APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Morris, and Mr. Justice Prinsep.

GUREEBULLAH SIRKAR (JUDGMENT-DEBTOR) *v.* MOHUN LALL SHAHA AND OTHERS (DECREE-HOLDERS).* 1881 *April* 2.

Limitation—Instalments—Decree Payable by Instalments—Rent Decree—Beng. Act VIII of 1869, *s.* 58—*Construction of Statutes.*

Per GARTH, C. J., and MORRIS, J. (PRINSEP, J., dissenting).—The words "from the date of such judgment" in s. 58 of Beng. Act VIII of 1869, should be read as if they were "from the date when the rent is adjudged to be payable."

Per PRINSEP, J.—The "date of such judgment" in s. 58 of Beng. Act VIII of 1869, means the date on which the judgment was delivered.

Where the terms of an Act are clear and plain, it is the duty of the Court to give effect to it as it stands.

THIS was an application for execution of a money-decree for Rs. 100, which was passed against the defendant, under s. 30 of Beng. Act VIII of 1869, on the 24th of January 1876. The decree directed the payment of the money by seven instalments, the first to be paid on the 12th of February 1876, and the last on the 12th of August 1879. A previous application, which was made on the 10th of January 1879, was struck off on the 7th of March 1879. The present application was made on the 5th of April 1879.

The Court of first instance dismissed the suit as barred by limitation, but this decision was reversed on appeal by the Judge of Rungpore, who held, *first*, that the application of the 5th of April was not a substantive application for execution, but merely a continuation of the application of the 10th of January 1876, which had been struck off improperly; and

Appeal from Appellate Order, No. 32 of 1880, against the order of H. Beveridge, Esq., Judge of Rungpore, dated the 15th September 1879, reversing the order of Baboo Gopee Mohun Mookerjee, Munsif of Gaibandha, dated the 5th July 1879.

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secondly, that, notwithstanding the terms of s. 58 of Beng. Act VIII of 1869, limitation ran from the default in payment of the instalments, and not from the date of the judgment, citing the case of *Behari Lall Mookerjee* v. *Mungola Nath Mookerjee* (1).

The judgment-debtor appealed to the High Court. The appeal was heard by Morris and Prinsep, JJ., who differed in opinion, in consequence of which, the case was again argued before the same learned Judges and the Chief Justice.

Baboo *Bhoirub Chunder Banerjee* for the appellant.

Baboo *Ishur Chunder Chuckerbutty* for the respondent.

GARTH, C. J.—The Judges of the Division Bench having differed in opinion, this case has been referred to me as a third Judge, and we have heard the point in difference again argued before us.

The suit was brought under s. 30 of the Rent Law, and a decree was made in the Court of first instance by consent of the parties on the 24th January 1876, for the sum of Rs. 100, payable by instalments. The first instalment of Rs. 10 was payable in January 1876, and the remaining instalments of Rs. 15 each were payable respectively, in January and August of the years 1877, 1878, and 1879, the last becoming due in August 1879, or upwards of three years from the date of the decree. On non-payment of any one of these instalments, the whole sum decreed became due.

The two first instalments were not paid in due course, and the whole amount thus became payable.

An application for execution was made on the 10th of January 1879, which was struck off on the 7th of March following, in consequence of no one appearing in support of it. Another application was made on the 5th of April following, and an objection was then taken, that by the terms of s. 58 of the Rent Law (Beng. Act VIII of 1869) no execution could legally be issued upon the judgment, inasmuch as more than three years had elapsed from the date of the decree.

(1) 4 C. L. R., 371.

The answer to this objection was two-fold :—

1*st.*—That the application on the 5th of April was only a continuation of the former application of the 10th of January; and

2*nd.*—That, in a case like the present, the language of s. 58 ought not to be construed literally, but that the three years' limitation ought to be reckoned, not from the date of the judgment itself, but from the day when the sum decreed was adjudged to be payable.

It was argued, and argued truly, that if the three years' limitation was to be reckoned from the date of the judgment, any decree, although obtained by consent, by which the amount payable would become due by instalments or otherwise at a date more than three years subsequent to the judgment, would be absolutely useless; and consequently that it would be impossible for any Court to make a valid decree for a sum payable by instalments at a time more than three years from the making of it.

This would, of course, be materially limiting the power, which is given to the Courts by s. 210 of the Civil Procedure Code, to make any sum decreed payable by instalments.

On the other hand, it is argued that the very object of s. 58 was, in the first place, to prevent the Courts from postponing the payment of rent for more than three years; and in the next place, to oblige decreeholders to enforce their decrees within that period, on pain of losing their money altogether. The intention was to prevent ryots being harassed and oppressed by rent decrees being kept hanging over their heads for a lengthened period.

I confess I have had great difficulty in coming to a conclusion upon the point, and I am not at all sure that I have at last arrived at the correct one.

On the one hand, the language of the section appears to be very plain, and there is no doubt much reason in the argument, that the sooner these rent claims are finally settled, the better it is for the interests of agriculture.

On the other hand, it seems hardly reasonable, that when a ryot is really unable, from poverty or otherwise, to pay the

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whole rent within three years, a Civil Court should be positively disabled (even at the instance of the ryot himself, and out of consideration for his poverty), from making a decree payable by instalments extending over more than three years.

