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KHAJAH ASHANOOLLAH v. KAJEE AFTABOOD-DEEN.

We think that that decision is not in accordance with the principles laid down in the Full Bench decision in *Doyamoyee Chowdrainee* v. *Bholanath Ghose* (1). There the principle laid down is, that the non-payment of the rent at the enhanced rate constitutes the cause of action, or, in other words, an arrear of rent, liable for interest, does not depend upon the date of decree, but upon the date upon which it became due.

When a tenant is called upon by notice to pay an enhanced rate of rent, he has more than one course open to him. He can take the initiative, and complain of excessive demand of rent, or he can contest his liability to pay what is asked for in answer to a suit; but whichever course he adopts, and whatever the result of his contention, the rent adjudged to be due is none the less an arrear if not paid when due. The amount of rent is fixed by the notice, and if the tenant neither pays that amount at the appointed time, nor succeeds in showing that it is an unjust demand, he is properly liable for the consequences of his failure to pay in due time,—namely, for interest.

We therefore consider the Subordinate Judge's decision erroneous, and decree this appeal with proportionate costs. The plaintiff is entitled to interest at 12 per cent. on the instalments of rent as they fell due up to this date, and we allow interest at 6 per cent. on the amount of this decree till realization.

Appeal allowed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

KRISHNA KISHORE SHAHA (DEFENDANT) *v.* BIRESHUR MOZOOMDAR (PLAINTIFF).*

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July 18.

Small Cause Court, Mofussil, Jurisdiction of—Act XI of 1865, *s.* 6, *cl.* 4—*Beng. Act VIII of* 1869, *s.* 104—*Act X of* 1859, *s.* 23, *cl.* 2—*Special Appeal—Act XXIII of* 1861, *s.* 27.

The plaintiff, the holder of a patni taluk, by an arrangement with the defendants, his zemindars, paid the Government revenue and the road-cess

(1) B. L. R., Sup. Vol., 592; S. C., 6 W. R., Act X Rul., 77.

Special Appeal, No. 2061 of 1877, against the decree of Baboo Nund Coomar Bose, Rai Bahadur, Second Subordinate Judge of Zilla Rajshahye, dated the 25th of June 1877, reversing the decree of Baboo Kaylash Chunder Mookerjee, Sudder Munsif of that District, dated the 15th of September 1876.

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tax for the year 1874, and then tendered the balance of the rent for that year to the defendants, but they refused to accept it; and he, therefore, deposited it in the Munsif's Court in accordance with s. 46 of Beng. Act VIII of 1869. One of the defendants then took proceedings under Reg. VIII of 1819 to recover his share of the rent, and notwithstanding the protest of the plaintiff that the rent had been already paid, obtained an order for the sale of the tenure; and to prevent the sale the plaintiff had to pay the sum claimed for rent. In a suit brought to recover that amount with interest, *held*, it was a suit cognizable by a Court of Small Causes under s. 6 of Act XI of 1865, and therefore a special appeal was barred by s. 27, Act XXIII of 1861. It was not a suit for "damages on account of illegal exaction of rent" within the meaning of cl. 2, s. 23 of Act X of 1859.

THE facts sufficiently appear from the judgment.

Baboo *Kishory Mohun Roy* for the appellant.

Baboo *Saroda Churn Mitter* for the respondent.

MITTER, J.—We think that in this case the preliminary objection taken by the pleader for the respondent must prevail. The plaintiff brought this suit to recover from the defendant No. 1 Rs. 74-12-14¼ under the following circumstances:—The plaintiff alleges that he is the holder of a patni taluk, the rent of which is Rs. 128-11-2½; that by an arrangement between himself and the defendants Nos. 1 and 2, the zemindars, he had, out of the rent payable by him, to pay Rs. 76-4 Government revenue of the zemindari, and Rs. 3-2 road-cess; and that he, accordingly, for the year 1281, paid these two amounts into the Collectorate; that the balance, Rs. 49-5-1½, which was due to the defendants Nos. 1 and 2, was tendered to them, but they having refused to receive that money he deposited the amount in the Munsif's Court on the 1st of April 1874 under the provisions of s. 46, Beng. Act VIII of 1869; and that, notwithstanding these facts, the defendant No. 1 took proceedings under Reg. VIII of 1819 to recover his half share of the rent payable by the plaintiff on account of this patni. The plaintiff further states, that although he protested against these proceedings on the ground that the rent due had been already paid, the Collector passed an order for the sale of the patni tenure under Reg. VIII of 1819, and he, the plaintiff, in

order to save the tenure, was accordingly obliged to pay on the 1st of Joisto 1282 the sum of Rs. 68-6-1¼ claimed by the defendant No. 1. Under these circumstances the plaintiff contends that he is entitled to recover back from the defendant No. 1 Rs. 68-6-1¼, together with Rs. 6-6-0, being the interest accruing due upon that amount. We think that this is a suit which is cognizable by a Court of Small Causes. It is a suit for damages which the plaintiff sustained by reason of the defendant No. 1 having taken proceedings under Reg. VIII of 1819 to recover money which had already been paid. It has been contended on behalf of the special appellant that, upon the facts stated in the plaint, the present suit was of a nature which was cognizable by the Collector under Act X of 1859, and is at present cognizable by the Civil Court under the Rent Law, Beng. Act VIII of 1869. This contention is based upon the 4th proviso of s. 6, Act XI of 1865. That proviso is to the following effect:—"For any claim for the rent of land, or other claim for which a suit may now be brought before a Revenue Officer, unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears."

