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much as the Judge has not admitted the appellant to the position of an, insolvent. It appears to us, that the term "insolvency matter" is purposely wide, so as to include any question arising out of the exercise of the functions entrusted to the Courts under the section specified. We have, therefore, heard the appeal, and having heard it, we think it should be dismissed on the merits.

Appeal dismissed.

Before Mr. Justice Birch and Mr. Justice Mitter.

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HORRO NARAIN (PLAINTIFF) *v.* SHOODHA KRISHTO BERAH AND OTHERS (DEFENDANTS).*

Bhag-jote—Wrongful Distraint—Right to sue to set aside.

A landlord whose tenant's crops have been wrongfully distrained by a stranger, has a right to sue to set aside such wrongful distraint. When lands are held under a *bhag-jote* tenure, and the tenants are bound by agreement to cut and store the crops on their landlord's *chuck*, where it is afterwards to be divided, the dominion over the crops till division is in the landlord.

THE first defendant in this case had distrained the crops on certain lands under the cultivation of the remaining defendants, alleging that he was the proprietor of the lands, and they his rent-paying tenants, and that the distraint was for arrears of rent due to him as landlord. This present suit was instituted by the plaintiff to set aside this distraint as illegal, he, the plaintiff, being the real proprietor of the land, and the defendants, other than the defendant No. 1, his *bhag-jote* tenants, that is, tenants who did not pay a money-rent, but divided the crop with their landlord after it had been cut, stored, and threshed, the tenants receiving in advance seed from the landlord, and being by their agreement bound to cut and store the crops when they came to maturity upon their landlord's (the plaintiff's) *chuck*. The lower Court of Appeal found that the plain-

* Appeal from appellate decree, No. 1287 of 1878, against the decree of W. Cornell, Esq., Judge of Midnapore, dated the 17th April 1878, affirming the decree of Baboo Jodoo Nath Roy, Subordinate Judge of that district, dated the 18th August 1877.

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tiff, and not the first defendant, was the real proprietor of the lands upon which the distrained crops had been grown; but—being of opinion that the property in the crops was, until division, not in the plaintiff as landlord, but in the cultivating tenants, that is, in the defendants other than the first defendant,—held, that the suit to set aside the wrongful distraint should have been brought against the first defendant by the other defendants whose crops he had distrained, and not by the plaintiff. The suit was accordingly dismissed. Against this decision the plaintiff appealed to the High Court.

Baboo *Troylokho Nath Mitter* for the appellant.—The Court below is wrong. If the plaintiff was, as the Court below has found, the real proprietor of the lands, the first defendant, by his distraint infringed the plaintiff's proprietary rights, and gave him a cause of action. To distrain is the peculiar right of a landlord, and a distraint by a stranger is an assertion of ownership which the true owner is bound to repel. Even if, as the Court below has found, the property in the crops had at the time of the distraint been vested in the cultivating ryots, still, although each ryot might, and would in that case, have had a right to sue to set aside the distraint of his particular share of the crops, the adoption of such a course would only have resulted in a multiplicity of suits, in all of which the point in issue would have been the same, namely, whether the plaintiff or the first defendant was the person entitled to distrain. It would have been otherwise, if the crops belonging to a ryot, or certain ryots had been seized, or attached while in the sole possession of such ryot, or ryots in execution of a decree against a third party; then the ryot, or ryots, aggrieved might, and probably would, be the only parties competent to sue, but when there has been, not a seizure in execution of a decree, but a distraint, then the title of the true landlord is impeached, and he has a good cause of action notwithstanding that his tenant or tenants may also sue for any injury to him or them. In the present case, however, it is very doubtful whether the ryots could have sued for anything beyond the trespass committed by coming on the lands held by them, at all events they could sue

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only for the value of the crops as property in their possession, of which they had been wrongfully deprived, but of which they could not establish that the true ownership was vested in them. The agreement under which the defendants, other than the first defendant, held their lands was, that they should cut the crops and store them when cut on the *chuck* of the plaintiff to be afterwards divided. Under this agreement I submit that the crops belonged until division to the plaintiff, and its true meaning was, not that the cultivators should then make over to the plaintiff a share of what till division was their own property, but that after it had been cut, stored and threshed, a share of the crop produced by seed supplied by the plaintiff and grown on the plaintiff's land should be taken by the ryots in return for their labour in producing it.

Mr. *Twidale* and Baboo *Mohini Mohun Roy* appeared for the respondents.

The judgment of the Court was delivered by

MITTER, J.—This suit is brought by a talookdar to contest the demand of a distraint, and to try the plaintiff's right to the possession of the crop distrained.

The defendant admits that he distrained the crops, but denies the plaintiff's right to, and possession of, the land.

The plaintiff's case was, that he held some of the lands in dispute at a money-rental and some in bhag-jote; the finding of the Court of first instance was, that all the lands were let at a money-rental, and that the plaintiff was therefore not entitled to the crops distrained. The opinion of the Subordinate Judge was, that the plaintiff could not bring such a suit, because he had no right to the crop, which the Subordinate Judge considered to belong to the cultivators. The suit was accordingly dismissed, and the defendant was declared, according to the provisions of s. 96, Act VIII of 1869, entitled to recover the sum which had been deposited by him as security when removing the crop.

In appeal, the Judge differed from the first Court as to the conditions of the tenancy, and held that the plaintiff, under the

terms of his contract with his tenants, had no right of possession in the standing crops, but only a lien upon the crop when cut and stored in the threshing floor; that even if the plaintiff had any right to the crop, the tenants should have been joined as co-plaintiffs, and that this not having been done, the suit would not lie. The Judge also expressed an opinion that suits under s. 96 should always be instituted by the tenants who raised the crop. Finding that possession was with the tenants, and that they should have instituted the suit, the Judge, with some modification as to the amount recoverable by the defendant, dismissed the appeal, and confirmed the order of the Court of first instance.

In this case a number of hookumnamas have been put in by the plaintiff, which set forth the arrangement come to between him and his tenants, and these documents have been accepted by the Judge as genuine. But he puts upon these documents a construction which we think erroneous.

The interpretation we put upon that arrangement is this: The landlord, under exceptional circumstances, supplied the seed; and the agreement was, that the tenants should cut and store the crop on his *chuck*; after the threshing, division was to be made between the landlord and the cultivators. The dominion over the crop was with the landlord, and if that crop was cut by some one else under cover of the law of distraint, the landlord was clearly the person entitled to sue to contest the demand of the distrainor.

Upon the facts the Judge's finding is against the distrainor, and he discredits the evidence adduced by him as to the cultivation of the crop.

We think, that the distrainor has failed to show that he was entitled to make the distraint; and that the plaintiff has such an interest in the crops distrained as entitles him to institute this suit to set aside the distraint.

The result is, that the decision of the lower Court must be reversed, and the plaintiff's suit must be decreed by setting aside the illegal distraint of the defendant. The plaintiff will recover costs of all the three Courts from the defendant.

Appeal allowed.