time when the Judicial Commissioners in Sind gave their decision.

I find that the Assistant Sessions Judge had not jurisdiction to test the sureties and, therefore, would set aside the orders passed by him and direct that the matter of accepting or rejecting the sureties offered in this case be dealt with by the Magistrate under section 122. The necessary correction will be made in the order of the learned Assistant Sessions Judge, substituting the words " to be of good behaviour " for the words " to keep the peace."

SCROOPE, J.—I agree.

Reference accepted.

APPELLATE CIVIL.

Before Das and Ross, JJ.

SYED HASAN IMAM

v.

BRAHMDEO SINGH.*

1930.

January, 7, 8, 9, 15.

Limitation Act, 1908 (*Act IX of* 1908), *sections* 19, 20 *and* 29—*amendment of section* 29, *scope and effect of—sections* 19 *and* 20, *whether apply to suits governed by Schedule III to Bengal Tenancy Act*, 1885 (*Act VIII of* 1885)—*section* 185(2) *of the Act, whether affected by the amendment of section* 29, *Limitation Act*, 1908.

Section 29, Limitation Act, 1908, as amended by Act X of 1922, provides :

"(2) " Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(*a*) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(*b*) the rmaining provisions of this Act shall not apply ".

*Appeal from Original Decree no. 200 of 1927, from a decision of Babu Phanindra Lal Sen, Subordinate Judge of Patna, dated the 5th of September, 1927.

1930.

SYED HASAN IMAM v. BRAHMDEO SINGH.

Section 184, Bengal Tenancy Act, 1885, prescribes the limitation for the suits specified in Schedule III. Section 185 of that Act excludes the operation of sections 7, 8 and 9 of the Limitation Act and sub-section (2) provides :

"Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section."

Held (*i*) that section 185(2), Bengal Tenancy Act, 1885, is not in any way affected by the amendment of section 29 of the Limitation Act which only means that the remaining provisions of the Act shall not apply of their own force, that is, unless the Act is expressly applied by the special or local law ;

(*ii*) that, therefore, sections 19 and 20 of the Limitation Act apply to all those suits which are governed by Schedule III to the Bengal Tenancy Act, 1885.

Rakhal Chandra Tewari v. *Hemangini Debi*(1), *Kamal Krishna Kundu* v. *Kedar Nath Kundu*(2), *Harihar Lal* v. *Gunendar Prasad*(3) and *Paresh Nath Pal Choudhury* v. *Ismail Sardar*(4), followed.

Secretary of State for India in Council v. *Gangadhar Nanda*(5), *Secretary of State for India in Council* v. *Shib Narain Hazra*(6) and *Gangadhar Nanda* v. *Secretary of State for India in Council*(7), distinguished.

The rule of construction is that repeal by implication will not be admitted if the two Acts can be reconciled and can stand together.

Appeal by the plaintiffs.

In this suit the plaintiffs claimed Rs. 17,487-9-3 as due under a registered lease of mauza Srirampur Mirich executed on the 4th of January, 1917, for a term of seven years from 1324 to 1330 in favour of the defendant no. 1 as the managing member of the joint family of the defendants, after giving credit for the payments made. The defence was that nothing was due; that the account had been adjusted and an

(1) (1902) 3 Cal L. J. 347.
(2) (1909) 10 Cal. L. J. 517.
(3) (1905) 9 Cal. W. N. 1025.
(4) (1921) 26 Cal. W. N. 486.
(5) (1918) 27 Cal. L. J. 374.
(6) (1918) 22 Cal. W. N. 802.
(7) (1918) 22 Cal. W. N. 817.

acquittance given. The payments set forth in the written statement differed in certain respects from those set out in the schedule to the plaint. It was further pleaded that there was no stipulation for interest and that the suit was barred by limitation. A further plea was taken that defendants nos. 2 to 15 and 20 to 27 were separate from defendant no. 1 and his sons, defendants nos. 16 to 19. The plea of these defendants was that they were separate from defendant no. 1 and had no concern with the lease.

The findings of the Subordinate Judge were that the accounts had not been adjusted and that the acquittance produced by the defence was not genuine; that where there was a difference between the payments stated by the plaintiffs and those stated by the defendant, the plaintiffs' version was correct except as to a payment of Rs. 300 on the 28th of November, 1923; that interest at 24 per cent. per annum was agreed upon; that the suit was governed by the Bengal Tenancy Act and not by the Transfer of Property Act and that consequently the rate of interest could not exceed 12½ per cent. per annum; that although sections 19 and 20 of the Limitation Act applied, the suit was barred by time, neither the acknowledgment of the 7th of January, 1923, nor the payment of Rs. 300 on the 28th of November, 1923, which were set up by the plaintiffs as saving limitation being accepted; and, lastly, that the defendants were a joint family, but that the defendant no. 1 had no authority to take this lease and that any liability under the lease would be limited to defendant no. 1 and his sons. On these findings the Subordinate Judge dismissed the suit, and the plaintiffs appealed.

