Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice Bayley, Mr. Justice L. S. Jackson, Mr. Justice Macpherson, and Mr. Justice Mitter.

BAKRANATH MANDAL *v.* BINODRAM SEN.*

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Ryot not having a Right of Occupancy—Ground of Enhancement—S. 13, *Act X. of* 1859.

See also Sup. Vol. 202. 8 B. L R. (App.) 95.

Section 13 of Act X. of 1859 is applicable not merely to ryots having rights of occupancy, but to all under tenants and ryots. The landlord cannot, by giving notice of enhancement, compel the tenant to pay more than a reasonable rent, and he cannot enhance without notice specifying the grounds of enhancement. The *onus* of proving the existence of the grounds alleged is upon the landlord.

THIS was a suit for enhancement of rent after service of notice. The defendant was a tenant without right of occupancy. The Deputy Collector dismissed the plaintiff's suit, holding that he failed to prove the reasons for which enhancement was sought. On appeal, the Judge reversed this decision, on the ground, that a tenant-at-will must either pay the rent demanded or quit the tenure. The defendant appealed to the High Court. The case was heard before L. S. Jackson and Mitter, JJ., by whom the following question was referred for the opinin of a Full Bench:

"Can a landlord recover rent at an enhanced rate from a ryot who has not a right of occupancy, otherwise than on proof of the existence and the reasonableness of the grounds stated in his notice served under section 13, Act X. of 1859?"

The learned Judges referred this question with the following remarks:—

JACKSON, J.—The Judge in his decision in this case, clearly relies on the authority of *Kubir Sirdar* v. *Golak Chandra Chuckerbutty* (1). In that case the Judges say: "We think that in the case of a tenant-at-will, the grounds on which notice of enhancement was given are mere superfluity; the tenant must either go or stay. Nor has he any right to claim the prevailing rate."

Special Appeals, Nos. 1911 and 1935 of 1867, from a decree passed by the Judge of Beerbhoom, modifying a decree of the Deputy Collector of that district.

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In the other case, which was cited by the respondent's vakeel *Rammani Chuckerbutty* v. *Ali Baksh* (1), the Judges observe "We do not desire to say that, in a case like the present, a suit for arrears of rent on the footing of the notice of enhancement might not be successful. A ryot not possessing a right of occupancy upon receiving such a notice, must be aware, that if he will not agree to the landlord's terms, he has no alternative but to go out. If under these circumstances, he chooses to remain, without remark, in the use and occupation of the land, he may well be taken to have acquiesced in the terms of the notice, even though these be couched in words which refer rather to regular enhancement than to a bare proposal for a new rent." And this seems to have been the opinion of the Court in the case of *Kubir Sirdar* v. *Golak Chandra Chuckerbutty* (2). These latter observations really amount to no more than a mere dictum. The case then before the Court was a suit for a kabuliat at an enhanced rate, and in that suit an order for a remand was made. But the ruling in the first case to which I have referred is clear and unmistakable.

It seems to me now that the point has arisen again, quite unreasonable to hold that, when the Legislature has required a written notice to be served upon the tenant, stating the grounds upon which enhancement is sought, such ground is mere "superfluity."

I am of opinion that when notice has been served upon a tenant (not being a ryot with a right of occupancy) under section 13, and when that tenant does not agree to pay at the rate mentioned in such notice, the landlord has the option of removing him from the land, or allowing him to remain; and I think, when the landlord has not given him notice, but has allowed him to remain in occupancy which the ryot, for his own part, retains, it must be considerad that the parties have agreed to continue the relation of landlord and tenant, and to leave to the arbitrament of the Court whether the rent claimed is fair and equitable

It cannot be said that what the Legislature directs to be essential to the notice of enhancement, is a mere superfluity. The

(1) 4 W. R. (Act X. Rul) 46. (2) 3 W. R. (Act X. Rul.), 126.

difference between a ryot having a right of occupancy and a royt not having a right of occupancy, is that, in the case of the fromer, the ladlord in his notice of enhancement is restricted to the grounds stated in section 17, and in the case of a ryot not having a right of occupancy, he may state other grounds, and if those grounds are disputed, it is for the Court to determine whether the grounds are just and reasonable.

