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agreed that the abatement be set aside and that his heirs be substituted in the appeal. Let this be done.

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ROWLAND, J.—I agree.

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The words of the statute are wide and I have no doubt that they apply not only to tenancies in existence at the commencement of the Act but to affect contracts entered into before the Act and intended to be fulfilled after its commencement.

AGARWALA,
J.

Appeals dismissed.

REVISIONAL CIVIL.

Before Agarwala and Rowland, JJ.

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MAHARAJADHIRAJ SIR RAMESHWAR SINGH

March, 25,
26, 30.

v.

MAHABIR PASI.*

Limitation Act, 1908 (Act IX of 1908), Schedule I, Article 110—Bengal Tenancy Act, 1885 (Act VIII of 1885), section 193 and Schedule III, Article 2(b)—suit to recover money due on account of settlement of date and toddy palm trees, if governed by Article 110 of the Limitation Act or Article 2(b) of the Bengal Tenancy Act.

Held, that suits to realize money due on account of settlement of date and toddy palm trees are not rent suits but suits of a Small Cause nature and are governed by Article 110 of the Limitation Act.

Deb Nath Ghose v. Pachoo Mollah(1), *Jatindra Mohan Lahiri v. Abdul Aziz Meah*(2), *Jhakur Sahu v. Raj Kumar Tewari*(3), *Maung Kywe v. Maung Kala*(4) and *Natesa Gramani v. Tangavelu Gramani*(5), followed.

* Civil Revisions nos. 687 to 689 of 1935, from an order of S. Bashiruddin, Esq., District Judge of Darbhanga, dated the 18th July, 1935, affirming an order of Babu B. K. Sarkar, Munsif, 2nd Court, Darbhanga, dated the 28th July, 1934.

(1) (1866) 6 W. R. (Civ. Ref.) 8.

(2) (1920) 59 Ind. Cas. 595.

(3) (1936) 160 Ind. Cas. 186.

(4) (1926) I. L. R. 4 Rang. 503.

(5) (1914) I. L. R. 98 Mad. 883.

Moti Singh v. Deoki Singh (1), distinguished.

Section 193 of the Bengal Tenancy Act, which makes the provisions of that Act applicable to suits for recovery of anything payable or deliverable in respect of any rights of pasturage, forest-right, rights over fisheries and the like, applies only to suits between landlord and tenant.

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The Bengal Tenancy Act according to the preamble is an Act relating to the law of landlord and tenant and, therefore, all its provisions including the schedules and the period of limitation laid down therein must be applicable only to suits in which the parties stand in the relation of landlord and tenant.

Mohendra Nath Kalamorce v. Kailash Chandra Dogra (2), followed.

Applications in revision by the plaintiff.

The facts of the case material to this report are set out in the following judgment of Macpherson, J.

MACPHERSON, J.—These three applications in revision relate to three suits brought under the Bengal Tenancy Act for recovery of the several amounts payable on settlement (by auction) of date and palm trees in April, 1930, with three sets of Pasis for the year 1937F.

They were brought on the 8th September, 1933, which date was within three years of the 30th Bhado (that is the last day) of the year 1937. It was contended on behalf of the landlord that the suits were brought within the period of limitation since, even though the payments by the Pasis are not "rent" as defined in the Bengal Tenancy Act, yet under section 193 of the Bengal Tenancy Act the provisions of the Act applicable to suits for recovery of rent are, so far as may be, to apply to suits for recovery of anything payable or deliverable in respect of any rights of pasturage, forest-right, rights over fisheries and the like, and the contention is that these payments for the date and palm trees are payable in respect of "forest-right" or are something analogous to forest-right covered by the words "and the like". The expression which the plaintiff would use is "phalkar". If that contention is sound, then the plaintiff would come under Schedule III, article 2, clause (b), of the Bengal Tenancy Act and would be entitled to recover on the date of suit, though, of course, as the claim is not for "rent" the interest could not be at 12½ per cent as for rent.

The plaintiff adduced evidence that there was an oral contract that the so-called "thika jamas" would be payable on the 30th Bhado, 1937, but that claim was not established.

(1) (1935) 17 Pat. L. T. 170.

(2) (1900) 4 Cal. W. N. 605.

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The defence was that the suits were barred under article 110 of the Limitation Act and the Munsif accepted and dismissed the suits.

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The District Judge entertained an application for revision under the proviso to section 153 of the Bengal Tenancy Act but holding that the suits were nothing but ordinary suits for recovery of the settlement money and did not fall under the provisions of section 193 of the Bengal Tenancy Act he rejected the applications in revision.

