreed by his kabuliat to make the principal kutcherry his place of business, and as both the plaintiff and defendant agreed that the cause of action arose in the principal kutcherry, and as it was the place to which all the moneys where remitted, and where all the accounts were prepared, and the money first came under the control of the defendant, and was by his order disbursed, the cause of action arose in the district within which the principal kutcherry lay.

Baboos *Chandra Madhab Ghose* and *Mahini Mohun Roy* for the appellant.

Baboos *Anand Chandra Ghosal* and *Abhai Charan Bose* for the respondents.

THE facts of the case or fully stated in the judgment of the Court, which was delivered by

LOCH, J.—The question before us in this case is in itself a simple one. It is—What is the place where the cause of action arose between the parties, and in what Court should the suit have been instituted?

The suit is clearly one under section 24, Act X of 1859. It is a suit by a zemindar against an agent for the recovery of money in the hands of the said agent. Whatever may be the allegation in the plaint, we see clearly that this is the nature of the suit.

It appears that in Aghran 1272 (November 15th to December 14th, 1865), the defendant executed a kabuliat in favour of the plaintiff, when he (defendant) was appointed superintendent of two estates, one called Chalmar, within

* Special Appeal, No. 1862 of 1870, from a decree of the Judge of the 24-Pergunnas, dated the 28th July 1870, reversing a decree of the Deputy Collector of that district, dated the 1st March 1870.