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is sold privately from those where it is sold by public auction; or, on the other hand, to distinguish cases where a tenure is severed by different portions of its area being sold to different persons, from those where it is sold to different persons in undivided shares.

In all cases of this kind, the entirety of the joint interest should be considered as severable at the option of the purchaser; and it would lead to most inconvenient results, and to the depreciation of property thus sold in different lots, if the purchasers of such lots were compelled to collect their rents in one entire sum, conjointly with one another, or with the owners of the unsold shares or portions.

In this particular case, as the plaintiffs did not take any proper steps to make arrangements with the tenant, or to obtain an apportionment of the rent, the learned Judge of this Court was right in dismissing the suit; and this appeal must, consequently, be dismissed with costs, including those of the hearing before the Full Bench.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice White and Mr. Justice Maclean.*

HOSSEIN ALLY (DEFENDANT) *v.* DONZELLE (PLAINTIFF).\*

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March 15.

*Limitation—Beng. Act VIII of 1869, s. 52—Stay of Execution—Payment into Court—Extension of Time when Court is closed—Decree—Suit for Arrears of Rent.*

When a tenant has been sued for arrears of rent and a decree obtained against him under Beng. Act VIII of 1869, s. 52, which provides for the stay of execution if the amount of the arrears, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, and the Court is closed on or before the last day of the period so limited, the

\* Appeal from Order, Nos. 207, 208, 209, 210, and 211 of 1879, against the order of J. M. Lewis, Esq., Judge of Bhagalpore, dated the 13th August 1879; affirming the order of Baboo Ramdhur Mookerjee Roy Bahadur, Munsif of Muddepoora, dated the 5th April 1879.

tenant is at liberty to pay into Court the arrears, interest, and costs on the first day that the Court reopens; and if he does so, execution must be stayed.

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THIS was one of several cases instituted under s. 52 of Beng. Act VIII of 1869, by a Mrs. Benjamin Donzelle, in the Court of the Munsif of Muddepoora, for the purpose of ejecting several of her ryots for nonpayment of rent. The circumstances in each case were identical. On the 23rd of September 1878, the Munsif made a decree in favor of Mrs. Donzelle, by which he ordered the defendant, Sheikh Hossein Ally, to pay to Mrs. Donzelle the arrears of rent due from him within fifteen days of the date of the decree, and ordered that, on his failure to do so, he should be ejected from his holding. This order was made just two days before the closing of the Munsif's Court, which, as was well known, would not re-open till the 28th of October 1878. On the 28th of October, the first day the Court reopened, the defendant deposited the amount of the arrears decreed against him, together with interest and costs of suit. After this deposit had been made, Mrs. Donzelle applied to execute her decree by ejecting the defendant from his holding, on the ground that the amount decreed had neither been paid to her, nor paid into Court within fifteen days of the date of the decree.

The defendant objected that, by the terms of s. 52, Beng. Act VIII of 1869, he was entitled to have execution of the decree against him stayed if he paid the amount decreed, with interest and costs, into Court within fifteen days of the date of the decree; that the Court having closed two days after the date of the decree, and remained closed until the 25th of October, he had done all he was bound to do to entitle him to claim stay of execution, when he paid the decreed amount with interest and costs into Court directly it re-opened.

The Munsif overruled the objection of the defendant, and ordered steps to be taken to carry the decree into execution, and the defendant was accordingly ejected from his holding.

The defendant appealed against this order to the Judge of Bhagalpore, who thought himself bound by a Full Bench decision of the High Court, which appears to have been quoted before him, and reluctantly confirmed the order of the Munsif.

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and dismissed the plaintiff's appeal with costs. He marked, however, his sense of the injustice which he thought himself compelled to sanction by appending to his judgment the following remark:—"The attention of Munsifs will be drawn to the hardship which may result from the present state of the law, and, when giving a decree under s. 52 of the Rent Law, they will do well to enquire whether the Court is about to be closed; and if so, they ought to extend the time of grace so as to cover the time during which the Court is closed."

The defendant appealed to the High Court.

*Baboo Oomakally Mookerjee* for the appellant.

No one appeared for the respondent.

The judgment of the Court (WHITE and MACLEAN, JJ.) was delivered by

WHITE, J.—In this case the appellant (who is the defendant in the first Court) was sued under s. 52 of Beng. Act VIII of 1869 for the purpose of being ejected, and also for the recovery of certain arrears of rent.

