"his baree. It was not the intention of "the grantor, that it would also fail on "Puddo Lochun's son and grandson leaving "their baree. I think this argument is not "sound. The grant was made to Puddo "Lochun for ever with a certain condition. "I do not think it was intended that the "grant should fail if the actual grantee "leave his baree, but if his descendants are "entitled to leave that baree, the grant "would not be affected. It appears that "this bit of land was made over to Puddo "Lochun to make it the outer compound "of his baree, and that as it would not be "of much use if the baree be forsaken, the "above condition was introduced in the "pottah. I think as the grant was to "Puddo Lochun, his sons and grandsons, "the condition was also intended to be ap- "plied to Puddo Lochun, his sons and "grandsons, although the words sons and "grandsons were not used in reciting the "condition."

In other words, the condition of forfeiture in terms applies only to Puddo Lochun, but in the opinion of the Moonsiff must be extended to Puddo Lochun's descendants, otherwise the intention of the condition will be frustrated. The condition has been read out to me in the original, and has been translated also by the learned pleaders on both sides, and I think it is quite plain that the words of it apply only to the event of Puddo Lochun leaving the baree. Then it seems to me that the Moonsiff is wrong in the principle upon which he has extended the operation of the condition. It is, I conceive, a well known rule of Courts of equity that a condition of forfeiture should not be extended beyond its words, unless, perhaps, it is impossible to give a reasonable construction to the instrument in which it appears without doing so. And there might in this case be many reasons suggested why the lessor should, when making a condition of this kind, confine it to Puddo Lochun himself. Moreover, an indefinite condition which might rise into operation at any distance of time beyond the period of the grant, would be, I take it, clearly repugnant not only to the principles of Hindoo Law but also to those principles of equity which govern English Courts. On the whole, it appears to me that the Moonsiff was wrong in considering that this condition of forfeiture was such as to come into operation upon the events which have occurred, *i. e.*, not the event of Puddo Lochun leaving the baree, but the event of his sons or descendants leaving the baree. In this view, I think that the lease is still in full operation and effect, and that therefore, as I have already said, the suit must fail not only against Puddo Lochun's direct descendants, but also against the other defendants who, to say the least, are entitled to occupy the baree under cover of leave and license of the first holder.

The appeal must be dismissed with costs.

The 24th November 1874.

Present :

The Hon'ble J. B. Phear, *Judge.*

Rent-suit by Co-sharer—Act VIII (B. C.) 1869, s. 102—Charter Act, s. 15.

Case No. 565 of 1874.

Special Appeal from a decision passed by the Officiating Additional Judge of Twenty-four Pergunnahs, dated the 4th December 1873, *reversing a decision of the Second Moonsiff of Satkhira, dated the 23rd January* 1873.

Mokhoda Soonduree Dassee (Plaintiff), *Appellant,*

versus

Kureem Shaikh and others (Defendants), *Respondents.*

Baboos Hem Chunder Banerjee and *Kalee Mohun Dass* for Appellant.

Baboo Mohinee Mohun Roy for Respondents.

A suit by a sharer in a talook against a ryot for an aliquot part of the rent, wherein plaintiff made her co-sharers defendants, as they had resisted her right to have any share of the rent at all, should be treated as a suit on behalf of all the shareholders collectively.

Where a suit of this nature, in which the rent claimed was Rs. 7 odd annas, had been decreed in plaintiff's favor by the first Court, but was dismissed by the Lower Appellate Court as not maintainable, it was held that although the Lower Appellate Court expressed no opinion as to the rights of the parties, yet the decree had determined questions between parties having conflicting claims to an interest in land within the words of the Rent Law, s. 102.

Where such a case so dismissed came up to the High Court in special appeal, and the respondent was not placed in a disadvantageous position in regard to answering the complaint, the Court felt bound to exercise the power vested in it by the Charter Act, s. 15, and ordered the Lower Appellate Court to try the case on its merits.

