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mismanagement, letters of administration should be granted to the applicant. But after full consideration, we do not think we should be justified in refusing her application. We have, however, considered how the action of the applicant in the management of the estate could be controlled. There are one or two sections of the Probate Act which bear upon this matter, and to which we would desire to call attention. One is section 78, under which it is incumbent upon the District Court to call upon the administrator to give security; and the other is section 98, under which an executor or administrator is to submit accounts from time to time; and it seems to us that if these two sections of the Act be kept in view, and if the applicant be called upon by the District Judge from time to time to submit proper accounts, much of the evils which are now complained of, and which we think do exist, would be avoided.

We accordingly direct that the order of the District Judge be set aside, and that letters of administration be granted to the applicant without any condition, but subject to this, that before letters of administration are granted to her, she should give sufficient security to the satisfaction of the District Judge, and that the District Judge should see that she does submit proper accounts from time to time in accordance with section 98. We make no order as to costs.

Appeal allowed.

J. V. W.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

FAEZ RAHAMAN AND OTHERS (DEFENDANTS) v. RAMSUKH BAJPAI AND ANOTHER (PLAINTIFFS).*

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June 29.

Sale for arrears of rent—Liability of auction-purchaser for arrears of rent prior to purchase—Bengal Tenancy Act (VIII of 1885), ss. 65 and 169, cl. c.—Rent, suit for.

The plaintiffs sued the first five defendants for arrears of rent due in respect of a certain tenure, and obtained a decree on the 16th of April 1888.

* Appeal from Appellate Decree No. 263 of 1892, against the decree of R. H. Anderson, Esq., Officiating District Judge of Chittagong, dated the 13th of November 1891, modifying the decree of Babu Shambhu Chunder Nag, Officiating Subordinate Judge of Chittagong, dated the 22nd of June 1891.

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In execution of that decree the tenure was sold on the 8th April 1891, the defendants 6, 7, and 8 being the auction-purchasers. On the 18th of April 1891 the plaintiffs sued all eight defendants for the arrears of rent which had become due between the 16th April 1888 and the 8th April 1891. *Held*, that the auction-purchasers (defendants 6, 7, and 8) were not liable, the arrears of rent sued for having become due prior to their purchase.

THE plaintiffs had brought a suit against the first five defendants for arrears of rent up to the year 1248 Maghi, and had obtained a decree, dated the 16th April 1888. In execution of that decree the tenure was sold, and was purchased by the 6th, 7th, and 8th defendants on the 8th April 1891. The first five defendants were in possession of the holding during the years 1249, 1250, 1251, and 1252, and failed to pay the rent. On the 18th of April 1891 the plaintiffs instituted a suit against the first five defendants for arrears of rent for those years, and the defendants Nos. 6, 7, and 8 (the auction-purchasers) were added as defendants. In the Subordinate Judge's Court, the 6th, 7th, and 8th defendants only appeared. The Subordinate Judge held that the claim for the year 1249 was barred by limitation, and that the defendants 6 to 8 were not liable for the rent prior to their purchase on the 8th of April 1891. On appeal, the Officiating Judge, relying on s. 65 of the Bengal Tenancy Act, held that the tenure was liable for the whole of the arrears, irrespective of the question whether it fell due before or after the purchase by the defendants 6, 7, and 8.

Against that decision the defendants 6, 7, 8, appealed to the High Court.

Babu *Golap Chunder Sarkar* for the appellants.

Babu *Akhil Chunder Sen* for the respondents.

The judgment of the Court (MACPHERSON and BANERJEE, JJ.) was as follows:—

This appeal arises out of a suit brought by the plaintiffs-respondents to recover arrears of rent of a certain tenure for the years 1249 to 1252 Maghi, the plaint praying for a decree against defendants 1 to 5, the former holders of the tenure, and stating that as the tenure was liable for those arrears, defendants 6 to 8, who had purchased the tenure at a sale for its arrears of rent for 1248 and certain previous years, were also made parties.

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Defendants 1 to 5 did not appear, but defendants 6 to 8 contested the suit on various grounds, of which it is now necessary to notice only one, namely, that the tenure was not liable for any arrears that accrued due before their purchase.

The first Court held that the claim for 1249 was barred by limitation, and the tenure was not liable for any arrears that fell due before the sale at which the defendants 6 to 8 purchased it.

On appeal by the plaintiffs, the Lower Appellate Court, relying chiefly on section 65 of the Bengal Tenancy Act, has made the tenure liable for the whole amount of arrears, irrespective of the question whether it fell due before or after the purchase by the defendants 6 to 8.

Against that decision the defendants 6 to 8 have preferred this second appeal, and it is contended on their behalf that the tenure was not liable for any arrears that fell due before their purchase.

We think this contention is sound. It is true that section 65 of the Bengal Tenancy Act makes arrears of rent due in respect of a tenure a first charge thereon; but that section, after enacting that a tenure-holder shall not be liable to ejectment for arrears of rent, declares that his tenure shall be liable to sale in execution of a decree for rent, and the rent shall be a first charge thereon. That, we think, goes to show that rent falling due during the time that a tenure belongs to any particular tenure-holder is a first charge on the tenure only so long as it is his and has not been sold for arrears of rent. And this, we think, is made clear beyond doubt by clause (*c*) of section 169, which enacts that if any surplus remains of the proceeds realized by the sale of a tenure in execution of a decree for arrears of rent, after satisfying that decree, any rent falling due between the date of the suit in which the decree was passed, and the date of sale, shall be paid therefrom to the decree-holder. This provision of the law evidently shows that the Legislature intended that the charge in respect of any rent falling due between the date of suit and the date of sale in satisfaction of the decree passed therein, shall be transferred from the tenure to its sale proceeds, and that the tenure shall pass to the purchaser at a sale for arrears of rent free of all liability created upon it by the default of the previous holder.

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The learned vakil for the respondents contended that clause (c) of section 169 could not limit the charge created by section 65, and that the landlord might have a charge on the tenure as well as on the surplus sale proceeds. If that was the law, it might lead to greater injustice to the defaulter. For the tenure in the hands of the purchaser being liable for the rent falling due between the date of suit and date of sale, the purchaser will evidently bid for it so much less than its full value; while the surplus sale proceeds being also charged with such rent, the landlord may recover it from the surplus; and thus the defaulter may be made to pay the full rent and yet not get the full value of his tenure, while the auction-purchaser will get the tenure for less than its full value without having to pay any back rent. This we do not think the Legislature could ever have intended. If the value of the tenure is sufficient to pay off all the arrears due up to the date of sale, as the tenure would, upon the view we take of the law, fetch its full value, the landlord's demand would be paid in full. But if the value of the tenure be not sufficient to pay off all the arrears due upon it, then it must necessarily be an insufficient security for the arrear, and no view of the law can enable the landlord to realize his dues fully out of it. The opposite view of the law, if correct, would result in lowering the value of the tenure at any sale for arrears of rent, and what the landlord might get from the tenure by a second sale will be counterbalanced by the deficiency in price at the first.

The cases cited for the respondent—*Obhoy Chunder Bundopadhya* v. *Nilambur Mookerjee* (1) and *Khoda Bux* v. *Degumburee Dossee* (2)—are not in point. They relate to the liability of purchasers at ordinary sales in execution of decrees, and not to that of purchasers at sales in execution of decrees for arrears of rent.

For all these reasons we think the view taken by the first Court is correct, and the decree of the Lower Appellate Court must therefore be reversed, and that of the first Court restored, with costs in this Court and in the Court of appeal below.

Appeal allowed.

C. S.

(1) W. R., 1864, 73.
(2) W. R., 1864, 207.