LETTERS PATENT APPEAL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Mookerjee.

PRATAP NARAIN DEO

v.

HARIHAR SINGH.*

1909 June 21.

Landlord and tenant—Notice to quit—Denial of landlord's title in the written statement, whether such denial makes Notice unnecessary—Reasonable Notice.

In a suit for ejectment under the Bengal Tenancy Act, a landlord is not relieved of the obligation to give notice to quit to the tenant, where the tenant for the first time denies the title of the landlord in his written statement.

The notice must be a reasonable notice, and it need not necessarily determine the tenancy at the end of the year. It will be for the final Court of fact in each case to determine what is reasonable notice having regard to all the circumstances, and whether it would not be reasonable in the circumstances of the particular case for it to determine with the year.

APPEAL under section 15 of the Letters Patent, by the plaintiff, Pratap Narain Deo.

The plaintiff brought a suit to recover possession of a mouzah after determination of a *mustagiri* lease by a notice to quit, and for recovery of arrears of rent for the years preceding the determination of the lease. Defendant, on the 4th of August 1893, executed in favour of the plaintiff a *mustagiri* lease for a term of seven years. The plaintiff stated in his plaint that, on the expiry of the lease, he served the defendant with a notice to quit, although such notice was unnecessary, and that since then the defendant had been in wrongful possession of the mouzah.

The defendant pleaded, *inter alia*, that the plaintiff had no title, that he had a permanent right in the disputed mouzah, and that in any case the suit for recovery of possession should be dismissed for want of proper notice.

The Court of first instance found the question of title in favour of the plaintiff, but dismissed the suit on the ground that no sufficient notice had been given, and also incorporated in its decree a declaration that the defendant had not a permanent

* Letters Patent Appeals Nos. 91 to 94 of 1908.

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right. On appeal, the lower Appellate Court reversed the decision of the first Court holding that the notice was sufficient.

On appeal to the High Court, Doss J., sitting alone, held that the notice given was insufficient. His Lordship dismissed the suit and, declining to go into the question of the permanency of the defendant's holding, restored the decree of the first Court.

Against this decision the plaintiff preferred the present appeal under the Letters Patent.

Dr. Bashbehary Ghose (*Babu Joy Gopal Ghose* with him), for the appellant. In this case the defendant is not entitled to a notice; he has set up a title to himself, and so there has been a disclaimer. Section 111 of the Transfer of Property Act (IV of 1882) supports my contention: *Kizhakkinyakath Abdulla Naha* v. *Karuthamakkakath Moidin Kutti* (1). A tenant, who denies the title of the landlord for the first time in his written statement in a suit for ejectment, is not entitled to a notice to quit: *Chidambram Pillai* v. *Sabapathi Pillai* (2). The case of *Gopalrao Ganesh* v. *Kishor Kalidas* (3) also supports my contention. In this case the tenant not only says that he has a permanent right in the land, but he also denies the title of his landlord. The next question is, whether, if the tenant is entitled to a notice, the notice given is a sufficient and reasonable notice or not. On looking at the lease it appears that it is not an agricultural lease; the lease not being one for agricultural purposes, under section 106 of the Transfer of Property Act, 15 days' notice expiring with the end of a month of the tenancy is sufficient. The defendant being a middleman, and supposing Bengal Tenancy Act applies to this case, he would be entitled to a reasonable notice which has been found to be so by the lower Appellate Court: *Radha Gobind Koer* v. *Rakhal Das Mukherji* (4) and *Bidhumukhi Dabea* v. *Kefyutullah* (5). In the present case the lease

(1) (1907) 17 Mad. L. J. 287.
(2) (1891) 1 Mad. L. J. 218.
(3) (1885) I. L. R. 9 Bom. 527.
(4) (1885) I. L. R. 12 Calc. 82.
(5) (1885) I. L. R. 12 Calc. 98.

having been granted for a term of years, and the property of the lease not being used for agricultural or manufacturing purposes, the lessee must be deemed to be a tenant from month to month, and is entitled only to a 15 days' notice to quit, expiring with the end of a month of the tenancy: *Troilokya Nath Roy* v. *Sarat Chandra Banerjee* (1).

