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if it could be said that they had no sufficient opportunity of offering evidence before that Court by reason of the extreme view which it took on the question of law, they ought to have asked the Lower Appellate Court (before which they were appellants) to take evidence on the point. Even this they omitted to do. That being so, we think they are not entitled to ask us to remand the case for a further enquiry into the question.

The result then is that this appeal must be allowed and the case as against the defendant No. 2 will be remanded to the First Court for trial.

The costs of this appeal will abide the result.

S. C. G.

*Appeal allowed ; case remanded.*

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*Before Mr. Justice Ghose and Mr. Justice Pratt.*

1900  
 Dec. 19, 20.

DWARKA NATH SANTRA AND ANOTHER (DEFENDANTS) v. RANI DASSI AND OTHERS (PLAINTIFFS.) \*

*Bengal Tenancy Act (VIII of 1885), s. 49, clause (b)—Under-raiyat—Ejectment—Notice to quit—Period of notice—Transfer of Property Act (IV of 1882), s. 106.*

It is not necessary that a notice under s. 49, clause (b), of the Bengal Tenancy Act should mention any particular period within which the under raiyat is to quit the land.

*Naharullah Patwari v. Madan Gazi (1) followed.*

THE plaintiffs, who are the landlords, served a notice to quit on the father of the defendants, an under-raiyat, in Bhadra, 1302 B. E. A second notice was then served on the defendants in Joistha 1305 B. E. The earlier notice required the tenant to quit the land from the 1st Baisak 1303 B. E. The present suit for ejectment against the defendants was instituted on the 26th June 1897, almost immediately after the date of the second notice.

\* Appeal from Appellate Decree No. 1367 of 1899, against the decree of E. G. Drake-Brockman, Esq., District Judge of Midnapur, dated the 1st of June 1899, reversing the decree of Babu Charu Chunder Mitter, Munsiff of Garbetta, dated the 10th of September 1898.

(1) (1896) 1 C. W. N., 133.

The Munsif held that the first notice was not in accordance with the provisions of the Bengal Tenancy Act, that even if it was a good notice, the fact of the second notice having been served, proved that the plaintiffs had waived their right under the first notice, and that the second notice was not adequate, and accordingly he dismissed the suit as premature.

On appeal, the District Judge held that the earlier notice of Bhadra 1302 was duly served and that under it the defendants were liable to vacate the holding at the end of Chaitra 1303. He accordingly decreed the suit for ejection and awarded mesne profits from Baisak 1304.

The defendants appealed to the High Court. The appeal came on for hearing on the 19th December 1900.

1900, DEC. 19 and 20. Babu *Joy Gopal Ghose*, for the appellants.

Babu *Boidanath Dutt*, for the respondents.

1900, DEC. 20. The judgment of the High Court (GHOSE and PRATT, JJ.) was as follows :—

The real question that has been raised on behalf of the appellants in this case is, whether the notice which was served upon the appellants in Bhadro 1302, calling upon them to vacate the land in suit in Baisak 1303, is a good notice, having regard to the provisions of section 49 of the Bengal Tenancy Act. The defendants have been found to be under-raiyats to whom the provisions of that section are applicable. The contention on behalf of the appellants is that, inasmuch as they were required to vacate the land in the early part of the year, and not at the end of the year, it is a bad notice, and therefore the suit based upon such a notice is not maintainable. Section 49 provides :—

“An under raiyat shall not be liable to be ejected by his landlord, except (a) on the expiration of a term of a written lease; (b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.”

What we are really asked to do is to insert after the words “notice to quit” the words “expiring at the end of the said year;” for clause (b) of the section, as it stands, does not require that the

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notice should mention any particular time within which the under-raiyat is to quit the land. Referring to the provisions of section 106 of the Transfer of Property Act, we find that where the Legislature intends that a notice to quit should specify the precise time within which the person to whom it is given must quit, it uses words which indicate that intention. There, the words are "by six months' notice expiring with the end of a year of the tenancy," and again "by fifteen days' notice expiring with the end of a month of the tenancy." Similar words do not occur in section 49 of the Bengal Tenancy Act, and we are therefore unable to say that the notice in question was bad in law. The view that we adopt is the same which was laid down by a Divisional Bench of this court in the case of *Naharullah Patwari v. Madan Gazi* (2). Mr. Justice Macpherson, in delivering the judgment of the Court, made, amongst others, the following observations:—

"The Legislature advisedly seems to have refrained from fixing any period of notice, and the section was probably framed, as it is framed, with the view of doing away with all questions of the unreasonableness or otherwise of the notice, it being considered sufficient to intimate the landlord's intention of determining the tenancy and leaving the law to operate, so that the raiyat, if he chooses to remain on the land shall not be ejected, until a certain time had expired after the notice was served. The circumstance that the landlord has called upon the tenant to quit at a time when he could not compel him to do so, does not, we think, vitiate the notice. A notice to quit without specifying any period would be open to the same objection on the ground that it was a notice to quit at once."

The suit for ejectment founded on the notice in question was not brought until two years after the expiry of the year 1303, and it is obvious therefore that the defendants could not have been prejudiced by reason of the notice not specifying the time at which they would be liable to ejectment under the provisions of section 49 of the Act.

The appeal is dismissed with costs.

M. N. R.

*Appeal dismissed.*