Before Mr. Justice Phear and Mr. Justice Hobhouse.

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July 8.

BRAJANATH PAL CHOWDHRY *v.* HIRALAL PAL.*

Abatement of Rent—Jurisdiction of Revenue Courts—Act X of 1859, *s.* 23, *cl.* 3.

A. granted a putni to B., to which a certain mehal appertained. The Government, to which the mehal belonged, in reversion upon an ijara held by A., sold it to C. *Held*, that B. was entitled to abatement of rent from A., and that a suit for abatement, under the circumstances, was cognizable by the Revenue Court.

Semble.—Where there is no specification in the original contract of the amount of rent payable for the portion of land for which abatement is claimed, such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land which has disappeared bears to the annual value of the land originally leased.

THIS was a suit instituted in the Court of the Deputy Collector of Nuddea for abatement of rent. The plaintiff, Hiralal Pal had obtained a putni of Mouza Bhawanipur from the zemindars. Subsequently, by an ikrar, the zemindars granted to the putni-holders, a certain mehal called Bil Biswalakshi, appertaining to the putni. It was stated in the ikrar that the zemindars held the *Bil* under an ijara lease from the Government; that the Government jumma was Rs. 40 a year; that the said *Bil* was included within the plaintiff's putni; that, on the expiration of the lease, the zemindars would re-settle with the Government, of not, the putnidar might himself settle; but if the jumma were to exceed Rs. 40, the excess was to be paid by the putnidar. The Government, however, sold the *Bil* to a third party, and the purchaser having taken possession of it, the plaintiff now sued the zemindars for an abatement of the rent he had stipulated to pay. The Deputy Collector decreed the plaintiff's claim.

On appeal before the Additional Judge of Nuddea, it was urged on behalf of the defendants, that the plaintiff was bound to have the *Bil* (on account of which the abatement was claimed) settled with him, under the terms of the ikrar explaining the putni-potta; and that the plaintiff was not entitled to abatement, there being no special agreement to that effect in

* Special Appeal, No. 3456 of 1867, from a decree of the Officiating Additional Judge of Nuddea, affirming a decree of the Deputy Collector of that district.

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the ikrar. The Additional Judge held, that as the plaintiff had proved that the *Bil* was included in the putni, and as it was nowhere denied by the defendants that it was so included, the plaintiff was entitled to abatement quite independently of the ikrar.

Baboo *Taraknath Sen* for appellants.—This suit does not come within the jurisdiction of the Revenue Courts. A suit will not lie for remodelling a contract, but it may lie for annulling it altogether. As the ikrar is a part and parcel of a former contract, this suit will not lie. [PHEAR, J.—The plaintiff is not suing to enforce any obligation under the ikrar. He sues for abatement, on the ground that the *Bil* has altogether disappeared.]

Baboo *Bhagabati Charan Ghose* for respondent.—The case of *Afsaruddin* v. *Sarasi Bala Devi* (1) is in point.

The jugdment of the Court was delivered by

PHEAR, J.—This is a suit brought by a putnidar to obtain an abatement of rent from his zemindar. It appears to be undisputed, that a certain mehal called a *Bil*, originally formed a portion of the land, which was leased to the present plaintiff by the zemindar under the putni-potta. Since the first execution of that potta, under which, I may mention by the way, the defendant enjoyed possession of this *Bil* for a time, the title of the zemindar to the *Bil* mehal has terminated, and the present plaintiff has been evicted from possession of it by a claimant under a title paramount. The Government to whom it belonged, in reversion upon an ijara held by the zemindar, has sold it to a third party, and the purchaser has taken possession. On that state of facts alone, it is clear, I think, that the plaintiff is entitled to an abatement of rent from his zemindar. It must be taken, that when a landlord leases any portion of land without any further stipulation with regard to the title, he does thereby impliedly undertake that he has sufficient title to support the lease, and he guarantees the tenant quiet possession

(1) Marshall's Reports, 558,

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and enjoyment. That is the result of the law in England, and I believe that it has always been held to be the same here. Therefore, on the facts which have occurred, and on the footing of the original potta alone, it seems to me, that the plaintiff has a good cause of suit for abatement of rent.

Much has been made in this case of a certain ikrar which was executed by the parties after the execution of the original potta, and if the ikrar were really in evidence between the parties, speaking for myself alone, I should have some doubt whether its effect, on the whole, would not be to do away with the right, which I conceive, the plaintiff has under the original potta, *viz.*, the right, under the circumstances of the case, to an abatement of rent; because I think there would be good ground for arguing upon the terms of the ikrar that there was not, relative to this *Bil*, an unqualified undertaking on the part of the landlord to keep the tenant in due possession and enjoyment thereof However, the defendant, with full advice I must presume, has, from the beginning, repudiated this ikrar, said that it is not binding upon him, and ought not to be used as evidence between him and the plaintiff. I think, therefore, that excluding that ikrar, as he desires, the case stands, as I have already said it does, that is, the plaintiff has a good right to ask for an abatement of rent from the landlord.

At first I had some doubts as to whether abatement for a cause of this kind was a matter which could properly be said to fall within the jurisdiction of the Revenue Courts, but upon reference to several cases which have been decided in this Court, I think it is now too late to say that the Revenue Courts have no jurisdiction to entertain a suit for abatement in all cases where the holding of the tenants has diminished since the time when he received possession from the landlord, whatever may have been the cause of the diminution, and whether it effected an absolute destruction of the subject or not. I have, therefore, come to the conclusion that my views, on this head, were not well founded; and that the Revenue Courts have jurisdiction to entertain suits of this nature.

The only question remaining then is, what ought to be the amount of abatement. The Deputy Collector has gone through

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a most elaboraate calculation, in order to arrive at the required result. I feel bound to say that it seems to me that his calculation is misplaced. When once it is determined that a tenant is entitled to an abatement of rent, in consequence of the subject of demise having been diminished, whether by reason of its destruction as in the case of diluvion, or otherwise as has happened in this case, the only thing that requires to be settled is, what was the amount, what was the portion, of the original rent which was referable to the portion of the tenure which has disappeared. It might be, of course, that the original contract specified in terms how much rent was reserved out of the mehal in question. In this instance, however, I understand that there is nothing in the potta to show that the rent was apportioned in parcels to the different parts of the whole land held in putni. It seems to me, therefore, that the only way to arrive at a conclusion as to how much of the whole rent is fairly attributable to this particular portion, is to deal with it as a matter of proportion only; that is, such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land which has disappeared bears to the annual value of the land originally leased. This course does not seem to have been pursued in this case, and I am quite unable to judge whether the course actually pursued has led to any materially different result, or not, as compared with that which this would produce. But I believe, we are relieved from this difficulty by what fell from Baboo Taraknath Sen, the pleader for the special appellant, in the course of his argument in this appeal; for I understood him to admit that no dispute had been raised as to the amount of the actual abatement. That all the questions that were raised in special appeal, had reference to the jurisdiction of the Court, and to the inadmissibility of the ikrar. This being so, it is not for me, of course, to say, whether the mode of assessing the abatement has produced a result materially different from that which, in strictness, ought to have been arrived at. The party most concerned does not seem to be aggrieved; and, therefore, in my opinion, the appeal ought to be dismissed with costs.