Susil Madhab Mullick (with him *S. Dayal* and *B. K. Prasad*), for the appellants.

Nirsu Narayan Sinha and *B. P. Sinha*, for the respondents.

Ross, J. (after recording his findings on the plea of payment and the liability of defendants other

1930.

SYED HASAN IMAM v. BRAHMDEO SINGH.

than defendant no. 1 and his sons, and holding that the defendants had paid, inter alia, a sum of Rs. 300 towards interest on the 28th of November, 1923, proceeded to say as follows:)

ROSS, J.

There is one other document which ought to be referred to—an acknowledgment of liability (Exhibit 12). On the 7th of January, 1923, a parwana (Exhibit 10) was sent to the defendant no. 1 requiring him to pay his arrears and on the same day a reply was sent (Exhibit 12) which clearly acknowledges the debt and says that he was trying to sell grain. The reasons that the learned Subordinate Judge has given for not accepting this document are, in my opinion, without force. The Diwan has sworn that the letter (Exhibit 12) is in the handwriting of the defendant no. 1 and was brought to him by one of the peons in reply to a letter written by him to the defendant no. 1 and that he knows his handwriting. The only comment that the respondents had to make on this document was that it was not a definite acknowledgment of a definite sum due, but this is not necessary in order to constitute an acknowledgment of liability. In my opinion the defendant did acknowledge his debt on the 7th of January, 1923. Now the effect of this acknowledgment is that it saves from limitation the rents of the years 1327, 1328 and 1329, the year 1327 having expired in September 1920. The effect of the payment of interest as such on the 28th of November, 1923, was again to give a fresh starting point to limitation and to save the rents of these three years from being barred. Consequently, unless the suit is barred altogether by reason of the provisions of section 29 of the Limitation Act, the plaintiffs are entitled to recover the rents of 1327, 1328 and 1329 with interest, the rent of 1330 having been admittedly settled according to the terms of the lease by the advance payment of Rs. 1,600 made when the lease was granted. The payments shown in the schedule to the plaint were validly appropriated to the arrears and interest of preceding years although the rate of

interest must be reduced to 12½ per cent. and interest will only accrue from the end of the quarter in each year in which the instalments fell due. The word *malguzari* or the words *malguzari bakaya* cannot be limited to the actual rent [see *Rani Chatra Kumari Devi* v. *W. W. Broucke*(1)], but must be understood as meaning that the landlord was crediting the payment to whatever was due to him, without making any distinction between rent and interest. It is a question of intention and it would be unreasonable to suppose that the landlord in making the appropriation was abandoning any part of what was in fact due to him. There was some discussion about the meaning of '*san guzasta*' the words used in the receipts showing appropriation; and it was contended for the respondents that the words mean only "the last year" and not "the last years". There is evidence, however, that the expression can bear that latter meaning and there can be no reasonable doubt that it was used in this sense.

The only question that remains is as to the effect of the amendment of section 29 of the Limitation Act made by Act X of 1922. As this Act came into force on the 5th of March, 1922, the present suit is governed by the amended section. Section 29 provides that

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first Schedule, the provisions of section 3 shall apply as if such period were prescribed therefor in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law (*a*) the provisions contained in section 4, sections 9 to 18 and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and (*b*) the remaining provisions of this Act shall not apply."

The respondents rely upon this clause (*b*). Section 184 of the Bengal Tenancy Act prescribes the limitation for the suits specified in Schedule III, of which the present suit is one, being governed by Article 2(*b*) of that Schedule. Section 185 excludes the operation

(1) (1927) I. L. R. 7 Pat. 134, P. C.

1930.

SYED HASAN IMAM v. BRAHMDEO SINGH.

ROSS, J.

of sections 7, 8 and 9 of the Limitation Act and sub-section (2) provides that

> "subject to the provisions of this Chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section."