THE judgment of the Lower Appellate Court is short, and as it seems sufficiently to set out

the facts of the case I will read it in full. It runs as follows :—"This suit has been "brought for arrears of rent by a 4-anna "sharer in the talook against a ryot hold- "ing a jumma of Rs. 45, for her separate "proportion of the rent to which defendant "was liable for the year 1278 B. S.

"The plaint sets out that defendant holds "a jote at the rent stated, that up to 1278 "B. S. plaintiff jointly with the other "sharers employed a single gomashtah, who "collected the rents and divided them after- "wards among the proprietors according to "their respective shares.

"Now, the first question the Moonsiff "should have considered was whether a suit "of the kind would lie. The current of deci- "sions in the High Court for some time back "has been that a sharer cannot sue a ryot "separately for his proportion of the rent, "unless there has been an express agreement "to that effect on the part of the ryot. The "Moonsiff has relegated the question to the "2nd last paragraph of his judgment, and has "there dealt with the subject in a very inade- "quate manner. He appears not to recognize "the fact that the rule is for the protection "of the ryot, who would otherwise be liable "to have his rent split up into infinitesimal "fractional portions, and have to spend half "his time looking for his landlords. The "Full Bench decision of the High Court, 17th "April 1871, in the case of Indur Chunder "Doogur, No. 1798 of 1870, page 21, Weekly "Reporter, Volume VI, lays down the law "on the subject, and had it been followed by "the Moonsiff in the present instance this "suit would have been dismissed at once.

"From the wording of the plaint, it is "perfectly apparent that the ryot has never "agreed to pay separately to the several "proprietors, nor in fact done so. The allega- "tion in the plaint of his having paid rent of "the Rs. 11 odd due for 1278 B. S. to "plaintiff separately, is, I have no hesitation "in saying, a mere falsehood asserted to "attempt to evade the force of the late deci- "sions. On the simple ground, then, that "the plaintiff is only a sharer and cannot "sue separately for her proportion of the "rent from the ryots, I decree this appeal "with costs."

The Judge has here omitted to state that, although the plaintiff sued alone to recover a share only of the rent due from the ryot defendant, yet she made her co-sharers co-defendants, and that these co-defendants resisted her right to recover in this suit.

It appears that it was an issue between the parties in the first Court whether or not the plaintiff was entitled to receive any share of the rent. The plaintiff maintained that she was, and she complained that the ryot defendant had not paid this share. This issue was decided by the Moonsiff adversely to the defendant. The Judge refuses to go into the merits of the case at all as it was laid before the first Court, on the simple ground that as the plaintiff is only one sharer out of several co-sharers, she cannot sue separately for her proportion of the rent due from the ryot.

It appears to me that the Judge misapprehended the doctrine which the Full Bench decision quoted by him affirmed and which had been repeatedly laid down and acted upon by Division Benches of this Court before that decision was passed. It is true that the long current of decisions has been to the effect that each sharer of rent has no right, independently of his co-sharers, to bring a suit against a ryot for his aliquot part of the rent, unless he can place his suit upon the ground of a contract on the part of the ryot to pay him that part separately from the rest. And the Judge is quite right in supposing that this rule of law is dictated in a very large degree by consideration for the ryot. It has the effect, as the Judge remarks, of protecting him from having his rent split up into infinitesimal fractions and from being sued by each one of the shareholders separately for each fraction.

