APPELLATE CIVIL.

Before Richardson and Walmsley JJ.

1918

April 4.

SECRETARY OF STATE FOR INDIA

v.

SHIB NARAIN HAJRA.*

Limitation—Bengal Tenancy Act (VIII of 1885) s. 104H, cl. (2), suit under —Limitation Act (IX of 1908), Parts II, III, ss 3 to 25, 29 (1) (b)— Civil Procedure Code (Act V of 1908) s. 80.

A instituted a suit under s. 104H of the Bengal Tenancy Act against the Secretary of State for India in Council. The latter pleaded limitation. The Courts below overruled this plea on the ground that A was entitled under s. 15, cl. (2) of the Limitation Act to a deduction of two months in respect of notice which s. 80 of the Civil Procedure Code, 1908, required.

Held, that the Bengal Tenancy Act being a Local Act, the saving clause in s. 29 (*b*) of the Limitation Act applied, and s. 15, cl. (2) thereof did not extend the limitation period of six months provided under s. 104H of the Bengal Tenancy Act.

Secretary of State for India v. *Gangadhar Nanda* (1) followed.

Dropadi v. *Hira Lal* (2) distinguished.

Held, also, that the provisions of Part III of the Limitation Act did affect periods of limitation prescribed in the Act itself by s. 3, which was the first and enacting section in Part III.

Held, further, that the language of s. 104H of the Bengal Tenancy Act was not ambiguous and in interpreting the words of a positive enactment such as this, any suggestion of hardship was out of place.

SECOND APPEAL by the Secretary of State for India in Council, the defendant.

* Appeal from Appellate Decree, No. 1707 of 1916, against the decree of W. N. Delevingne, District Judge of Midnapore, dated May 13, 1916, affirming the decree of Achinta Nath Mitra Subordinate Judge of Midnapore, dated Feb. 25, 1914.

(1) (1917) 27 C. L. J. 374. (2) (1912) I. L. R. 34 All. 496.

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The facts are shortly these: On the 19th December 1910 the plaintiffs instituted this suit under s. 104 H of the Bengal Tenancy Act against the Secretary of State for India in Council. The defendant contended, *inter-alia*, that the suit was barred by limitation and that as no proper notice as required by law was served on the defendant, the suit could not proceed. On the 25th February 1914, the Court of first instance decreed the suit and overruled the plea of limitation on the ground that the plaintiffs were entitled under s. 15, cl. (2) of the Limitation Act to a deduction of two months in respect of the notice required under s. 80 of the Civil Procedure Code, 1908. On the 13th May, 1916, the lower Appellate Court concurred in the above finding. From that decision the defendant preferred this second appeal to the High Court.

Babu Ram Charan Mitra, for the appellant.

Sir Rashbehary Ghose, *Babu Sajani Kanta Sinha* and *Babu Sarada Charan Maiti*, for the respondents.

Cur. adv. vult.

RICHARDSON J. This is an appeal by the Secretary of State in a suit brought against him by the plaintiffs under the provisions of section 104H of the Bengal Tenancy Act.

As the suit was not instituted within the period of six months prescribed by clause (2) of the section, it is contended for the Secretary of State and has been contended throughout, that the suit is out of time. The Courts below have overruled this plea of limitation on the ground that the plaintiffs are entitled under section 15 (2) of the Limitation Act of 1908 to a deduction of two months in respect of the notice which section 80 of the Civil Procedure Code required them

to give to the Secretary of State or his representative before they could present their plaint. The question is whether the view so taken is right or wrong.

The precise point which arises was determined in the Secretary of State's favour by the judgment of this Court in *Secretary of State for India* v. *Gangadhar* (1). The learned Government Pleader relies on that decision. On the other side, it has been strenuously urged by Sir Rashbehary Ghose that the decision is inconsistent with other decisions of the Court said to be in *pari materia* and that it ought to be referred to a Full Bench.

The argument turns on the division of the Limitation Act into parts with separate headings—Part II being headed "Limitation of Suits, Appeals and Applications" and Part III "Computation of Period of Limitation"—and on the effect of the saving clause enacted in section 29 (*1*) (*b*), "Nothing in this Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India." It is said that that clause applies expressly to the period of limitation and does not necessarily make Part III, relating to computation of the period, inapplicable to a special period of limitation prescribed by a special or local law. It is not suggested that the provisions in Part III can be aptly described as general principles of law but it is argued that it is a question of construction in each case whether the Legislature intended (without expressly saying so) that the special period of limitation specially prescribed should or should not be subject to those provisions.

Now, I confess that I find the argument at the outset somewhat difficult to follow. To my mind the

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provisions of Part III do affect the periods of limitation prescribed in the Act itself by section 3, which is the first and the enacting section in Part II. Section 3 begins with the words "Subject to the provisions contained in sections 4 to 25 (inclusive)" those sections comprising the remainder of Part II and the whole of Part III. Stopping there it hardly seems that Part II and Part III can be differentiated in the manner which the argument requires. The section as a whole enacts that subject to the provisions specified "every suit instituted . . . after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence." It may well be that where a period of limitation is prescribed by a special or local law, a suit need not be dismissed if limitation is not set up as a defence, but I find it difficult to say that the application of the provisions of Part III to such a period would not "affect" it.

