

1879

SONAKA
CHOWDHRAIN
v.
BHOOBUNJOY
SHARMA.

under the Stamp Act. The fines to which it does apply are those which may be levied under the Code itself.

The penalty, which has been imposed upon the plaintiffs, could not be enforced by levy or in any other way. The only effect of the plaintiffs not paying it, would have been that the bond could not have been admitted in evidence.

There is no doubt that, if the plaintiffs had refused to pay the penalty, and the bond had consequently been rejected, the plaintiffs, if the Judge was wrong, might have appealed to this Court, upon the ground that he had committed an error of law in refusing to receive the document in evidence; and it certainly seems rather hard that, because the plaintiffs submitted to the judgment of the Court and paid the penalty, they should be without redress in a Court of appeal.

But such is the law, as we read it, and we consider that the only remedy which the plaintiffs have is to apply to the Revenue Board. We have had the opinion of that Board read to us. It seems to be of opinion, that the bond was properly stamped in the first instance, and if that is so, there is no reason why the plaintiffs should not obtain from the Board the relief which we cannot give them here.

Any opinion of ours as to what is the proper stamp would of course be extra-judicial, because, for the reasons which we have already given, we think we have no right to entertain the question at all.

The cross-objection is, therefore, disallowed.

Cross-appeal disallowed.

Before Mr. Justice Jackson and Mr. Justice McDonell.

1879

April 23.

GOLAP CHAND NOWLUCKHA (PLAINTIFF) v. KRISHTO CHUNDER DASS BISWAS (DEFENDANT).*

Limitation—Beng. Act VIII of 1869, s. 30—Act IX of 1871, s. 6—Act XV of 1877, ss. 5 and 6.

Although a suit to recover moneys or obtain papers or accounts from an agent, must, under s. 30 of Beng. Act VIII of 1869, be instituted within

* Appeal from Appellate Decree, No. 1867 of 1878, against the decree of A. J. R. Bainbridge, Esq., Judge of Moorsshedabad, dated the 1st August 1878, affirming the decree of Baboo Grish Chunder Chatterjee, First Munsif of Berhampore, dated the 2nd February 1878.

one year from the determination of the agency, yet, if on the last day of such year the Courts be closed, the suit will, under s. 5 of Act XV of 1877, not be barred if filed on the first day of the reopening of the Court.

Section 6 of Act IX of 1871 and s. 6 of Act XV of 1877 compared.

1879
 GOLAP CHAND
 NOWLUCKIA
 v.
 KRISHTO
 CHUNDER
 DASS BISWAS.

THIS was a suit instituted by the plaintiff to recover from the defendant moneys that had been in his hands as an agent, and for the delivery of accounts and papers of the plaintiff which had been and remained in the hands of the defendant as agent of the plaintiff. It was stated in the plaint, which was filed on the 8th of November 1877, that the defendant had been the agent of the plaintiff, and that such agency had determined on the 6th of Kartic 1283 (corresponding with the 21st of October 1876). It was admitted that the Court in which the plaint had to be filed, was closed on the 21st of October 1877; and that the plaint was in fact filed on the first day on which the Court had reopened.

The Court of first instance and the lower Appellate Court were of opinion, that the suit was barred under s. 30 of Beng. Act VIII of 1869, and that the plaintiff could not claim the benefit of s. 5 of the Limitation Act—Act XV of 1877—which enacts that: “If the period of limitation prescribed for any suit, appeal, or application expires on a day when the Court is closed, the suit, appeal, or application may be instituted, presented, or made on the day that the Court reopens.” The two lower Courts held that the effect of s. 6 of the Limitation Act was to prevent that Act from applying to cases under the Rent Law, and that “the plaintiff could not take advantage of” the “lenient provisions of” the latter Act “against the strict provisions of the special law,” and accordingly dismissed the plaintiff’s suit as barred by s. 30 of Beng. Act VIII of 1869.