Babu Jogesh Chunder Roy (*Babu Khetter Mohan Sen* with him), for the respondent. The defendant is entitled to a notice. A denial in the written statement does not operate a forfeiture: *Nizamuddin* v. *Mamtazuddin* (2) and *Kali Krishna Tagore* v. *Golam Ally* (3). In order to work as a forfeiture and to absolve the landlord from giving a notice, the denial must be before the institution of the suit. Bengal Tenancy Act applies to the facts of the case; the lease is an agricultural lease. In the case of *Umrao Bibi* v. *Mahomed Rojabi* (4), the distinction between the Bengal Tenancy Act and the Transfer of Property Act has been pointed out; where the land is agricultural there the Bengal Tenancy Act applies. The case of *Troilokya Nath Roy* v. *Sarat Chandra Banerjee* (1) does not apply as it was one under the Transfer of Property Act. In the case of a yearly tenant six months' notice is a reasonable notice. In the cases of *Kishori Mohun Roy Chowdhry* v. *Nund Kumar Ghosal* (5) and *Hemangini Chowdhrani* v. *Sri Gobinda Chowdhury* (6) six months' notice was considered to be a sufficient notice. If the notice on the face of it is unreasonable, the Court can see whether it is so or not.

Dr. Ghosh, in reply.

JENKINS C.J. This is a suit brought to recover possession of a mouzah and for incidental relief, on the allegation that the plaintiff is the proprietor, zemindar and holder of Lachmipur estate of which this mouzah forms part. It is said that the mouzah was held by the defendant's father under several *mustagiri* settlements and has now devolved on them.

(1) (1904) I. L. R. 32 Calc. 123.
(2) (1900) I. L. R. 28 Calc. 135.
(3) (1886) I. L. R. 13 Calc. 248.
(4) (1899) I. L. R. 27 Calc. 205.
(5) (1897) I. L. R. 24 Calc. 720.
(6) (1901) I. L. R. 29 Calc. 203.

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By way of defence it is pleaded that the plaintiff has no title, that the defendants have a permanent right, and that in any case the suit for recovery of possession cannot succeed for want of proper notice. The plaintiff's title is established, and both the lower Courts have decided against the plea of permanent right. The first Court held that no sufficient notice to determine the lease had been given, and on that ground it dismissed the suit, but at the same time incorporated in its decree what in effect is a declaration that the defendants have not a permanent right. The lower Appellate Court considered that sufficient notice had been given, and therefore passed a decree in the plaintiff's favour. On appeal to the High Court, Mr. Justice Lal Mohun Doss held that the notice given was insufficient. He dismissed the suit, and declining to go into the question of the permanency of the defendants' holding, he restored the decree of the first Court. This decree was not, therefore, in conformity with his judgment, because the decree of the first Court asserted the permanent right on which the learned Judge, Mr. Justice Lal Mohun Doss, in the course of his judgment declined to decide. On appeal before us, the principal question has been as to whether notice was necessary, and if necessary, then whether proper notice had been given. It has been contended that notice was not necessary, because there was a disclaimer which relieved the plaintiff from any difficulty that he might otherwise have been under, by reason of the insufficiency of the notice. But this disclaimer on which the plaintiff relies was not prior to suit but is an inference to be drawn from what is said to be a denial of title in the written statement in this suit. Even if the written statement be treated as a denial of title, still I am of opinion that this did not relieve the plaintiff of the obligation to give notice, if notice was required. In favour of the view that there was a disclaimer which rendered notice unnecessary, reliance has been placed principally upon a decision of Sir Charles Sargent in *Gopalrao Ganesh* v. *Kishor Kalidas* (1). I doubt whether the point really arose in that case, for it appears from a passage

(1) (1885) I. L. R. 9 Bom. 527.

