APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

1882
September 19. TATIA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SADASHIV (ORIGINAL PLAINTIFF), RESPONDENT.*

Landlord and tenant—Non-payment of rent—Adverse possession—Limitation.

The plaintiff sued for possession of a piece of ground, alleging that he was the owner of it. The defendants denied the plaintiff's title and claimed ownership in themselves. The Subordinate Judge found that the plaintiff had originally held the property from the defendants; but that, as he had occupied it for more than twelve years without paying any rent or acknowledging the defendants as his landlords, he was entitled to be considered as owner by adverse possession. The District Judge, in appeal, upheld the decree of the first Court. On appeal to the High Court,

Held that the District Judge was wrong in holding that mere non-payment of rent was sufficient to constitute adverse possession.

THIS was a second appeal from the decision of W. H. Newnham, Judge of the District Court of Poona, affirming the decree of Nowroji Dorabji, Second Class Subordinate Judge of Junnar.

The plaintiff, Sadashiv, brought this suit for possession of a piece of ground, alleging that he was the owner of it and also of a house standing upon it; that in October, 1878, the defendants pulled down the house and carried away the materials. The plaintiff also claimed Rs. 114 as damages. The plaint was filed in September, 1879. The defendants answered that the property belonged to them, and that they had a right to pull down the house.

The Subordinate Judge found, on the evidence, that the plaintiff had originally held the property from the defendants; but that as he had occupied it for more than twelve years, without paying any rent to the defendants or acknowledging them as his landlords, he was entitled to be considered as the owner of it by adverse possession. He, accordingly, awarded the ground to the plaintiff with Rs. 20 as damages.

In appeal the District Judge affirmed the decree of the first Court. He observed:

* Second Appeal, No. 547 of 1881.

"On review of the evidence in the case I concur in the finding of the Subordinate Judge that the plaintiff held the house of the defendants for many years and possibly his father died there before him, but that from 1864 to 1878 he occupied it without paying any rent or in any way acknowledging them to be his landlords. Accordingly, the Subordinate Judge has held that he has acquired a title to it by adverse possession of more than twelve years, and decreed in his favour. The appellants contend that on the principle, 'once a tenant always a tenant,' his possession was not adverse, but on sufferance only, and could give him no right.

"The position of a plaintiff pleading the law of limitation is an unusual one. The question, however, is whether the defendants in 1878 could have ousted the plaintiff in a suit; because, if not, they could not better their position by taking the initiative and pulling down the house annexing the land. When did the plaintiff's possession become adverse?

"A landlord must sue to eject his tenant within twelve years from the determination of the tenancy. In this case there is no evidence as to the terms of the plaintiff's tenancy. Therefore, he must be held to have been a yearly tenant. The last rent he paid was in April, 1864. Assuming even that plaintiff continued to be a tenant on the same terms for the year 1865, if no rent was paid at the end of 1865, I apprehend that his possession then became adverse and the defendants could only eject him by suing before the end of 1877, which they did not do. Consequently, their remedy and right both became extinguished at the end of 1877, and in 1878 the plaintiff had acquired ownership by possession."

The defendants appealed to the High Court.

G. R. Kirloskar for the appellants.—Both the lower Courts found that the plaintiff occupied the property as tenant of the defendants until 1865. His subsequent possession, therefore, was erroneously held to be adverse to them. Mere non-payment of rent for a period of twelve years does not constitute adverse possession sufficient to give the plaintiff a title as against his landlords. The learned pleader cited *Huronath Roy* v. *Jogendur*

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TATIA v. SADASHIV.

Chunder Roy and others (1) and *Hari Vasudev* v. *Mahadaji Apaji* (2) in addition to the cases referred to in the judgment of the High Court.

The Hon. *V. N. Mandlik* for the respondent.

SARGENT, C.J.—The District Judge was wrong in holding that mere non-payment of rent was sufficient to constitute adverse possession : *Dadoba* v. *Krishna* (3); *Rungo Lall Mundul* v. *Abdul Guffoor* (4). The decree must, therefore, be reversed, except as to damages, which must be varied by substituting five rupees on account of moveables in the house for rupees twenty, and plaintiff's claim must be rejected (except as aforesaid) with costs throughout.

Decree reversed.

(1) 6 Calc. W. R., 218.
(2) 5 Bom. H. C. Rep., 85, A.C.J.
(3) *Supra*, p. 34.
(4) I. L. R., 4 Calc., 314.

APPELLATE CRIMINAL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

EMPRESS v. TUCKER, NORMAN AND THOMPSON.*

1882
September 28.

Indian Penal Code (XLV of 1860), *Sections* 151 *and* 188—*Unlawful assembly—Assembly of five or more persons—Lawful command—Criminal Procedure Code (X of* 1872), *Sections* 137 *and* 480—*Officers superior to officers in charge of a police station— Legality of their order—Evidence—Opinions of policemen.*

Where the object of only three persons was to draw a crowd and their action was such as was calculated to and did draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace, *held* that the gathering constituted an assembly of five or more persons within the meaning of section 151 of the Indian Penal Code (XLV of 1860), and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section.

An order given by an officer superior in rank to an officer in charge of police stations commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse, is a lawful order within the meaning of section 480 of the Code of Criminal Procedure (X of 1872).

The opinions of policemen as to whether certain acts would lead to a breach of the peace is relevant ; and the Court itself may properly look to the surrounding circumstances to enable it to form an opinion on the subject.

* Application for Revision, No. 186 of 1882.