A case which supports this view is brought to our notice by Baboo Gopal Lal Mitter—*Jiwan Lal Jha* v. *Kalinath Jha* (1), the marginal note of which runs thus:—"In a suit for enhancement, the rent demanded must be proved to be fair and equitable, even if the tenant has no right of occupancy." This opinion, however, is in conflict with the ruling in *Kubir Sirdar* v. *Golak Chandra Chuckerbutty* (2).

MITTER, J.—I entirely concur. It appears to me that the special appellant in this case is clearly entitled to a notice under section 13 of Act X. of 1859, before he can be called upon to pay a single pice more than what he paid in previous years.

It is admitted that he is an under-tenant holding the land without a "written engagement, or under a written engagement not specifying the period of such engagement;" and, therefore, according to the very express wording of that section, he is entitled to the notice as specified therein; or, in other words, to a notice which shall specify the particular ground upon which the enhancement is sought.

It has been said that the ryot has no right of occupancy; this circumstance is perfectly immaterial. All that the law says section 8, Act X. of 1859, is this: that ryots not having rights of occupancy are not entitled to pottas, except upon such terms as may be agreed upon between them and the persons to whom the rent is payable. But it does not say that when a non-occupant ryot is sued for enhancement, he is not entitled to call upon the landlord to prove the particular grounds on which, the notice has been served. It is neither fair nor equitable to hold that, when he is sued for rent, he should be called upon

(1) 5 W. R. (Act X. Rul.) 41 (2) 3 W. R. (Act X. Rul.), 126.

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to pay any thing more than what is fair and easonable, and nothing is fair or reasonable that is inconsistent with the grounds of the notice that has been served upon him. The landlord might have asked the ryot to quit the land; but if he chooses to demand rent from him, he is entitled to recover what is fair and equitable.

The provisions of the next section (section 14) very clearly lay down, that when a ryot has been served with notice by the landlord, he can sue the landlord for excessive demand of rent. Section 10 provides, that "every under-tenant or ryot from whom any sum is exacted in excess of the rent specified in his potta, or payable under the provisions of this Act, whether as Abwab, or under any other pretext, and every under-tenant, ryot, or cultivator, from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent, damages not exceeding double the amount so exacted or paid," &c.

Now unless the landlord is in a position to make out the grounds of enhancement assigned in the notice, the rent which he has asked for is rent which is not payable under Act X. of 1859; and if the grounds do not exist, or do not exist to the extent alleged by the landlord, the tenant is entitled to sue him for damages. Under these circumstances, I think that it is not desirable to depart from a rule laid down by the Legislature, on a mere assumption that it is a mere superfluity, in the largest number of cases to which it applies.

Baboo *Debendra Narayan Bose* for appellant contended, that section 13 of Act X. of 1859 applied. Whether the tenant had a right of occupancy or not, a notice must be served, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement is claimed; and the landlord is bound to prove the actual existence of the ground or grounds stated in the notice.

Baboo *Khettra Nath Bose* for respondent contended, that the object of the notice contemplated by section 13 is merely to inform the ryot not having a right of occupancy, of the

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amount of rent which the zemindar asks from him for the ensuing year, leaving him the option either to abide by the terms of the zemindar or to relinqush his jote. For occupant ryots a separate provision is made by section 17, which specifies particular grounds for enhancing their rent; but no such specification is contained in section 13.

The opinions of the learned Judges upon the question proposed to them were as follows:

PEACOCK, C. J.— I entertain no doubt whatever in this case. Section 13 is not applicable merely to ryots having rights of occupancy, b to all under-tenants or ryots. It enacts that no under-tenant or ryot who holds or cultivates lands without a written engagement, or under a written engagement not specifying the period of such engagement, &c, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or ryot on or before the the month of Chait, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed. This section is applicable to ryots who have not gained a right of occupany as well as to ryots who have a right of occupancy. Speaking for myself, I have no doubt that a ryot who has held, without any period for the duration of his tenancy having been fixed, although he may not have gained a right of occupancy, cannot have his holding determined without a reasonable notice to quit, and that a notice given in the last month of a current year would not be sufficient.