These rules have apparently been issued to consider the question which I have set out. A complication is introduced by the objection raised on behalf of the defendants, opposite party, that this Court has no power to act in revision over the District Judge's failure to revise. As at present advised, I am not inclined to hold that this is really an obstacle to the consideration of the question since this Court may in a proper case itself act under its powers of revision.

The question itself is, of course, of considerable importance; various recent decisions of this Court which are referred to appear to be in conflict. I may mention *Jhukur Sahu v. Rajkumar Tewari*(1) and *Moti Singh v. Deoki Singh*(2) and there may be others.

I accordingly refer these applications in revision to a Division Bench.

On this reference—

Murari Prasad (with him *R. Misra* and *S. P. Srivastava*), for the petitioner.

Ratikant Chowdhury and *H. P. Sinha*, for the opposite party.

ROWLAND, J.—These three applications raise the question whether limitation should be calculated under Article 110 of the Limitation Act as has been done in the courts below or under Article 2(b) of Schedule III of the Bengal Tenancy Act. The suits were brought to realise money due on settlement by auction of date and toddy palm trees made in April 1930, for the year 1337. The settlement holders got the right to take the juice from the trees for the season. The applications have been referred by Macpherson, J. to be decided by a Division Bench. As pointed out in the order of reference the payments by the *pasis* are not rent. This is settled by a long line of authority beginning with *Deb Nath Ghose v.*

(1) (1936) 160 Ind. Cas. 186.

(2) (1935) 17 Pat. L. T. 170.

Pachoo Mollah(¹), a decision which has been followed in *Jatindra Mohon Lahiri v. Abdul Aziz Meah*(²) and recently by a single Judge of this Court in *Jhakar Sahu v. Raj Kumar Tewari*(³). The last mentioned case referred to mahua fruits but the principle is same. According to these decisions the payments sued for are not rent and suits to realize them ought to be brought in a small cause court. It follows, I may add, that the Munsif to whom the plaints were presented ought not to have entertained them but should have returned them for presentation to a small cause court. This view of the nature of the suits is held in other High Courts also: *Maung Kyve v. Maung Kala*(⁴) decided that suits for the price of the juice of toddy trees are small cause court suits, following a decision in *Natesa Gramani v. Tangavelu Gramani*(⁵) where it was held that a lease of palmyra trees was not a lease of immoveable property. That decision cited section 3 of the Registration Act where movable property is defined as including "juice in trees". But it was argued that section 193 of the Bengal Tenancy Act makes the provisions of that Act applicable to suits for recovery of anything payable or deliverable in respect of any rights of pasturage, forest-right, rights over fisheries and the like. The answer to this argument is that such suits to come within this section must be suits between landlord and tenant. The title and preamble of the Bengal Tenancy Act show that it was an Act to amend and consolidate enactments relating to the law of landlord and tenant. It was said in *Mohendra Nath Kalamoree v. Kailash Chandra Dogra*(⁶). "It is clear that the Bengal Tenancy Act, according to its preamble, is an Act relating to the law of landlord and tenant in Bengal, and that therefore, all its provisions, including the schedules and

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(1) (1866) 6 W. R. (Civ. Ref.) 8.

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the periods of limitation laid down in the schedules, must be applicable only to suits in which the parties stand in the relation of landlord and tenant". The expressions "landlord" and "tenant" are defined in section 3 of the Act. The definitions make it clear that no one is a tenant who does not hold land under another person. In the cases before us it cannot be said that the defendants by taking settlement of the toddy trees were admitted to occupation of any land: they did not hold land under the plaintiff; they are not his tenants and no part of the provisions of the Act applies to these suits. The courts below have correctly applied the limitation under Article 110 of the Limitation Act. In the order of reference of Macpherson, J. a decision in *Moti Singh v. Deoki Singh*(1) is referred to; but there is nothing in that decision which has any application to the facts of the cases before us. All that was there decided was that for the purposes of a partition suit palm trees might be treated as immoveable property.

I would, therefore, dismiss all these applications with costs. Hearing fee one gold mohur in each case.

AGARWALA, J.—I agree.

Rule discharged.

ORIGINAL JURISDICTION.

(INDIAN COMPANIES ACT, 1913.)

1936.
 April, 20.

Before Wort, A. C. J.

BISHADENDU GUPTA

v.

H. LANGHAN REED.*

Companies Act, 1913 (Act VII of 1913), section 235—payment made after winding up out of the assets—petition to enquire into the conduct of the Directors—directors residing in England and Bombay, outside the jurisdiction of the Patna High Court—process, if can issue—Code of Civil Procedure, 1908 (Act V of 1908), sections 16, 19, 20 and 28.

*Miscellaneous Judicial Case no. 63 of 1930.
 (1) (1935) 17 Pat. L. T. 170.