Against this decision the plaintiff appealed to the High Court.

Baboo Saroda Churn Mitter for the appellant.

Baboo Mutty Lall Mookerjee and *Baboo Guru Dass Banerjee* for the respondent.

Baboo S. C. Mitter.—The lower Courts have omitted to note the distinction between the language of s. 6 of Act IX

1879
 GOLAP CHAND
 NOWLUKHA
 v.
 KRISHTO
 CHUNDR
 DASS BISWAS.

of 1871 and s. 6 of Act XV of 1877. In the first Act the words are—"when by any law not mentioned in the schedule hereto annexed, and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suits, appeals, or applications, *nothing herein contained shall affect that law.*" In the later Act the language is the same till we come to the last two lines, which there run—"nothing herein contained shall affect or alter the period so prescribed." Why is the language different? Clearly to give a plaintiff the benefit of the rules contained in the Act of 1877 for *computing the period* within which his suit is to be brought.

The Acts of 1871 directed that the special law shall not be affected; the Act of 1877, that the *period* prescribed shall not be altered or affected. The period within which such a suit must be brought remains as before, but subject to the rule that, if the Court is closed on the day on which such period expires, the suit may be instituted on the reopening of the Court.

The judgment of the Court was delivered by

JACKSON, J.—The plaintiff's suit has been dismissed on the ground of limitation, the Munsif not having taken the trouble to read with care the terms of the present Limitation Act, XV of 1877. He says:—"The plaintiff admits that his cause of action against the defendant accrued from the date of his discharge on the 6th Kartic 1283. This suit, brought after the lapse of one year from the above date, is evidently barred. The plaintiff cannot have extension of the time allowed by the special law for the realization of rent, because the Court remained closed on the 6th Kartic 1284, and subsequent dates. The new Limitation Act does not apply to cases under the Rent Law."

Now, it is quite inaccurate to say that the new Limitation Act does not apply to cases under the Rent Law. What the Act says is this:—"When by any special or local law, now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal, or application, nothing herein

contained shall affect or alter the period so prescribed,"—that is to say, the time within which the suit is to be brought remains unaffected by the Act of 1877. But nothing forbids the application of the other provisions, and specially of the provisions for computing the period of limitation contained in Part III of the new Act. The 6th section differs in this particular from the corresponding section of the old Act, which says—"nothing herein contained shall affect such law."

The intention of the Legislature to give to the persons suing the benefit of the rules contained in the present Act for computing the period within which a suit is to be brought is thus manifest. This suit, therefore, being brought on the first day after the Court reopened, was in time. The judgments of the Courts below, which dismissed the suit on the ground of limitation, are set aside, and the case is remanded to the Munsif's Court for trial on the other issues. The costs of this appeal will follow the result.

Case remanded.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

KALLIDA PERSHAD DUTT (ONE OF THE DEFENDANTS) v. RAM HARI CHUCKERBUTTY (PLAINTIFF).*

1879
May 6.

Suit for Possession—Limitation—Beng. Act (VIII of 1869), s. 27—Documents filed with the Record, but not proved.

Where a landlord does not himself directly take steps to interfere with the rights of cultivation of his tenants, but does so through other persons, whose acts he may, if it so pleases him, afterwards ignore, he is not in a position to set up a special plea of limitation under the Rent Law (*Beng. Act VIII of 1869, s. 27*).

Documents which have not been proved, but simply filed in accordance with a usage in the mofussil, should not be put up with the record. It is the duty of a Judge to pass over such documents as unproved, but it is also the duty of the pleader of the party, against whom they are intended to be used, to insist that they should not remain on the record at all.

* Appeal from Appellate Decree, No. 1826 of 1878, against the decree of H. Muspratt, Esq., Judge of Sylhet, dated the 9th July 1878, affirming the decree of Baboo Nilmadhub Samunto, First Sudder Munsif of that District, dated the 11th December 1876.