We were referred, however, to a number of authorities, decided for the most part under Acts prior to the present Limitation Act. Under Act IX of 1871, the saving clause, relating to a period of limitation prescribed by a local or special law ran:—"Nothing herein contained shall affect such law." Under Act XV of 1877, it was, "Nothing herein contained shall affect or alter the period so prescribed." Apparently it was held that this change in the language had the effect of making the provisions in the latter Act, relating to the computation of the period of limitation, applicable, in the absence of any reason for holding the contrary, to special and local laws prescribing special periods of limitation. [Compare *Purran Chunder Ghose* v. *Mutty Lall* (1) decided under Act IX of 1871, with the following cases decided under Act

(1) (1878) I. L. R. 4 Calc. 50.

XV of 1877: *Behari Loll* v. *Mungolanath* (1), *Golap Chand* v. *Krishto Chunder* (2), *Hossein* v. *Donzelle* (3), *Khoshelal* v. *Gunesh* (4), *Nijabutoolla* v. *Wazir Ali* (5), *Khetter Mohun* v. *Dinabashy* (6)]. These cases or some of them have been cited in later cases as authority for the rule of construction which they appear to lay down. But the rule has by no means gone unchallenged.

It was not followed in *Girija* v. *Patani* (7) in regard to suits for arrears of rent under Bengal Act VIII of 1869. In connection, however, with previous cases, a distinction was there suggested between the application of the provision corresponding to that contained in section 4 of the present Limitation Act and the application of other provisions which have the effect of extending the period of limitation in particular circumstances. Section 4 provides for the case where the Court is closed when the period of limitation expires and extends the period to the day when the Court re-opens. The distinction bore fruit and led to what may be roughly called the rule of the *dies non*, laid down in *Shooshee Bhusan* v. *Gobind Chunder* (8) and *Peary Mohun* v. *Anunda Charan* (9). Even this rule has not escaped criticism from high authority: *Ahad Baksh* v. *Sheikh Bahar* (10). *Shevdas* v. *Narayen* (11). The rule, however, has received legislative recognition in the General Clauses Acts in respect to Acts passed by the Indian Legislative Council since 1887 (section 7, Act I of 1887, section 10 of Act X of 1897: *Cf.* also Bengal Act I of 1899, section 12).

(1) (1879) I. L. R. 5 Calc. 110.
(2) (1879) I. L. R. 5 Calc. 314.
(3) (1880) I. L. R. 5 Calc. 906.
(4) (1881) I. L. R. 7 Calc. 690.
(5) (1882) I. L. R. 8 Calc. 910.
(6) (1883) I. L. R. 10 Calc. 265.
(7) (1889) I. L. R. 17 Calc. 263.
(8) (1890) I. L. R. 18 Calc. 231.
(9) (1891) I. L. R. 18 Calc. 631.
(10) (1912) 16 C. W. N. 721.
(11) (1911) I. L. R. 36 Bom. 268.

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In *Nagendro* v. *Mathura* (1), a Full Bench held that section 14 of the Act of 1877, corresponding to the same section of the present Act, had no application to suits for arrears of rent under Act X of 1859.

In *Abdul Hakim* v. *Latifunnessa* (2), it was similarly held that section 14 did not apply to a suit brought under section 77 of the Registration Act (III of 1877). It was said that *Khetter Mohun* v. *Dinabashy* (3) could not stand beside the Full Bench case, *Nagendro* v. *Mathura* (4). The decision in *Mutabbar* v. *Sasi Bhusan* (5) is referable like *Nijabutoolla's* Case (6) to the rule of the *dies non*.

The rule in the wider form has not fared well at the hands of Full Benches in Madras: see *Venkata* v. *Chengadu* (7), *Veeramma* v. *Abbiah* (8), and *Vattakulakaran* v. *Secretary of State for India* (9). The decision of the learned Judges in *Srinivas* v. *The Secretary of State* (10) seems to me, if I may say so with respect, to be inconsistent with the Full Bench decisions at any rate those in the two later cases.

In *Guracharya* v. *The President, Belgaum Municipality* (11), the earlier Calcutta cases were followed but in *Queen-Empress* v. *Nageshappa* (12) more sober counsels prevailed. This last case, however, was under the Criminal Procedure Code.

The case of *Moro Sadashiv* v. *Visaji* (13) relates to minors. It was not followed in *Ramana* v. *Babu Reddi* (14) where the point was more fully considered. Both these were decisions on the Civil Procedure Code.

(1) (1891) I. L. R. 18 Calc. 368.
(2) (1903) I. L. R. 30 Calc. 532.
(3) (1883) I. L. R. 10 Calc. 265.
(4) (1891) I. L. R. 18 Calc. 368.
(5) (1911) 16 C. W. N. 20.
(6) (1882) I. L. R. 8 Calc. 910.
(7) (1888) I. L. R. 12 Mad. 168.
(8) (1894) I. L. R. 18 Mad. 99.
(9) (1909) I. L. R. 34 Mad. 505.
(10) (1912) I. L. R. 38 Mad. 92.
(11) (1884) I. L. R. 8 Bom. 529.
(12) (1895) I. L. R. 20 Bom. 543.
(13) (1891) I. L. R. 16 Bom. 536.
(14) (1912) I. L. R. 37 Mad. 186.