in the judgment of the Subordinate Judge, as reproduced in the report of that case, that in view of the pleadings and the conduct of the suit the defendant could not properly have been allowed to rely on the absence of notice. But in any case that decision cannot now be regarded as establishing the proposition that a denial of title made in the written statement for the first time, absolves the plaintiff from the necessity of giving notice. This, I think, is to be gathered from the subsequent decisions of the Bombay High Court. In *Purshotam Bapu* v. *Dattatraya Rayaji* (1), Sir Charles Sargent recognised that there were other decisions which were opposed to his determination, for in the course of his judgment he said :—"It is not necessary to express an opinion on that view of the rights of the parties in the general case, as here the defendant No. 4, who is the real defendant, having purchased the third defendant's interest, not only alleged by his written statement that his alienor was a permanent tenant, but also that the defendant No. 3 had not received legal notice to quit ; meaning, that even if he were only a yearly tenant, as alleged by the plaintiff, the latter had not given him the legal notice and could not recover in ejectment. Having thus pleaded an alternative defence, as he was entitled to do, the defendant cannot, we think, be regarded as having consented to the contract of yearly tenancy being treated as cancelled." Now, in this case there is this alternative defence, and an issue has been raised on that basis, so that it is clear that even according to Sir Charles Sargent's own decision in *Purshotam* v. *Dattatraya* (1), his previous decision would not aid the plaintiff's contention. The matter does not rest there. In *Vithu* v. *Dhondi* (2), Mr. Justice Telang puts the doctrine of disclaimer on its proper footing. He there recognises the distinction between a disclaimer operating as a waiver of the requisite notice in a tenancy determinable by notice and a disclaimer operating by way of forfeiture in the case of a lease for a fixed term ; and he goes on to decide that even if there had been any disclaimer, its occurrence after the institution of the suit would prevent the

(1) (1886) I. L. R. 10 Bom. 669. (2) (1890) I. L. R. 15 Bom. 407.

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plaintiff from succeeding without proof of a legal notice to quit. In *Dodhu* v. *Madhavrao Narayan Gadre* (1), Sir Charles Sargent recognized the authority of *Vithu* v. *Dhondi* (2), so that it is clear that Dr. Rashbehary Ghose's argument, so far as it is based on Sir Charles Sargent's decision in *Gopalrao Ganesh* v. *Kishor Kalidas* (3), has lost the foundation on which it once rested. There are cases in the Madras High Court to which our attention has been directed by Dr. Rashbehary Ghose and in particular the cases of *Chidambram Pillai* v. *Sabapathi Pillai* (4) and *Kizhakkinyakath Abdulla Naha* v. *Karuthamakkakath Moidin Kutti* (5). These cases, no doubt, as they stand, support the proposition for which he contends, that is to say, that a denial of title in the written statement is a sufficient waiver of notice. But the first of those cases purports to rest on Sir Charles Sargent's decision in the case of *Gopalrao Ganesh* v. *Kishore Kalidas* (3) and the second merely to follow the first; whereas, we find on the other hand that in a more recent decision reported in the case of *Peria Karuppan* v. *Subramanian Chetti* (6) a different view is taken. Turning to the Calcutta authorities we find that the cases of *Prannath Shaha* v. *Madhu Khulu* (7) and *Nizamuddin* v. *Mamtazuddin* (8) are opposed to the plaintiff's contention in this case, though it must be conceded that the language used in the judgments in those cases does not mark the distinction between the waiver of notice in relation to a tenancy determinable by notice and the forfeiture of a lease for a fixed term. Then if we turn to the English authorities on which after all these Indian cases rest, it is clear on the authority of *Doe dem. Lewis* v. *Cawdor* (9) that a denial of title after suit does not amount to a waiver of the notice to which the tenant is ordinarily entitled. Whether or not there can be a waiver of notice by a denial in the written statement in those tenancies to which the Transfer of Property Act applies, it is not necessary now to decide; but

(1) (1893) I. L. R. 18 Bom. 110.
(2) (1890) I. L. R. 15 Bom. 407.
(3) (1885) I. L. R. 9 Bom. 527.
(4) (1891) 1 Mad. L. J. 218.
(5) (1907) 17 Mad. L. J. 287.
(6) (1908) I. L. R. 31 Mad. 261.
(7) (1886) I. L. R. 13 Calc. 96.
(8) (1900) I. L. R. 28 Calc. 135.
(9) (1834) 1 Cromp. M. & R. 398.

the conclusion to which I now come is that the first point argued before us on behalf of the plaintiff, that is to say, that there has been a disclaimer of the plaintiff's title, which did away with the necessity of notice, fails.