By section 19, a ryot may relinquish possesion by giving notice to his landlord in or before the month Chait of the year, preceding that in which the relinquishment is to have effect. If the land-owner, instead of giving notice to quit, requires the ryot to pay a higher rent than that paid in the previous year, the ryot is not bound to continue to hold the land at such enhanced rent, but is at liberty to quit upon giving notice in or before the month of Chait. The landlord, however, cannot, by giving notice enhancement, compel the tenant to pay

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more than a reasonable rent, and he cannot enhance without notice, specifying the grounds of enhancement. If giving notice of enhancement in or before the end of Chait to a ryot not having a right of occupancy, he could enhance the rent to any amount he placed, the ryot might suffer great injustice. For the landlord might give him notice of enhancement to an exorbitant amount at the last moment of the month of Chait, when it would be too late for the ryot to quit without being liable to pay rent for the ensuing year under section 19, Act X. of 1859. The notice might be sent on the last day of Chait from the land-owner's kutchery at a long distance, when it would be too late for the tenant to send notice to his landlord under section 19 of his intention to relinquish possession; and if the tenant should quit without such notice, he would be liable to pay rent (see section 19).

When section 13 required that the notice of enhancement should specify the grounds on which the enhancement should be claimed, the Legislature could not have intended to compel the land-owner to do that which they considerd to be superfluous; still less could they have intended to compel him to do something worse than superfluous, *viz.*, to specify grounds of enhancement by which he was not to be bound. Section 14 authorizes the tenant to contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent, or in answer to a suit preferred against him for recovery of arrears of the enhanced rent. I think it clear that the meaning of the Legislature was that the grounds specified for enhancement should be such as to justify the enhancement, and that their existence should be proved in the suit in which the tenant should contest his liability to enhancement.

It was contended in argument that the landlord may enhance the rent of a ryot not having a right of occupancy to any amount he pleases, and may specify any grounds that he pleases for such enhancement; and that he is not bound to prove that any of such grounds exist, and that it is for the ryot to prove that no such ground exists. If such an argument were tenable, a landlord might give notice that he intends to enhance to some exorbitant amount, upon the ground that he is a grasping oppres

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give landlord, having no regard for justice or fair dealing, or for the interests of any one except himself. It might be difficult, if not impossible, in many cases, for a ryot to disprove the grounds alleged, by showing that the landlord was not a person of that description. This shows that the grounds must be reasonable, and such as to justify the enhancement claimed. The *onus* of proving the existence of the grounds alleged is upon the land-owner. It appears to me that the Judges who referred this case came to a right conclusion that a landlord cannot enhance the rent unless he states the grounds on which he seeks to enhance; and that if those grounds are disputed, it will be for the Court to determine whether they exist, and whether they are such as to justify the enhancement. Section 8 has been referred to, but it appears to me to have nothing to do with the question. It merely says, "ryots not having rights of occupancy are entitled to pottas only at such rates as may be agreed on between them and the persons to whom the rent is payable." A ryot is not at liberty to compel his landlord to give him a potta at any rent he pleases.

BAYLEY, JACKSON, MACPHERSON, and MITTER, JJ., concurred.

Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice Bayley, Mr. Justice L. S. Jackson, Mr. Justice Macpherson, Mr. Justice Mitter, and Mr. Justice Hobhouse.

THE MAHARANI OF BURDWAN *v.* SRIMATI BARADASUNDARI DEBI.*

1868 *Aug.* 6.

Arrest of Pardanashin Women in Execution of Decree—Act VIII. of 1859 s. 21.

Pardanashin women, or women who, according to the usage of the country, ought not to be compelled to appear in public, are not exempt from arrest in execution of a decree.

See Sec. 640 of Act X of 1877, and 1 B. L. R. (S. N.) 4.

AN application for the arrest of a Hindu lady, in execution of a decree for money against her, was made to the Principal Sudder Ameen of Hooghly. He rejected the application, saying: "As the judgment-debtor belongs to a respectable family, no writ for her

* Miscellaneous Regular Appeal, No. 450 of 1867, from a decree of the Principal Sudder Ameen of Hooghly.