

(1879) 05 CAL CK 0019

Calcutta High Court

Case No: None

Baboo Lukputty Singh
and Another

APPELLANT

Vs

Nursingh Narain
Singh

RESPONDENT

Date of Decision: May 12, 1879

Citation: (1880) ILR (Cal) 333

Hon'ble Judges: Broughton, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

Who, after stating the facts, continued: The Courts below have found that the debt has been satisfied, and that there is a surplus in the hands of the defendant irrespective of the rent still payable up to the end of the term. They have also found that the plaintiff is not entitled to re-enter before the end of Jeyt 1287 (1880), the time fixed in the original lease. With this latter part of their decision we are not now concerned.

2. The questions before us are: 1st, whether the plaintiff is entitled to an account at all; and, 2ndly, whether this suit is not premature? The Courts below having found that the plaintiff had no right of re-entry until 1287 (1880), it is contended that he had no cause of action in 1877, when this suit was brought.

3. The position which is taken by the defendant is, that, whereas the plaintiff was entitled to recover his rent from time to time under the Rent Law, and did not choose to do so, these rents are, to a great extent, irrecoverable now under the operation of the law of limitation: and that, therefore, the plaintiff is not entitled by a suit for an account to recover those rents which he could not recover in a suit framed under Act VIII of 1869. But it appears to me that this is a defence which the defendant is not equitably entitled to set up. It amounts to this, that he may keep in his own hands the money due from him to the plaintiff, and at the same time

require the plaintiff to pay to him the moneys due on his side.

4. The defendant as lessee was bound to tender to the plaintiff his rent as it fell due. Instead of doing so, he choose to keep that rent in his own pocket. The plaintiff might have insisted on the conditions of the lease being strictly carried out, but as the defendant had departed from them, he was justified in treating the rent withheld and not tendered as a set off against his own debt to the defendant. The defendant has by his conduct altered the arrangement under which he held the property: and, as a consequence, the plaintiff" is entitled now to come in and claim an account from him. Thus, whether or not the Courts below were right in holding that possession could not be recovered within the fixed term, it would seem that the plaintiff had a right to have an account taken in this suit.

5. In my opinion, therefore, this appeal ought to be dismissed with costs.