The next point is as to whether sufficient notice was given. The learned Additional Subordinate Judge considered that sufficient notice was not given; the District Judge, on the other hand, thought that there had been the requisite notice. The facts are that 18 days' notice was given, and it was a notice for the determination of the tenancy neither with the year of the defendant's tenancy nor with the end of the Fusli year. In order to determine what notice would be right, we must first see what the lease was. It has been described to us by the plaintiff as a middleman's lease pure and simple. The document has been placed before us, and we are unable to accept that view. In certain aspects it must be regarded as a lease for agricultural purposes, and so it does not come within that part of section 106 of the Transfer of Property Act which provides that "a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by 15 days' notice expiring with the end of a month of the tenancy." The state of the authorities on the question of notice cannot be regarded as satisfactory; and, all that we are able to say sitting as a Division Bench is, that there must be a reasonable notice and that the notice need not necessarily determine the tenancy at the end of a year. But it will be for the final Court of fact, in each case, to determine what is reasonable notice having regard to all the circumstances, and whether it would not be reasonable in the circumstances of the particular case for it to determine with the year. Even in relation to a middleman's lease pure and simple, it has been said by Mr. Justice Norman in *Bunwaree Lall Roy* v. *Mohima Chunder Koonal* (1), "that the principle which applies to the case of ryats applies to the case of middlemen, and that the latter cannot be turned out by the zemindar without a reasonable notice,

(1) (1870) 13 W. R. 267.

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notice which we are disposed to think should expire at the end of the year." And the learned Judge gives his reasons for this view. Then there is a decision, which certainly is deserving of attention and respect, in *Kishori Mohun Roy Chowdhry* v. *Nund Kumar Ghosal* (1), where Sir Francis Maclean C.J. discussed the question as to the notice to which a tenant is entitled before he can be ejected. It has been said, and said truly, that the tendency of the law is to narrow the field of uncertainty, and the growth of law is towards the substitution of the fixed for the fluid. Although it cannot be said that any fixed rule has been established by the cases to which I have referred, I think they show a tendency in that direction, both as to the length of notice and the time at which the notice should expire; and the lower Appellate Court may well have regard to this tendency when it comes to determine, as it must, the question whether or not in all the circumstances of this case reasonable notice has been given—reasonable, that is to say, both in length and as to the time at which it was to come into effective operation.

There only remains one other point to be noticed, and that is the dispute between the parties as to whether the defendants had a permanent right incapable of determination by notice. The matter has been discussed in considerable detail by the first Court. Though the District Judge purports to come to the same conclusion, his treatment of the subject cannot be accepted as satisfactory or, indeed, as a compliance with section 574 of the Code of Civil Procedure. The matter in dispute is one of great importance to the parties and deserving of a far fuller discussion than the learned District Judge has bestowed upon it; and we cannot accept the few lines in which he has disposed of this part of the case, as a judgment in accordance with the law. It is true that this question of the permanency of the tenure has not been made a subject of appeal to us, but Dr. Rashbehary Ghose very properly has allowed this question to be raised as he felt that it would be merely taking advantage of a mistake—an unwitting mistake—on the part

(1) (1897) I. L. R. 24 Calc. 720.

of the learned Judge, Mr. Justice Lal Mohun Doss, if that question were not discussed here; and it is for this reason that we have gone into the question as to how far the District Judge has satisfactorily dealt with the topic of the permanency of the tenure. It is impossible for us in second appeal to deal with this matter on the materials before us. At the same time we feel that after this prolonged litigation and the expense and trouble it has involved, it would be most undesirable to shut out this question, seeing that both parties desire it to be determined in this suit.

We, therefore, reverse the judgment of Mr. Justice Lal Mohun Doss and set aside the judgment of the District Judge, and we send back the case to the lower Appellate Court in order that it may be determined, whether the permanent right pleaded and set up by the defendant has been established, and if that has not been established, then whether reasonable notice has been given entitling the Court to hold that the tenancy has been determined. Those are the only points that now remain for discussion in the case, and they must be heard and determined by the lower Appellate Court in the light of the foregoing remarks.

The costs of the High Court throughout will abide the result.

This judgment, it is conceded, will govern the other appeals Nos. 92 to 94.

MOOKERJEE J. concurred.

Appeal allowed; case remanded.

S. C. G.