This proviso refers to one of the excepted classes of suits which the Courts of Small Causes are prohibited to take cognizance of. Is this a suit coming within this proviso? The answer to this question evidently depends upon this:—Whether this suit could have been taken cognizance of by the Revenue Court under Act X of 1859, and after the repeal of that Act by the Civil Courts under Beng. Act VIII of 1869, which repealed Act X of 1859. Section 104 of Beng. Act VIII of 1869 also prohibits the Small Cause Court from taking cognizance of cases which they could not take cognizance of previous to the passing of that Act. That section says:—"Nothing in this Act contained shall be deemed to confer upon any Court, sitting as a Court of Small Causes, cognizance of any suit brought under the provisions of this Act, of which it would not have had cognizance if this Act had not been passed."

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Therefore the question we have to determine, with reference to this argument, is, whether, under the provisions of cl. 2, s. 23, Act X of 1859, this suit was cognizable by the Collector under the provisions of Act X of 1859. Clause 2 of s. 23 says:—"All suits for damages on account of the illegal exaction of rents or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress shall be cognizable by the Collectors of land revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal, as provided in this Act, shall not be cognizable in any other Court."

The question in this case is, whether, taking the facts which are stated in the plaint as correct, the defendant could be said to have illegally exacted any rent from the plaintiff within the meaning of this section. Now it is quite clear that the defendant had recourse to a legal proceeding in order to compel the plaintiff to pay this money. He applied to the Collector to sell the patni tenure under the provisions of Reg. VIII of 1819; and therefore, taking the plaintiff's case as correct, he might have, under cl. 2, s. 14, Reg. VIII of 1819, claimed a summary enquiry; and he might also, if there was no time for the summary enquiry to be concluded before the sale, have deposited the money, and asked the Collector to hold the summary enquiry provided for in this section. It is, therefore, quite clear, that, if the plaintiff was so minded, he might have applied to the Collector at any time before the sale was held, and asked the Collector to enquire into his claim. Instead of following that course, the plaintiff paid the money to the zemindar; and under these circumstances we cannot say that this was an illegal exaction of rent on the part of the zemindar. The zemindar had recourse to the provisions of the law which entitled him to bring the patni to sale, and having taken these proceedings, authorized by law, we cannot say that he illegally exacted any money. We are supported in this view of the law by *Debendernauth Roy Chowdry* v. *Chundermonee Chowdrain* (1); and although the facts of that case are not precisely similar to

(1) 2 Hay, 519.

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the facts of this case, the principle there laid down will equally apply to the decision of this case. In that case the Chief Justice, Sir Barnes Peacock, in delivering the judgment of the Court, says:—"The tenant might have contested his liability to pay that amount, and might have demanded a summary investigation as to the amount due, and he might have stayed the sale of the tenure by depositing the amount claimed. Instead of doing so, however, he paid the amount claimed to the zemindar. The zemindar having recovered the amount under a proceeding prescribed by law, the question is, whether that is an undue exaction. He possibly might have demanded more than was due, after allowing for the rice supplied; but the plaintiff, instead of demanding an investigation, paid the amount claimed with knowledge of all the facts. Can this be said to be an illegal exaction of rent within s. 23, cl. 2, and s. 10 of Act X of 1859? We think that it is not an illegal exaction of rent within the meaning of that Act."

This case clearly supports the view which we take of the nature of the claim in the present case; and we think that the suit is clearly cognizable by the Court of Small Causes, and, therefore, the special appeal to this Court is barred by the provisions of s. 27, Act XXIII of 1865.

The special appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

LUCHMESSUR SINGH (DEFENDANT) *v.* LEELANUND SINGH (PLAINTIFF).*

1878
July 22.

Ferry Rights, Infringement of—Right to restrain Party starting a second Ferry.

A, the owner of a ferry granted him under a Government settlement, brought a suit to restrain *B* from running another ferry over the same spot where *A's* ferry plied for hire. It appeared on the evidence, that *B* levied no tolls on his ferry, but it was not shown that it was used only for the conveyance of his own servants and ryots. *Held*, that such suit was maintainable.

* Regular Appeal, No. 308 of 1876, against the decree of S. Wright, Esq., Subordinate Judge of Zilla Purneah, dated the 31st of July 1876.