Most of the authorities which have been cited appear to me to render us little or no assistance; but it was decided in the case of *Goloke Money Dabia* v. *Mohesh Chunder Mosa* (1) that the words "no process of execution shall be issued on a judgment after the 'lapse of three years' in s. 58" mean, that execution shall not issue unless a *proper application is made for it within three years.* In this the Court seems to have adopted the view taken by the majority of the Full Bench in the case of *Ridoy Krishna Ghose* v. *Kailas Chandra Bose* (2).

These cases certainly serve to show no more than this, that the Court will put a reasonable construction upon Acts of the Legislature, and will not allow the strict language of a section to prevent their giving it such a construction. Authority is scarcely needed for such an elementary principle.

The question with me has been, whether we ought to extend that principle to the present case; and I have come to the conclusion that we ought. We must, I think, read s. 58 of the Rent Law with s. 210 of the Civil Procedure Code, and it seems to me manifestly for the benefit of ryots, that full powers should be given to the Courts to make rent decrees payable by instalments.

If I am right in this, I think it almost follows as a matter of course, that it would be a great injustice to a decreeholder, whose rent is thus made payable by instalments, to give him a shorter time for executing his decree than one whose rent is made payable at once.

I therefore think, that the reasonable construction of the two sections taken together is this, that the words "from the date of such judgment" in s. 58 should be read as if they were "from the date when the rent is adjudged to be payable."

If I am wrong in putting this somewhat liberal construction upon the words of the section, I hope I may be set right either by a Full Bench or by the Legislature.

(1) I. L. R., 3 Calc., 547. (2) 4 B. L. R., F. B., 82.

The result of this decision will be, that the appeal will be dismissed with the costs of both hearings in this Court.

MORRIS, J.—I concur. It seems to me that, in the absence of express provision, a local Rent Law cannot, by implication only, be understood to restrict the general right possessed by Civil Courts to give decree for amounts payable by instalments over a period exceeding three years.

PRINSEP, J.—I regret to be unable to concur in the opinion expressed by my learned colleagues in this case. In my opinion the terms of s. 58 of the Rent Law prevent the further execution of this decree.

Section 34 of the Rent Law declares, that the Code of Civil Procedure shall regulate all proceedings in suits of this description, save as in that Act is otherwise provided. The Code of Civil Procedure (Act VIII of 1859), s. 194, declares, that in all decrees for the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments; but s. 58 of the Rent Law provides, that "no process of execution of any description whatsoever shall be issued on any judgment in any suit" (for arrears of rent) "after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees." In my opinion the date of the judgment is the date on which it is delivered (1), for s. 185 of Act VIII of 1859 provides, that "the judgment shall be dated by the Judge in open Court at the time of pronouncing it;" and s. 189 adds, "the decree shall bear date the day on which the judgment was passed." Further, I am of opinion, that the intention of the Legislature in enacting s. 58 was to insist on the early realization of all decrees for small amounts of rent, by withholding any action of the Court towards obtaining payment by means of its processes. If acting under s. 194 a Court fixes an instalment beyond the term of three years from the date of its judgment so as not to come within the terms of s. 58 of the Rent Law, in my opinion that decree is, in that respect, a bad decree, and incapable of being put into execution. With

(1) See the judgment of Lord Westbury, in *In re Risca Coal and Iron Co.*, 4 D. F. and J., 456; and of Bacon, J., in *Ex parte Whitton, In re Greaves*, L. R., 13 Ch. D., 881.

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the terms of s. 58 of the Rent Law so clearly expressed, the Court could have no sufficient reason for passing such an order. The consent of the parties would not affect the operation of the law, as has been held by Peacock, C. J., in the case of *Krishna Kamal Sing* v. *Hiru Sirdar* (1).

I am, therefore, of opinion, that we should read s. 58 of the Rent Law according to the plain sense of the words, it being our duty to expound it as it stands. I would, therefore, set aside the order of the lower Court.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

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April 13.

KOYLASH CHUNDER GHOSE AND OTHERS (PLAINTIFFS) *v.* SONATUN CHUNG BAROOIE AND OTHERS (DEFENDANTS).*

Easement—Right of Way—Prescription—Effect of Illustrations—Limitation Act (XV of 1877), s. 26 and illus. (b).

On the 6th of April 1878, the plaintiffs sued for obstructing a right of way for boats in the rainy season. The defendants admitted the obstruction, but denied the right of way. The plaintiffs proved that the right was peaceably and openly enjoyed, and actually used by them, claiming title thereto as an easement and as of right, without interruption, from before 1855 down to November 1875, since when no actual user of the way by the plaintiffs had taken place. The lower Appellate Court dismissed the suit, on the ground that the plaintiffs had made no actual use of the way within two years previous to the institution of the suit. *Held*, reversing the decision of the Court below, that, notwithstanding Act XV of 1877, s. 26, illus. (*b*), actual user within two years previous to the institution of the suit is not necessary, in order that the right claimed may be acquired under Act XV of 1877, s. 26.

Illustrations in Acts of the Legislature ought never to be allowed to control the plain meaning of the section to which they are appended, especially when the effect would be to curtail a right which the section in its ordinary sense would confer.

THIS was a suit to establish a right of way over the defendants' land. The plaint, which was filed on the 6th of April 1878,

Appeal from Appellate Decree, No. 2832 of 1879, against the decree of Baboo Nobin Chunder Gangooly, Second Subordinate Judge of Dacca, dated the 13th October 1879, reversing the decree of Baboo Brojo Nath Roy, Officiating First Munsif of Moonsheegunge, dated the 28th December 1878.

(1) 4 B. L. R., F. B., 105.