

for the purpose of repairing it is prohibited by Rule 101 of the Rules made by Government under s. 214 (g) of the Land Revenue Code of 1879. That rule further provides that a space of two cubits in breadth all round each such mark is to be left untouched so as to prevent injury to the mark from water lodging in the cavities from which the earth is taken for the repairs. For the breach of this rule a penalty is provided by cl. 3(a) of Rule 111 of the rules made under s. 215 of the Code. It is under this last section that the accused has been convicted. We are of opinion that the conviction and sentence are illegal, as Rule 101 is not such a rule as can legally be made under s. 214 (g) of the Code. It is not a rule "for the administration of a survey settlement." Such a settlement is a settlement of the land revenue, and relates only to such matters as are referred to in chap. VIII of the Code. Boundaries and boundary-marks are dealt with in chap. IX, and penalties for injuring boundary-marks are specially provided by s. 125 of the Code, which gives no jurisdiction to Magistrates. We, therefore, reverse the conviction and sentence, and direct that the fine, if paid, be restored.

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Conviction and sentence reversed.

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[294] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

BHUTIA DHONDU (*Original Plaintiff*), *Appellant v. AMBO AND OTHERS* (*Original Defendants*), *Respondents.** [10th September, 1888.]

Landlord and tenant—Tenant remaining in occupation after passing a rajinama—Land Revenue Code (Act V of 1879), s. 74—Effect of the rajinama—Construction—Practice—Ejectment suit by owner of. "inter esse termini."

The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the *inam* village of D. In 1883 the third defendant executed a *rajinama* in the following terms which he gave to the receiver who had been appointed by the Court to manage the village:—"Up to the present time my father and I have been cultivating the land, but the land belongs to the *inamdar*. I have no title over it, and the *inamdar* can give it for cultivation to any one he pleases." Shortly after the date of this *rajinama* the *inamdar* gave the land to the plaintiff, who now sued to obtain it from the defendants, who had remained in possession.

Held, that the plaintiff was entitled to the land. The *rajinama* operated as a relinquishment of the tenancy by defendant No. 3 under s. 74 of Bombay Act V of 1879.

Held, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land.

[R., 4 Bom.L.R. 891 (806).]

SUIT in ejectment.

The plaintiff filed this suit in 1885 to obtain possession of certain land which formed part of the *inam* village of Dongoste. He alleged that it had been given to him by the *inamdar* in 1883-84, and that the defendants were in wrongful possession.

The land in question had been held by Pos Patil (defendant No. 3), after the death of his father. A receiver had been appointed by the

* Second Appeal, No. 43 of 1887.

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Court to manage the village, which had been under attachment, and on the 30th December, 1883, Pos Patil, (defendant No. 3), gave the following *rajinama* to the receiver:—"Up to the present time my father and I have been cultivating the land, but the land belongs to the *inamdar*. I have no title over it, and the *inamdar* can give it for cultivation to any one he pleases."

[295] Notwithstanding his execution of the above *rajinama*, Pos Patil (defendant No. 3) continued in possession of the land. He now denied the right of the *inamdar* to give it to the plaintiff, and claimed it as his ancestral property.

Defendants Nos. 1 and 2 were his sub-tenants. They contended that the land was his property.

The Subordinate Judge awarded the plaintiff's claim.

The defendants appealed to the District Judge, who reversed the lower Court's decree. He was of opinion that there had been no legal ouster of the defendants, or legal letting to the plaintiff on the part of the *inamdar* so as to entitle the plaintiff to bring the present suit, and that only the *inamdar* could sue for possession.

The plaintiff preferred a second appeal to the High Court.

Daji Abaji Khare, for the appellant (plaintiff).—The plaintiff was given the land by the *inamdar* after defendant No. 3 had handed in his *rajinama*. The *rajinama* operated as a relinquishment of tenancy within the contemplation of s. 74 (1) of the Revenue Code (Act V of 1879). The plaintiff became the owner of the land thus surrendered, and is entitled to possession of the land.

