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also on the defendant's pleas, the plaintiff would in any case be entitled to have the Judge's decision taken as a whole, and to appeal against that part of it, which made the act of his grandmother binding upon him.

The Judge, in coming to this finding, has mainly relied upon a decision of this Court, *M. Muneeruddeen* v. *Mahomed Ali* (1) in which it is laid down that "when a cultivating ryot goes away from the land which he has occupied, and neither cultivates nor pays rent for it, he has wholly relinquished the land;" and he finds that as the plaintiff would have been bound by the act of his grandmother had she formally relinquished the jote, so he is equally bound, under this precedent by her informal relinquishment. No doubt, as in the case quoted, a ryot going away would altogether relinquish his land, but here the question is not whether or no the grandmother relinquished the jote, but whether her doing so binds her grandson, and we are not disposed to admit that it did so. The plaintiff was a minor at the time; and to make the relinquishment valid, it must be shown that it was for the minor's benefit so to make it. Nothing of this kind has been shown us, nor has the plea ever been raised, and *primâ facie*, to give up an hereditary jumma would be the reverse of beneficial to a minor.

We think, therefore, that we ought to reverse the decision of the lower appellate Court with costs, and decree that the plaintiff recover possession of his hereditary land from the defendants.

Before Mr. Justice Loch and Mr. Justice Glover.

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JAYANARAYAN SINGH *v.* MATILAL JHA.*

Act X. of 1859—*Suit to Enhance—Excess lands—Trespasser.*

A., the holder of an independent istemrari tenure lying in B.'s zemindary, lets it to C., who under cover of his lease encroaches upon the zemindary lands. *Held*, that there was no implied contract of tenancy between C. and B. and B. could not sue C. for rent on account of the excess lands.

* Special Appeal, No. 1945 of 1867 from a decree of the Judge of Bhagulpore, reversing a decree of the Deputy Collector of that District

(1) 6 W. R., 67.

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JAYANARAYAN SINGH v. MATILAL JHA.

THIS suit was brought in the Court of the Deputy Collector of Bhagulpore, by Jayanarayan Singh, a putneedar holding from the zemindar, to recover arrears of rent, after service of notice upon the defendants, in respect of 666 beegahs 7c. 8d., alleged to be held by them in excess of the lands covered by their lease.

The defendants obtained an istemrari putnee lease from Bikram Sirdar and others, of 500 beegahs, situated in Chakla Duhaia. Bikram Sirdar and the other lessors were described in the judgment of the first Court as the original grantees, and as istemrardars paying rent direct to the Collectorate. Their tenure appeared to have been independent of the zemindar, though lying within, and originally, perhaps, forming part of the zemindary. In 1250 (1842-43), they, in consideration of a loan of Rs. 800, gave an istemrari pottah to the defendants, covering 500 beegahs, at a jumma of Rs. 121. There appeared to be no dispute as to the status of Bikram Sirdar, nor any question as to his right to grant this pottah to the defendants, but the contention was that the defendants had taken possession of 663 beegahs of the zemindar's land not included in the pottah, and forming no part of Bikram Sirdar's istemrari tenure.

The defendants admitted that they got a lease only for 500 beegahs from Bikram Sirdar, but alleged that they had always held possession of the lands for which rent was now claimed as a part of the istemrari land under the lease, and that the lease covered 1280 beegahs 5c. 9d. They added, that the zemindar, Dhanpat Singh, brought a suit against them as trespassers, to recover possession of the lands held by them in excess of the area covered by their lease, and that his suit was dismissed on the ground that he had not proved his title to these lands, and that as they had never paid rent for these lands, the claim of the putneedar holding from the zemindar should be dismissed.

The terms of the lease held by the defendants from Bikram Sirdar and others were to the following effect: "We hold 500 "beegahs of land measured with a rod of six cubits, as istem "rardar, at a jumma of Rs. 109, payable into the Collectorate. "Having received an advance of Rs. 800 from Matilal Jha, a "putnee lease is given to him under Regulation VIII. of 1819, at "a rent of 121 rupees. He will hold the land from generation

"to generation according to boundaries. Dated the 21st Falgoon "1250 (7th March 1843)." No boundaries were mentioned in the lease.

In the first Court it was urged, that in regard to the land in dispute, the plaintiff and the defendants had never held the position of landlord and tenant. The Deputy Collector, however, held that the fact that defendants had never paid any rent, did not vitiate the presumption of an implied contract of tenancy arising from their holding lands in the zemindary in excess of their lease, and decreed in favor of the plaintiff. The Judge, on appeal, held that no relationship of landlord and tenant being established, the plaintiff could not recover. The following cases were referred to in the judgments of the Courts below: *Rasham Bibi* v. *Biswanauth Sircar* (1); *David* v. *Ramdhan Chatterjee* (2); *Rajmohan Mitter* v. *Gurucharan Aych* (3); *Digamber Mitter* v. *Haraprasad Roy* (4).

On special appeal it was urged, that the landlord had an option of treating defendants either as ryots or trespassers on the excess lands. What otherwise would be the use of clause 3, section 17, Act X. of 1859? On the other hand, it was contended, *Digamber Mitter's* case showed that, where there was no implied contract, the landlord could not sue for rent.

Mr. *Paul* (Mr. *Twidale* with him) for appellants.

Baboo *Upendra Chandra Bose* for respondents.

The judgment of the High Court was delivered by

LOCH, J., (after stating the facts).—No doubt the Deputy Collector is right in holding that the defendants are not warranted in saying that their lease covers 1280 beegahs 5c. 9d., for the area is expressly limited in the lease to 500 beegahs.

The possession of the parties to this suit is as follows: Plaintiff is the putneedar on the part of the zemindar, Dhanpat Singh, and he says the lands for which rent is claimed form part of his

(1) 6 W. R. 57, (Act X. Rulings.) (3) 6 W. R., 106, (Act X. Rulings)
(2) 6 W. R., 97, (Act X. Rulings.) (4) 7 W. R, 126.

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putnee. Defendants hold an istemrari tenure for 500 beegahs, not from the plaintiff's lessor or from the plaintiff, but from a third party, Bikram Sirdar, who has a title adverse to, and independent of, the zemindar and the plaintiff; and the defendants have never paid any rent to the plaintiff, or his zemindar, either for the 500 beegahs comprised in their lease, or for the lands in excess, for which rent is now demanded of them, so that it is clear that between plaintiff and defendant no relationship of landlord and tenant has ever existed. Furthermore, we find that the zemindar brought a suit in the Court of the Principal Sudder Ameen to recover possession of 548 beegahs from the defendants, stating that, under cover of their lease of 500 beegahs, the defendants had taken forcible possession of 548 beegahs of land besides. The zemindar treated them in that suit as trespassers holding under a title adverse to him, and he sued to eject them, and was successful in the first Court; but on appeal to the High Court the suit was dismissed, on the ground that the plaintiff, zemindar, had failed to make out his title to these lands.

Looking at the facts above stated, it appears to us that the Judge has taken a very proper view of the position of the parties in holding, as he did, that no relationship of landlord and tenant exists between the parties. Nor is it the case of a tenant holding more lands than is covered by his lease, but the defendants' title is altogether adverse to the plaintiff, whose title to the lands has been declared in the suit brought by the zemindar, whom plaintiff now represents, not to be established. Such being the case, we do not think that the plaintiff can recover rent in the present suit. It should be dismissed, and it is unnecessary to go into the cases quoted by the learned counsel for the appellant. The appeal is dismissed with costs.