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grain rent, which was reserved, appears to us to have been extortionate and oppressive, and the agreement to be of a character which, considering the relation of the parties, cannot equitably be enforced. We, therefore, affirm the decree of the Assistant Judge with costs on special appellant.

GIBBS, J. :—I concur.

Decree affirmed.

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Special Appeal No. 552 *of* 1866.

BHIMA'CHA'RYA bin VYANKATA'CHA'RYA ...*Appellant.*
FAKIRA'PPA' bin A'NANDA'PPA'.....*Respondent.*

Act VIII. of 1859, *Secs.* 41—111, *and* 119—*Pleader*—Ex parte *hearing.*

Held that the hearing of a suit in which a pleader was duly appointed on behalf of the defendant but not instructed to answer, or instructed not to answer at all, was an "*ex parte*" hearing, and that no appeal lay from a judgment passed in such suit.

THIS was a special appeal from the decision of W. Sandwith, Joint Judge of the District of Dhárwár, reversing the decision of the Ṣadr Amín of Húbli.

The plaintiff sued to eject his tenant, the defendant, from a field, alleging that, though the lease had expired, the defendant would not give up possession.

The defendant, Fakírápá, duly appointed a vakíl, who, however, stated that he had received no instructions from his client with regard to the case, and that he was unable to put in any written statement, or make any defence.

The Ṣadr Amín, after several adjournments to enable the pleader of the defendant to get instructions, which were unsuccessful, at last proceeded with the trial of the case, and gave a decree in favour of the plaintiff.

In appeal, the Joint Judge considered that the defendant had not shown any valid reason for not instructing his pleader in the court of original jurisdiction; but still, being

of opinion that the plaintiff's claim was not established, reversed the Ṣadr Amín's decree.

The Appeal was heard before TUCKER and GIBBS, J.J.

Shántárám Náráyan, for the appellant, contended that the defendant, not having instructed his vakil, must be held to have made no valid appearance. And the judgment of the Court being thus *ex parte*, no appeal lay to the Joint Judge, according to Sec. 119 of the Code of Civil Procedure.

TUCKER, J. :—I find that the defendant in this suit, though he appointed a pleader, gave that pleader no instructions which would enable him to answer the claim, or rather, it may be gathered from the character of the pleader's reply to the Ṣadr Amín, he instructed the pleader to make no answer. Under these circumstances, I hold that the hearing in the court of original jurisdiction was *ex parte*, and that the judgment pronounced by that court was also *ex parte*, and that, consequently, no appeal lay from that judgment. By Sec. 41 of the Code of Civil Procedure it is provided that a summons "shall be issued to the defendant to *appear and answer* the claim in person, or by a pleader of the court *duly instructed*, and *able to answer* all material questions relating to the suit, or by a pleader who shall be accompanied by some other person able to answer all such questions."

From this it would seem that the mere presence of a pleader for a defendant is not all that is necessary to constitute a compliance with the summons, or to make such a complete appearance on his behalf as is requisite under Sec. 111 of the Procedure Code. If a pleader attend, he must be instructed and able to answer, or be accompanied by some person who will be able to answer all material questions relative to the suit; and the presence of a pleader who is not supplied with the means of answering, or who is instructed to remain mute, or to decline making any answers, cannot, I think, be held to be a representation of the defendant, which will give to the suit the character of a defended action. The policy of the law and the course of justice would both be de-

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feated if such an appearance were to be treated as otherwise than nugatory. The decree of the Joint Judge must, therefore, be annulled, and that of the Ṣadr Amín confirmed.

GIBBS, J. :—I concur.

Joint Judge's decree annulled, and the Ṣadr Amín's confirmed.