

*Before Mr. Justice Pigot and Mr. Justice Stevens.*

1855  
August 27.

RAM LAL PATAK (PRINCIPAL DEFENDANT) v. DINA NATH PATAK  
(PLAINTIFF).<sup>\*</sup>

*Landlord and tenant—Tenant at will—Notice to quit—Reasonable notice—  
Ejection, Suit for.*

In a suit for ejection brought against a tenant who had no permanent right in the holding, after a notice to quit within thirty days had been served on the tenant, the lower Appellate Court considered the notice insufficient, but gave the plaintiff a decree for possession on a certain date named in the decree. *Held*, following the case of *Hem Chunder Ghose v. Radha Pershad Paleet* (1) that the suit was itself a sufficient notice to quit and that the decree made was correct.

THIS was a suit brought by the plaintiff as owner of a certain *bari* to eject the defendant after service of notice to quit. The notice was served on the 1st Chaitra 1297 (14th March 1891), and was to the effect that the defendant should give up possession on the 30th Chaitra 1297 (12th April 1891). The plaintiff alleged that the defendant was holding the land as a tenant at the time of service of notice, but that the tenancy was one determinable by notice to quit. The defendant set up a right of occupancy. It was held in the first Court that it lay on the plaintiff to prove the nature of the tenancy, and whether it was determinable by a notice to quit or not. The plaintiff's pleader declined to produce evidence on this point, and the suit was dismissed.

On appeal by the plaintiff to the Judicial Commissioner of Chota Nagpore, it was held that the tenant was entitled to a reasonable notice, and that the notice given (within thirty days) was not a sufficient notice. He expressed his opinion that the Court in deciding the case might have fixed a reasonable time. He held that it was for the defendant to shew that he had a right to retain possession as against the plaintiff, and that he had failed to do so. He accordingly set aside the decree of the first Court, and con-

<sup>\*</sup> Appeal from Appellate Decree No. 1668 of 1894, against the decree of F. Cowley, Esq., Judicial Commissioner of Chota Nagpore, dated the 3rd of July 1894, reversing the decree of Babu Jagat Durlabh Mozumdar, Subordinate Judge of Purulia, dated the 16th of March 1892.

sidering the time that had elapsed gave the plaintiff a decree for possession at the end of the current Bengali year.

Babu *Karuna Sindhu Mukerji* for the appellant.

Babu *Mohun Chand Mitter* for the respondent.

The judgment of the Court (PIGOT and STEVENS, JJ.) was delivered by

PIGOT, J.—We think the decision of the Judicial Commissioner must be affirmed. The case cannot be distinguished, in our opinion, from the case of *Hem Chunder Ghose v. Radha Pershad Paleet* (1) which was decided by Officiating Chief Justice Macpherson and Mr. Justice Morris, in which the correctness of such a decree as is made in this case, under circumstances practically the same as those in the present case, is distinctly affirmed. It is true that in the case of *Jubraj Roy v. Mackenzie* (2), Chief Justice Garth expresses some dissatisfaction with the decisions in the cases of *Mahomed Rasid Khan Chowdhry v. Jadoo Mirdha* (3) and *Hem Chunder Ghose v. Radha Pershad Paleet* (1), which we have just mentioned; but at the same time the learned Chief Justice says that the Court is bound by them so long as they are not touched by a Full Bench, and Mr. Justice Prinsep, who took part in the decision of that case, says that he concurs with those decisions.

We think that the decision of the Judicial Commissioner was right, and the appeal must be dismissed with costs.

F. K. D.

*Appeal dismissed.*

*Before Mr. Justice Prinsep and Mr. Justice Ghose.*

PAKHWANTI DAI (PETITIONER) v. INDRA NARAIN SINGH  
(OPPOSITE PARTY.) \*

1895  
*August 9*

*Appeal—Guardians and Wards Act (VIII of 1890), section 47, clauses (f) and (g)—Removal of guardian—Order refusing to remove a guardian.*

Upon an application for cancelling a certificate of guardianship of the person and property of a minor, the District Judge ordered the certificate to be amended only as regards the guardianship of the person by appointing the applicant as such guardian, and ordering a monthly allowance to be paid

\* Appeal from Order No. 254 of 1894, against the order of H. Holmwood, Esq., District Judge of Gya, dated the 21st of May 1894.

(1) 23 W. R., 440.

(2) 5 C. L. R., 231.

(3) 20 W. R., 401.