

1901  
June 18.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice  
Banerjee.

TAMASHA BIBI . . . . . DEFENDANT.

v.

MATHURA NATH BHOWMIK AND OTHERS . . PLAINTIFFS.

*Notice to quit, service of—Suit for ejectment against more than one tenant—  
Bengal Tenancy Act (VIII of 1885), s. 49, Ch. I., Rule 3.*

In a suit for ejectment against the under-raiyats the notice to quit, when addressed to more persons than one, should be made by proclamation, and beat of drum according to Rule 3 of Chapter I of the Rules made by the Government of Bengal, dated the 21st December 1885.

THIS appeal arose out of a suit for ejectment. The plaintiffs stated that the defendants were their under-raiyats, that they were served with a notice of ejectment according to the provisions of s. 49 of the Bengal Tenancy Act. Notwithstanding that, they did not give up the lands, hence the suit was brought for ejectment. The defendants *inter alia* pleaded that they were occupancy raiyats, and therefore they were not liable to be ejected, that they were not served with any notice under the law; and that there was no custom of ejecting the under-raiyats. The Court of First Instance, having found that the notice was served upon the defendants according to the provisions of s. 49 of the Bengal Tenancy Act, and that the defendants were mere under-raiyats, decreed the plaintiff's suit. On appeal the learned Subordinate Judge confirmed the decision of the First Court. Against this decision one of the defendants appealed to the High Court.

*Babu Sharat Chunder Roy Chowdhury* for the appellant.

No one appeared for the respondents.

MACLEAN, C. J.—This appeal must succeed upon the ground that no sufficient notice was served upon the defendants. There is only one appellant, but there were four defendants. It appears

\* Appeal from Appellate Decree No. 2373 of 1899, against the decree of Babu Prasunno Coomar Ghose, Subordinate Judge of Nuddea, dated the 7th of August 1899, affirming the decree of Babu Upendra Chunder Chatterjee, Munsif of Kusteia, dated the 24th of January 1899.

from the statement in the judgment of the Lower Court that notice was served personally upon the appellant, but, if the notice was addressed, as it was in this case, to four defendants, then it seems to me that Rule 3 of Chapter I of the Rules made by the Bengal Government, dated the 21st December 1885, has not been complied with, and the provision that personal service shall be effected in the manner prescribed for service of summons on a defendant under the Code of Civil Procedure does not apply to the case: that only applies to the case where the notice is addressed to a single person. That being so, the whole suit fails, and the appeal must be allowed with costs, in all the Courts.

BANERJEE, J.—I am of the same opinion.

S. C. G.

*Appeal allowed.*

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Banerjee.*

HARISH CHUNDER NEOGY . . . . . DEFENDANT.

*v.*

NISHI KANTA BANERJEE . . . . . PLAINTIFF.

1901

TAMASHA  
BIBI  
*v.*  
MATHURA  
NATH  
BHOWMIK.

1901  
*June 11.*

*Malicious prosecution—Onus of proof—Innocence—Reasonable and probable cause—Malice—Judge of law and facts.*

In a suit for malicious prosecution, in order to enable the plaintiff to succeed he must prove, first, that he was innocent of the charge brought against him; secondly, that the defendant acted without reasonable and probable cause in instituting the prosecution; and thirdly, he must satisfy the Court that the defendant was actuated by feelings of malice in the course which he took.

The question of reasonable and probable cause is, if the case is tried by a Judge with a jury, a question for the Judge and not for the jury: but in India, where there is no jury, the Judge becomes himself the Judge of the law and the facts.

*Pestonji Mody v. The Queen Insurance Company* (1) referred to.

THIS appeal arose out of a suit brought by the plaintiff for damages for an alleged false and malicious prosecution. The allegation of the plaintiff was that the defendant Harish Chunder

\* Appeal from Appellate Decree No. 1323 of 1899, against the decree of J. Pratt, Esq., District Judge of 24 Pergunnahs, dated the 16th March 1899, reversing the decree of Babu Rajendra Kumar Bose, Subordinate Judge of that District, dated the 8th of June 1898.