Ganesh Ramchandra Kirloskar, for the respondents (defendants):—So long as assessment is paid, the defendants cannot be ejected. The *inamdar* has no right to give away the land so as to make it [296] the property of the person to whom he gives it. Under s. 83 of the Revenue Code the defendants are entitled to the land. The right of an *inamdar* is only a right to receive the assessment. By the *rajinama* the right to cultivate only was given up by Pos Patil, (defendant No. 3). He did not surrender his ownership of the land. If a suit can be brought at all against the defendants, the *inamdar* alone can bring it.

JUDGMENT.

SARGENT, C. J.—We think that the *rajinama* passed by Pos Patil assuming it to be proved, operated as a surrender or relinquishment, to use the language of s. 74 of the Land Revenue Act of 1879. No particular words are essential to make a good surrender. See Woodfall on Landlord and Tenant, p. 298. The language of this *rajinama* shows, we think, a

(1) "Section 74.—An occupant may, by giving written notice to the Mamlatdar or Mahalkari, relinquish his occupancy, either absolutely or in favour of a specified person, provided that such relinquishment apply to the entire occupancy or to whole survey numbers or recognized shares of survey numbers. An absolute relinquishment shall be deemed to have effect from the close of the current year, and notice thereof must be given before the 31st March in such year, or before such other date as may be from time to time prescribed in this behalf for each district by the Governor in Council. A relinquishment in favour of a specified person may be made at any time.

"Where there are more occupants than one, the notice of relinquishment must be given by the registered occupant; and the person, if any, in whose favour an occupancy is relinquished, or if such occupancy is relinquished in favour of more persons than one, the principal of such persons must enter into a written agreement to become the registered occupant, and his name shall thereupon be substituted in the record for that of the previous registered occupant."

clear intention to give up the right of cultivation which he and his father had enjoyed up to that time. The Judge seems to think that it was not acted on by the *inamdar*, because he took the rent for 1883 and 1884 from Ambo, and because Ambo remained in possession in 1884 and 1885; but the rent was, we may assume, what was due in December, 1883, after the monsoon, and by the *rajinama* itself the *inamdar* is authorized to receive it. The fact that Ambo, a sub-tenant of the recognized occupant, remained in possession after the *rajinama* was passed, is no proof that it was not accepted by the *inamdar*.

As to the plaintiff's right to sue in ejectment, the Judge seems to think it is doubtful, as he had not been put in possession; but the owner of an "*inter esse termini*,"—as such an interest is designated at Common Law in England,—is entitled to bring ejectment. See Cole on Ejectment, pp. 72 and 287.

It has been said, however, that there is no finding that the *rajinama* is proved. It was produced after the issues were raised in the Court of the Subordinate Judge, but was proved by the receiver to have been passed to him, and Pos Patil was not put into the witness box, to deny it, nor was any application made in the Court of appeal to give evidence on the subject. We think, therefore, that we must regard it as proved.

As to the *inamdar's* right to the land, so as to confer a good title on the plaintiff, we think that, looking at the only issue [297] raised by the Judge in appeal, it could not have been intended to call it in question. Upon the whole, we must reverse the decree of the Court below and substitute that of the Subordinate Judge, with costs on the defendant in this and the Court below.

Decree reversed.

13 B. 297.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

HORMUSJI AND RATANJI, MINORS, BY THEIR GUARDIAN AND UNCLE BAPUJI (Original Plaintiffs), Appellants v. COWASJI AND OTHERS (Original Defendants), Respondents.* [2nd October, 1888.]

Fraudulent conveyance—Gift in fraud of creditors—Subsequent sale by creditors in execution of subject-matter of gift—Purchase at execution sale for inadequate price by means of fraud—Suit by donee to set aside sale for fraud—Rescission when granted.

In June, 1875, A. being in pecuniary difficulties executed a deed of gift of all his property in favour of his wife and minor sons, the plaintiffs. B., one of his then existing creditors, subsequently obtained a decree against him, and in execution sold part of the said property. At the sale the first defendant, by means of false representation, became the purchaser at an inadequate price.

In July, 1879, A. applied to have the sale set aside, on the ground of the fraud of the first defendant, but his application was rejected.

In 1884 the plaintiffs by their next friend sued to set aside the sale, contending that at the date of B's decree the property was theirs by virtue of the deed of gift of June, 1875, and further that the sale was void by reason of the defendants' fraud.

* Appeal, No. 138 of 1885.