It is true that in *Dropadi* v. *Hiralal* (1), where the question arose under the Provincial Insolvency Act (III of 1907), a Full Bench of the Allahabad High Court seems to have returned to the earlier cases for guidance. But of the six cases to be found in the Calcutta Series from 5 Calcutta to 10 Calcutta, four are referable to the rule of the *dies non*, one [*Nijabutoolla* (2)] has been held to be overruled and the remaining one, *Behari Lal* (3), also falls in view of the Full Bench decision in *Nagendra's Case* (4). Since that decision and the previous decision in *Girija's Case* (5) the general provisions of the Limitation Act have not been applied to the various Rent Acts which have been in force in Bengal.

Some stress was laid by Sir Rashbehary on the ruling of the Privy Council in *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy* (6). That decision turned on the construction of the Civil Procedure Code of 1859 (Act VIII of 1859) in reference to the Limitation Act of the same year (Act XIV of 1859). These Acts of course were clothed in their own language. The applicability of the general provisions of the present Limitation Act to special periods of limitation prescribed by the present Civil Procedure Code raises another question which may perhaps depend in some degree on the further question whether the Civil Procedure Code is to be classed as a "special" or "local" law within the meaning of the saving clause in section 29 (*b*) of the present Limitation Act [*Dropodi* (1)]. In any case the decision relied upon has no bearing on the question before us which arises under the Bengal Tenancy Act. There is no dispute that

(1) (1912) I. L. R. 34 All. 496.
(2) (1882) I. L. R. 8 Calc. 910.
(3) (1879) I. L. R. 5 Calc. 110.
(4) (1891) I. L. R. 18 Calc. 368.
(5) (1889) I. L. R. 17 Calc. 263.
(6) (1876) I. L. R. 1 Calc. 226, 241; L. R. 3 I A. 7, 24.

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that is a Local Act to which the saving clause of the Limitation Act applies.

Moreover, whatever may be said about other Acts, in view of sections 184 and 185 and Schedule III, the Bengal Tenancy Act has always been regarded as a self-contained Code on the subject of limitation, even as regards periods of limitation prescribed by it to which sections 184 and 185 are inapplicable: *Akhoy Kumar* v. *Bejoy Chand* (1), *Kamal* v. *Krishna* (2), *Radhashyam* v. *Dinabundhu* (3).

On the question whether an Act embodying the law and particular subject is or is not complete in itself, there are always the observations of Lord Herschell in *Vagliano* v. *Bank of England* (4), to which Lord Macnaghten referred in connection with section 188 of the Bengal Tenancy Act in the course of the argument in *Jatindra* v. *Prasanna* (5).

The language of section 104 in the present respect is not ambiguous and in interpreting the plain words of a positive enactment such as this, any suggestion of hardship is out of place. It was argued that if the period of limitation had been two months, the plaintiffs could not have sued at all. Possibly that is why the Legislature chose the longer period of six months. If the prescribed period had been twelve months instead of six, the same plea of hardship would have been put forward.

In my opinion, therefore, the decision in the unreported case, which is binding on us is not inconsistent, but consistent, with the current of authority, and it would serve no useful purpose to make a reference to a Full Bench.

The learned Government Pleader informed us that subject to the maintenance of the rent assessed by the

(1) (1902) I. L. R. 29 Calc. 813.
(2) (1909) 10 C. L. J 517.
(3) (1913) 18 C. W. N. 31.
(4) [1891] A. C. 107.
(5) (1910) I. L. R. 38 Calc. 270 L. R. 38 I. A. 1, 4.

Settlement Officer, he had no objection to the plaintiffs being described in the Record of Rights as occupancy raiyats in place of the present description "tenure holders." It may be well, however, to add that if there are tenants under the plaintiffs, they are not parties to this litigation and are not bound by the result of it.

The result is that this appeal should be allowed in part. The judgments and decrees of the Courts below must be discharged so far as they vary the rent settled by the Settlement Officer, but the Record of Rights should be altered in the manner agreed to by the Government Pleader. No order as to costs.

WALMSLEY J. I agree.

L. R. *Appeal allowed in part.*

APPELLATE CRIMINAL.

Before Sanderson C. J. and Beacheroft J.

BENI MADHAB KUNDU

v

EMPEROR*.

1918

May 3.

Verdict—Juror speaking to an outsider without the leave of the Court after their retirement to consider the verdict—Legality of the verdict—Criminal Procedure Code (Act V of 1898) s. 300.

The verdict of the jury is vitiated by the mere fact of one of them having, without the leave of the Court, and after their retirement to consider the same, spoken to, or held any communication with, a person not a juror.

It is not necessary for the Court to enquire into the nature of the subject matter of the conversation or communication.

* Criminal Appeal, No. 117 of 1918, against the order of H. C. Maitland, Additional Sessions Judge of Hooghly, at Howrah, dated Jan. 30, 1918.