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ss. 25 and 37, merely because his estate happens to be sublet to a number of tenure-holders. The only excepted case is where there is a special agreement, and no such special agreement is pleaded in the present case. Under these circumstances, we think the judgment of the Subordinate Judge must be set aside, and this case must be remanded in order that he may proceed to do that which the law empowers him to do. The costs will be assessed on the same scale on which the lower Court has assessed them, and will abide the result.

*Appeal allowed and case remanded.*

*Before Mr. Justice Mitler and Mr. Justice Maclean.*

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 June 11.

KHOSHELAL MAHTON AND ANOTHER (DEFENDANTS) v. GUNESH DUTT,  
*alias* NANHOO SINGH, AND ANOTHER (PLAINTIFFS)

*Limitation—Time for presenting Pleint—Beng. Act VIII of 1869, s. 31—  
 Limitation Act (XV of 1877), s. 5.*

The provisions of s. 5 of the Limitation Act (XV of 1877) apply equally to suits under the Bengal Rent Act (Beng. Act VIII of 1869).

In a suit for rent, where it appeared that a deposit had been made in Court under the provisions of the Bengal Rent Act (Beng. Act VIII of 1869), and that the six months allowed by s. 31 of that Act for the purpose of instituting a suit had expired on a day when the Court was closed for an authorized holiday, but that the plaint had been filed on the first day the Court re-opened,—

*Held*, that the provisions of s. 5 of the Limitation Act (XV of 1877) applied to such cases, and that, consequently, the suit was not barred.

*Gopal Chaud Nowluchha v. Krishto Chunder Dass Biswas* (1) and *Hossein Ally v. Donzelle* (2) followed.

*Purran Chunder Ghose v. Mully Lall Ghose Juhira* (3) dissented from.

THIS suit, which was instituted on the 3rd December 1879, was brought to recover arrears of rent for the years 1284 to

\* Appeal from Appellate Order, No. 297 of 1880, against the order of H. Beveridge, Esq., Judge of Patna, dated the 24th June 1880, reversing the order of Baboo Sheo Surun Lal, Munsif of Behar, dated the 13th February 1880.

(1) I. L. R., 5 Calc., 314,

(2) *Ibid*, 906.

(3) I. L. R., 4 Calc., 50.

1286 (corresponding with the years 1876 to 1879) in respect of Mouzas Bargawan, Bozerg, Khord, &c., Pargana Behar, Zilla Patna. The plaintiffs alleged that they held and owned a share in the lands under and by virtue of a purchase, and that collections and realizations from the said share had continued to be made from before, and management and settlement thereof since, the cultivation season of 1286 F. S. (1877-1878) separately from the other shareholder; that, previous to that date, settlements at different rates had been entered into between their vendor and his co-shareholder and the cultivators, but that, in 1285 (1877-1878), the tenants, of whom the principal defendant was one, agreed, by a fresh settlement, for the plaintiffs' exclusive share, to pay an additional eight annas per bigha; that, after such settlement, the defendant and the other tenants had, at the instigation of their co-shareholder, ignored such settlement, and deposited rent in the Civil Court, misstating the arrears and the rents actually due; and that they first came to know of such deposit on the 25th Jeyt 1286 (3rd June 1879). The second defendant, being the son of the principal defendant, and living jointly and in commensality with him, had been joined as a party; but he filed a written statement denying all interest in the land in question. Khoshelal Mahton, the principal defendant, denied any such fresh settlement. He alleged and pleaded payment in full up to the year 1286 (1877-1878), and with respect to the rent due for that year, stated that it had been deposited in Court under the provisions of the Rent Act.

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The Munsif dismissed the suit, on the ground that it was barred under s. 31 of Beng. Act VIII of 1869, and that the Limitation Act (XV of 1877) did not apply to such suits; and although he found that the rent in respect of 1286 had been deposited on the 3rd Magh 1286 (11th January 1879) before it was due, he held that that did not alter the case.

The Judge of the lower Appellate Court, while agreeing with the original Court on the point of limitation, had that question arisen, held, that no such point arose, and that the deposit by the defendant was not a deposit under the law, and that therefore s. 31 of the Rent Act did not apply. He considered that,

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as the rent was not due till the 1st Assar 1286 (5th June 1879), and as it was deposited on the 3rd Magh 1286 (11th January 1879), it was not a deposit in compliance with the law, as the plaintiffs were not bound to accept the rent before it was actually due; and that, as the provisions of s. 31 of Beng. Act VIII 1869 were not applicable, the plaintiffs were not barred by limitation from recovering the rent for the previous years, although they sued more than six months after the date of the deposit.

He, accordingly, reversed the decree of the lower Court, and remanded the case under the provisions of s. 562 of the Civil Procedure Code for trial on its merits.

The defendants now specially appealed to the High Court against that decision.

Mr. *H. C. Mendes* for the appellants.

Baboo *Mohesh Chunder Chowdhry* for the respondents.

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

MITTER, J.—The plaintiffs instituted this suit on the 3rd December 1879 to recover arrears of rent for the years 1284, 1285, and 1286 F. S. (corresponding with the years 1876 to 1879). The defendants alleged, that the rents for the years 1284 and 1285 (1876—1878) had been paid in full, and that of the year 1286 (1878-79) having been deposited under the provisions of the Rent Act, the notice of such deposit was given to the plaintiffs on the 31st May 1879. They pleaded that the suit, not having been instituted within six months from the 31st May 1879, was barred under the provisions of s. 31 of the Rent Act.

The Munsif held, that the suit was barred, while the Judge on appeal came to the contrary conclusion. The latter officer based his decision on the ground that the deposit of the rent of the year 1286 (1878-79) was not legal under the Act, because it had not then become due.

It is contended before us, that the Judge is wrong in assuming without evidence that the rent was not due. Although we are of opinion that the Judge ought not to have made any assumption of fact without taking evidence, still we think upon

another ground that his conclusion is right. The last day of the six months from the 31st May 1879 fell upon an authorized holiday, and the suit was instituted on the first day the Court re-opened.

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Under these circumstances, we think that the suit should be deemed to have been instituted within the time limited by the law. The days during which a Court remains closed should be considered as non-existent. It is but reasonable to hold this, otherwise great injustice might be done. Take for instance a case like this. A plaintiff comes to file his plaint on the last day allowed by law, and finds that the Court has been closed unexpectedly. It would be manifestly unjust to throw out his plaint, if filed on the next day the Court re-opened, as barred by limitation.

This Court has acted upon this principle in the cases of *Hossein Ally v. Donzelle* (1) and *Dabee Rawoot v. Heeramun Muha-ton* (2). We are aware of a contrary ruling in *Purran Chunder Ghose v. Mutty Lall Ghose Jahira* (3). This last-mentioned case was decided when Act IX of 1871 was the general Limitation Act. That law is no longer in force, and it has been decided under the present Limitation Act (XV of 1877), that the provisions of s. 5, which embody the principle laid down above, would apply to suits under the Rent Act; see *Golap Chand Nowluckha v. Krishto Chunder Dass Biswas* (4).

We are, therefore, of opinion that this appeal must fail. We accordingly dismiss it with costs.

*Appeal dismissed.*

(1) I. L. R., 5 Calc., 906.

(3) I. L. R., 4 Calc., 50.

(2) 8 W. R., 228.

(4) I. L. R., 5 Calc., 314.