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I think, therefore, that the parol evidence was inadmissible, and that as the defence entirely rests upon it, the plaintiff is entitled to a decree.

The plaintiff will be entitled to his costs in both Courts.

MITTER, J.—I concur in this decision. I do not think it necessary to decide the question whether the defendants are entitled to prove the parol agreement upon which they rely; because, assuming that they were so entitled, it was shown in the course of the argument that the plaintiff has discharged the obligation imposed upon him by that agreement.

Appeal allowed.

Before Mr. Justice Tottenham and Mr. Justice Maclean.

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Sept. 15.

MOZHURUDDIN (DEFENDANT) *v.* GOBIND CHUNDER NUNDI (PLAINTIFF).*

Landlord and Tenant—Forfeiture of Holding—Denial by a Tenant of his Landlord's Title.

A, a ryot with rights of occupancy, in a rent-suit brought against him by *B*, the purchaser of an *aima* (1) *mehal*, denied the existence of the relationship of landlord and tenant between himself and *B*, on the ground that the lands occupied by him were not included on the *aima mehal* purchased by *B*. *B*'s rent-suit having been dismissed for failure of evidence on this point, *B* afterwards brought a regular suit to evict *A*, and for mesne profits. *Held*, that *A*, by denying the title of *B*, in the rent-suit, thereby forfeited his rights of occupancy, and became liable to eviction.

THIS was a suit instituted by the plaintiff Gobind Chunder Nundi to evict the defendant Sheikh Mozhuruddin, a ryot with rights of occupancy, from certain lands comprised within the boundaries of the *aima mehal* Pilshua, the purchased property

* Appeal from Appellate Decree, No. 1829 of 1879, against the decree of C. D. Field, Esq., Judge of East Burdwan, dated the 6th May 1879, modifying the decree of Baboo Janokinath Mookerjee, Munsif of Cutwa, dated the 31st January 1879.

(1) *Aima.*—Land granted by the Mogul Government, either rent-free or subject to a small quit-rent, to learned or religious persons of the Mahomedan faith, or for religious and charitable uses in relation to Mahomedanism. Such tenures were recognised by the British Government as hereditary and transferable.—*Wilson's Glossary.*

of the plaintiff, and for a declaration that the occupancy-rights of the defendant were forfeited, on the ground that, in a rent-suit which had been previously instituted by the plaintiff against the defendant, the defendant had falsely denied the title of the plaintiff. The plaintiff also claimed mesne profits

It appeared that the plaintiff was the purchaser of the *aima mehal* Pilshua, at an auction-sale for arrears of Government revenue, and had obtained formal, but not actual, possession in June 1875. It was proved that the lands in dispute were included in the plaintiff's purchase; that the defendant had been in occupation of them as a ryot with rights of occupancy for a period of more than thirty years, and had paid rent to the former proprietor of the *aima mehal*, but had not, since the plaintiff's purchase, paid any rent to him. It was also proved that, in 1877, the plaintiff had sued the defendant for rent in respect of these lands; that in such suit the defendant had denied the plaintiff's title, alleging that the lands occupied by him were not included in the plaintiff's mehal, and that, in consequence of such denial, the suit was dismissed.

Upon these facts the Court of first instance held that the plaintiff was entitled to a decree for mesne profits for a period of three years, but not to evict the defendant, as the denial of the plaintiff's title by the defendant in the former suit might have been occasioned by mistake on his part.

From this decision the plaintiff appealed to the Judge of East Burdwan, who, on the 6th May, gave the following judgment:—"I think there can be no doubt that the defendant being well aware of the plaintiff's title, denied it in the rent-suit. Now, a tenant who denies his landlord's title, and sets up an adverse title, is liable to be evicted. The Munsif says that 'this might be that he considered the lands are lakheraj and not the *aima* sold to the plaintiff,' and it is argued before me that the defendant was misled by the former proprietor of the *aima*, who also held lakheraj lands. Now, if this had been pleaded and proved, if it had been shown that the defendant, having made reasonable enquiries, was misled by the former *aimadar*, the Court might perhaps take this plea into consi-

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deration. But I do not find that any such plea was set up before the Munsif, and indeed no one appears to have thought of it until the Munsif suggested, without evidence, that this was so. I think, therefore, that the plaintiff is entitled to evict the defendant."

From this decision the defendant appealed to the High Court.

Mr. *G. Gregory* and Baboo *Omanath Bose* for the appellant.

Baboo *Ram Chand Mitter* for the respondent.

Mr. *G. Gregory* (Baboo *Omanath Bose* with him) for the appellant.—There have been cases in this country in which it was held that a ryot, who denies his landlord's title, forfeits his tenure; but those decisions seem to have followed English cases. In England a tenant forfeits his tenure because that is the common law of England, but the whole of the law of landlord and tenant in this country is comprised in Beng. Act VIII of 1869, and as the Legislature have not thought it proper to insert the provision in that law, the Courts are not competent to import into it a penal provision of that nature. In the previous cases here, it seems to have been assumed that the law here allows a forfeiture. In *Mahomed Basiroollah Bhoonia* v. *Ahmed Ali* (1), Mr. Justice Dwarkanath Mitter says: "It seems to me that it is by no means a settled point of law in this country that the denial by the tenant of the landlord's title works a forfeiture of the tenancy." In *Sutyabhama Dassee* v. *Krishna Chunder Chatterjee* (2), your Lordship, Mr. Justice Maclean, took precisely the view I am now contending for, but the decision was, on appeal under the Letters Patent, reversed. But the second decree turned on entirely different grounds, which do not exist in this case. I submit it is *ultrâ vires* of the Courts to establish a penal law of this nature without legislative authority. A reference to a Full Bench would, I submit, be a proper order to make in this case in order that the question may be raised and decided. Even in some of the cases decided here, it is said that the Courts, both here and in England, "always lean strongly against

(1) 22 W. R., 448. (2) *Ante*, p. 55.

a forfeiture:" *Sreemutty Ahullya Debia* v. *Bhyrub Chunder Pattro* (1).

Baboo *Ram Churn Mitter* for the respondent was not called upon.

The judgment of the Court (TOTTENHAM and MACLEAN, JJ.) was delivered by

TOTTENHAM, J.—The point pressed upon us by the learned counsel for the appellant is, that there is nothing in the law of this country warranting forfeiture of his holding as the penalty of denial by a ryot of his landlord's title.

The lower Appellate Court has decreed the defendant's (appellant's) eviction for denying the plaintiff's title, though well aware of it.

There are numerous reported cases in which this Court has affirmed similar decrees passed under the same circumstances, and there being no contrary ruling, we think that we are bound to follow these decisions, notwithstanding that the learned counsel has contended that the point was never really raised and decided in these cases, but that it was assumed that denial of the landlord's title rendered the tenant liable to be evicted. We are not at present prepared to take the opposite view, and to refer the case to a Full Bench. We may observe that the doctrine of forfeiture is not entirely unknown to the law of landlord and tenant in Bengal, for s. 38 of Beng. Act VIII of 1869 distinctly provides for it in the event of the Collector being unable, from the nonattendance of persons holding tenures and under-tenures, to ascertain them at the measurement of any lands under that section.

In the present case, we think we are supported by authority, and dismiss the appeal with costs.

Appeal dismissed.

(1) 25 W. R., 146.