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had a good title to recover possession. But even if this case had to be decided independently of the former decision between the parties, still I think the plaintiff would succeed. The plaintiff has established, or it has been admitted, that this property was her father's, and that she and her father were continuously and peaceably in possession, until she was recently dispossessed by the defendant. This prior continuous and peaceable possession would completely answer the presumption arising from the defendant's recent and unexplained possession, and would shift back upon him the *onus* of proving that he had acquired this property by a good title from the plaintiff or her father. Thus the defendant would be driven to rely on the *benami* deed, which it is quite manifest that he would be unable to do. The principle of law which would prevent the plaintiff from asserting the invalidity of this deed, applies just as strongly to the defendant asserting its validity; it being admitted to be fraudulent, and he being a party to it; and the question in this case is not to be decided by simply considering who is plaintiff, and who is defendant, but by considering how the matter would stand, if the deed were not in existence. Clearly the plaintiff would then succeed. It is the defendant, therefore, who relies on the deed, and as against him who was a party to the fraud, I think that the invalidity of the deed may be relied on even by the plaintiff, who claims through a party to it. I think the appeal ought to be dismissed with costs.

L. S. JACKSON, J.—I entirely concur.

Before Mr. Justice L. S. Jackson and Mr. Justice. Markby.

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NABAKRISHNA MOOKERJEE (PLAINTIFF) *v.* THE COLLECTOR OF HOOGHLY AND ANOTHER (DEFENDANTS.)*

Infringement of Right—Damages.

Proof of infringement of a right, without proof of actual loss, does not necessarily entitle a plaintiff in this country to a verdict for nominal damages.

See also, 15 B. L. R. 290.

*Regular Appeal, No. 33 of 1868, from a decree of the Judge of Hooghly, dated the 28th August 1867.

Mr. *R. T. Allan* for appellant.

Baboo *Anukul Chandra Mookerjee* for respondents.

THE facts are fully stated in the judgment of

JACKSON, J.—In this case it appears that, about the year 1855, a dispute arose between Government and the zemindars, in the district of Burdwan, as to the duties of village chowkidars holding *chakran* lands, the Government insisting that they were liable to perform none but police duties, the zemindar (so it is stated) insisting that they were liable to perform none but zemindari duties (1). The result of the litigation which ensued upon that dispute was that, in 1864, it was finally determined that the duties of these chowkidars were of a mixed character, partly police and partly zemindari.

In May 1855, Government, acting on their own view of the matter, issued orders prohibiting the chowkidars from performing any other than police duties; and one of these orders was issued to Kani Bagdi, who, together with the Government, is now sued by the zemindar, for Rs. 50, for damages incurred by the zemindar in consequence of his having failed to perform his zemindari duties.

In October 1864, that is, as soon as the rights of the respective parties were finally determined, the prohibitory order of 1855 was withdrawn by the Government. This suit was brought in May 1865.

Five other suits were brought at the same time by the plaintiff in respect of the loss of services of other chowkidars. The Judge of the Zilla Court, who tried the suits, dismissed all of them, on the ground, as we understand his judgment, that the plaintiff had not proved any damages.

The plaintiff, by this regular appeal, as appellant in one of these cases, asks us to reverse this decision, but we think he has not given any evidence upon which we can assess any damages in this case.

There is no question of right now to be decided; the plaintiff's right has been fully admitted by the Government; the only ques-

(1) 10 Moore, I. A., 15.

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tion is, to what sum of money the plaintiff is entitled by way of compensation for the injury he has suffered.

The evidence on this question is extremely vague. The most tangible is that of Gobind Chandra Gangooly, who says that a tehsildar and two nugdis have been appointed in excess, in consequence of the failure of the chowkidars, to perform the zemindari duties; and that the plaintiff suffered a monthly loss of ten rupees, the pay of the tehsildar and two nugdis. But, in the first place, we are unable to understand what connexion there is between the duties of chowkidar and tehsildar; the duties of the latter being, as this witness himself states, confined to writing. It seems to us, therefore, that rupees 4 a month, the amount of the tehsildar's wages, must be excluded. This reduces the alleged monthly loss to six rupees, but that sum is to be divided amongst all the chowkidars of all the mehals, and no data are given upon which that division can be made. It is obvious that, unless this division is made, the plaintiff, who is bringing other actions, may recover the same damages several times over. But, in fact, we do not believe that there is any real foundation for this allegation of damage. We have no doubt that it is extremely convenient to the zemindar to be able occasionally to call in the services of the chowkidar to assist in obtaining his rent from a refractory tenant, but we do not believe that his ability to do so makes any real difference in the number of servants he requires for collecting his rents. The plaintiff in this case has not ventured to state that he has dismissed a single servant since the order of Government was withdrawn, and the witness we have referred to admits that the chowkidars have not, since that time, been called upon to perform any duties. Under these circumstances the plaintiff has, we think, failed to shew that he incurred any pecuniary loss by the failure of the chowkidar to perform his zemindari duties in this case, and his suit, therefore, ought to be dismissed with costs.

We would add that we do not consider it to be the law of this country that a plaintiff, who proves the infringement of a right, is necessarily entitled to a verdict for nominal damages, though he fails to prove any actual loss.