On the 23rd September 1878, the first Court passed a decree for his ejection, and, as directed by the section, the decree specified the amount of the arrears of rent due from the defendant.

The section further enacts that "if the amount of the arrears, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed." The date of the decree was the 23rd September 1878, and the Court closed on the 26th of that month for the Poojah holidays, and did not open again till the 28th October 1878. The defendant on that day appeared in Court, and deposited the amount of the arrears, together with interest and costs. Notwithstanding the deposit having been made, the decree-holder applied to the Munsif to execute the decree by ejecting the defendant, on the ground that the payment was not made in due time. The Munsif, being of that opinion, ordered execution to issue.

On appeal to the District Judge he upheld the Munsif's decision. He considered that it was a hard case, but that, on the face of a certain Full Bench Ruling, which he refers to but does not cite, held, that the Munsif's order must stand, and that he could not interfere. We have referred to the Full Bench Ruling, which is reported in 2 W. R., 21 (1), and we think that it has no application to the case now before us. The real question which we have to deal with is as to the construction which is to be put upon s. 52 of Beng. Act VIII of 1869. It is to be observed that s. 52 gives a ryot the power of staying execution of a decree for ejection upon paying the amount of arrears decreed, together with interest and costs of suit, into Court, and allows him fifteen days for that purpose. We think that he is entitled to have a clear fifteen days for making the payment. In the present case the decree was made only two days before the Court closed. To hold that he must make the payment within those two days, as the Courts below appear to think, is to deprive him of thirteen of the days awarded him by the legislature. When the fifteenth day arrived he could not possibly deposit the money, because the Court was shut, and there was no officer to receive the money. The Court was legally closed for the Poojah holidays; but the money was paid in by the defendant on the very first day the Court reopened. We think that, under these circumstances, the defendant was entitled to stay of execution. A case analogous to the present one was decided by Sir B. Peacock, Chief Justice, and Mr. Justice Loch—*Dabee Rawoot v. Heeramun Mahatoon* (2). It was a case under the Regulation relating to the foreclosure and redemption of mortgages, which was construed by these Judges to give a mortgagee the option either of depositing the mortgage-money and costs in Court within a year from the date of the notice to foreclose, or of tendering it to the mortgagee. The mortgagor in the decision cited chose to adopt the former course,—namely, to deposit the money in Court. The 25th November was the last day for depositing the money, but the Court was not open on that day, and he

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(2) 2 W. R., 223.

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DONZELLE, deposited it on the 28th, which was the first day of the reopening of the Court. Those learned Judges held, that the mortgagor had saved the estate from foreclosure by depositing the money on the first day after the 25th November on which the Court was open, and they came to this decision, although Sir B. Peacock doubted whether the Court had been legally closed. Our decision is also in accordance with the English authorities. In *Mayer v. Harding* (1), the appellant, who wished to appeal against an order of certain Justices of the Peace, and who was bound by a Statute to lodge in the Queen's Bench the case signed by the Justices within three days after he had received it from them, got the case on Good Friday, when the Queen's Bench was closed, and lodged it on the following Wednesday, when the Division Bench reopened. The Court held, that as the offices were closed from Friday to the Wednesday, the appellant had transmitted the case as soon as it was possible to do so, and had sufficiently complied with the requirements of the Statute. In passing the decision the Court acted upon the rule that the law will not compel the doing of impossibilities.

We, accordingly, reverse the order of the lower Court, and direct that the defendant, if he has been ejected, which we are informed that he has been, should be restored to possession, and that the plaintiff should have liberty to take out of Court the money deposited by the defendant.

The appeal is allowed with costs.

*Appeal allowed.*

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*Before Mr. Justice White and Mr. Justice Maclean.*

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March 19.

SARODA PERSHAD CHATTOPADHYA (DEFENDANT) v: BROJO NATH BHUTTACHARJEE (PLAINTIFF).\*

*Limitation Act (XV of 1877), s. 10 and sched. ii, art. 120—Cestui que Trust, Suit by, against Trustee.*

A alleged that his father B had, before his death, placed in the hands of C a certain sum of money, and had also transferred to C his landed property

\* Appeal from Appellate Decree, No. 888 of 1879, against the decree of O. D. Field, Esq., Judge of East Burdwan, dated the 9th April 1879 reversing the decree of Baboo Radha Kisto Sen., Munsif of Raneergunge dated the 6th January 1878.

(1) L. R., 2 Q. B., 410.