Apparently, therefore, when a suit is governed by the third Schedule to the Bengal Tenancy Act, it is also governed by the Indian Limitation Act subject to the provisions of this Chapter XVI. The argument for the respondents is that as the Limitation Act itself by section 29(2) excludes the operation of the remaining provisions of the Act, their operation is not restored by section 185(2). This construction makes section 185(2) altogether nugatory, because it leaves nothing to apply. What section 29(2) (*b*) means clearly is that the remaining provisions of the Limitation Act shall not apply of their own force, that is, unless the Act is expressly applied by the special or local law. But the Act is specially applied by section 185(2) of the Bengal Tenancy Act and consequently it must be taken that sections 19 and 20 of the Limitation Act govern this case. Section 185(2) requires the application of the Limitation Act in order to ascertain the starting point for limitation for suits governed by Schedule III to the Bengal Tenancy Act. Under the Limitation Act, as it stood before the amendment, it was consistently held that its provisions applied to cases under the third Schedule to the Bengal Tenancy Act [see, for instance, *Rakhal Chandra Tewari* v. *Hemangini Debi*(1), *Kamal Krishna Kundu* v. *Kedar Nath Kundu*(2), *Harihar Lal* v. *Gunendar Pershad*(3) *and Paresh Nath Pal Choudhury* v. *Ismail Sardar*(4)]. On the other hand, there are three cases in which the Limitation Act was not applied; but these were cases under section 104-H of the Bengal Tenancy Act which prescribes its own limitation and is not included within Schedule III to that Act [*Secretary of State for India in Council* v.

(1) (1902) 3 Cal. L. J. 347.
(2) (1909) 10 Cal. L. J. 517.
(3) (1905) 9 Cal. W. N. 1025.
(4) (1921) 26 Cal. W. N. 486.

Gangadhar Nanda(1), *Secretary of State for India in Council* v. *Shib Narain Hazra*(2) and *Gangadhar Nanda* v. *The Secretary of State for India in Council*(3)]. In the second of these cases all the authorities are referred to. In the first of these cases Mookerjee, J., said: "It is plain beyond reasonable controversy that section 15(*2*), which is made applicable to suits, appeals and applications mentioned in the third Schedule annexed to the Bengal Tenancy Act, by virtue of section 185, sub-section (*2*), cannot possibly apply to suits instituted under section 104-H which are not mentioned in the third Schedule." The ground of the distinction between these three cases and the others is that they deal with applications under section 104-H which are not included within the third Schedule. The effect of the amendment was to extend and not to restrict the operation of the Limitation Act. The result of the argument on behalf of the respondents would be that the amendment of the Limitation Act by implication repealed section 185(*2*) of the special Act; but the rule of construction is that repeal by implication will not be admitted if the two Acts can be reconciled and can stand together. I can see no conflict between section 29(*2*) (*b*) and section 185(*2*). There is an express reference in section 29(*2*) to section 3 which itself refers to sections 4 to 25. Sections 4, 9 to 18 and 22 are specifically made applicable so far as not expressly excluded; and the only reasonable way in which clause (*b*) can be read is that the remaining provisions of the Act, if they are to apply, are to be specially applied. They will not be applied by force of the Limitation Act itself. In this view the argument of the respondents fails and it must be held that the suit is not barred by limitation.

The result is that the appeal must be decreed and the suit decreed in part. There will be a decree for the rents of 1327, 1328 and 1329 after allowing credit

(1) (1918) 27 Cal. L. J. 374. (2) (1918) 22 Cal. W. N. 802.
(3) (1918) 22 Cal. W. N. 817.

1930.

SYED HASAN IMAM v. BRAHMDEO SINGH.

ROSS, J.

for any payments attributable to these years. In order to ascertain this the whole account will have to be corrected from the beginning by reducing the rate of interest from 24 to 12½ per cent. and calculating from the end of the first quarter in each year. The arrear of rent will carry interest from the end of the quarter in each year in which the instalments of rent fell due, up to the date of the suit, and the amount of the decree will carry future interest at 6 per cent. per annum. The plaintiffs are entitled to proportionate costs in both Courts.

DAS, J.—I agree.

Appeal decreed.

FULL BENCH.

Before Jwala Prasad, Ross and Wort, JJ.

1930.

January, 10, 29.

TILAKDHARI SINGH
v.
KUMAN DAS.*

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *sections* 3(3), 3(9), 4 and 5(2)—"*holding*", *meaning of—belagan homestead land—no presumption that it does not form part of a raiyati holding—question of fact.*

Section 3(9), Bengal Tenancy Act, 1885, defines "holding" as a "parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy".

Held, that all that is required for a "holding" is that it should consist of a parcel or parcels of land, whether rent-paying or rent-free, held by a raiyat and forming the subject of a tenancy; and that a belagan homestead land included in the holding is held by the tenant for the purpose of cultivating the rest of the lands in that holding and such a land is not only a part of the holding but is inseparable from the rest of the lands in that holding.

*Appeal from Appellate Decree no. 712 of 1927, from a decision of Babu Shivanandan Prasad, Subordinate Judge of Purnea, dated the 27th of April, 1927, reversing a decision of Maulavi Shamsuddin, Munsif of Purnea, dated the 8th of April, 1926: Referred to the Full Bench by Das and James, JJ., by their order no. 7, dated the 20th of November, 1929.