But this suit, as the plaintiff has brought it, is very different from any thing that the rule was directed against. In truth it is difficult to understand how the plaintiff could obtain any remedy for the wrong of which she complains if the view of the Judge is correct. In the present instance it is plain, even if the plaintiff does not say so in express words, that she could not get her co-sharers to sue with her. They resisted her right to have any share of the rent at all. And the only mode in which she could get the question at issue between herself and her co-sharers and the ryot decided by a Court of law was that which she has adopted, namely, to make her co-sharers defendants as well as the ryot from whom she sought to recover the rent. A suit of this kind protects the ryot from being sued again. The suit of the plaintiff thus brought as against the ryot is, or should be treated as, a suit on behalf of all the shareholders collectively, although she stands alone as the plaintiff. The question whether the

ryot had paid the whole of the rent due to all the co-sharers jointly or not, could be and ought to be decided in a suit of this kind once for all; and the decision of this suit, if the issues were properly framed, would be an answer to any claim which might be made against the ryot by any of the co-sharers in another suit. The Judge, as I have already mentioned, has deliberately refused to try the matter which was thus brought before the Court. And it appears to me that he is wrong in law on this point.

Two objections have been made on behalf of the respondent to my entertaining this appeal. The first is that if the decree of the Judge is a decision *inter partes* on the merits, then the case falls within Section 102 of the Rent Law; and inasmuch as the amount of the rent is only Rs. 7 odd, and as the judgment of the Judge does not determine any question of right to enhance or to vary the rent of a ryot, or any question relating to title to land or to some interest in land as between parties having conflicting claims thereto, therefore this Court has no jurisdiction to entertain this suit.

The other objection is that if this decree be not operative as a decision *inter partes*, but the Judge has by his judgment simply declined to entertain jurisdiction in his Court, then the proper remedy cannot be applied on an appeal of this kind.

It seems to me that as the case now stands it probably would be dangerous to treat the decree of the Lower Appellate Court as not operative upon the rights of the parties. The Lower Appellate Court is a Civil Court competent to determine all questions of civil rights between the parties before it, and unquestionably upon the footing of the plaint and the written statement, more than one issue of right between the plaintiff and some of the defendants, involving conflicting claims to property, arose. These were determined in favor of the plaintiff by the first Court; and the decree of the Lower Appellate Court by dismissing the suit, if it stand unqualified, must have the effect of deciding them against her. If this is so, although in the judgment itself there is no expression of opinion on the part of the Judge as to the rights of the parties, yet the decree has, within the latter words of Section 102 of the Rent Law, determined questions between parties having conflicting claims to an interest in land. But even if this view be not correct, I think I ought, in a case of this kind, to exercise the jurisdiction which is reposed in this Court by the 15th Section of the Charter Act. The Judge ought, in my opinion, to have entertained this suit and decided it between the parties upon the merits. It is true that the appellant has not in terms asked for special interference of this Court upon the footing of Section 15 of the Charter Act, but she has asked for a remedy which this Court can give by an exercise of the power which is conferred upon it by that Section. And unless the mode in which the matter is brought before this Court is such as to place the respondent into a disadvantageous position in regard to answering the petitioner's complaint, it appears to me that there is no reason why that power should not be exercised upon this occasion. Of course, if upon the petition of the plaint and the written statement and the judgments of the Lower Courts, I could not see facts which would justify the exercise of the extraordinary power of the Court, I should be in duty bound to refuse to interfere, leaving the petitioner, if she chose, to make an entirely independent application on the subject. Again, on the other hand, if I had any reason to suppose that the respondent had not had any fair opportunity of meeting the facts which have been disclosed in the pleadings and in the judgments of the Lower Courts, I ought to abstain from interfering now, and so afford him time to answer the application of the petitioner when it should be made in another shape. On the whole, however, there does not appear to be any reason why I should refrain from dealing with the case as it stands. The facts found by the Lower Courts are very plain and distinct: they are indeed relied upon by the respondent himself, and he does not desire to add any thing to them. As I understand those facts and the course taken by the Lower Appellate Court, it seems to me plain that the Judge has been entirely wrong in refusing to consider and determine this case upon its merits. And that being so, it is the duty of this Court to put him right.

On the whole, I think the decision of this Court ought to be that the decree of the Lower Appellate Court be reversed and the case remanded to that Court for trial upon its merits.

The costs of this appeal will abide the event.