marised in a few lines. Their Lordships would wish that the officials in India were authorized to exercise some sort of control over the length of the record, or at least to indicate the party, at whose instance matter obviously irrelevant for the purpose of the argument is included in the transcript.

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29 C. 664.

Appeals dismissed.

Solicitors for the appellants : *T. L. Wilson & Co.*

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29 C. 674.

[674] FULL BENCH.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Prinsep, Mr. Justice Banerjee, Mr. Justice Ameer Ali and Mr. Justice Rampini.

MATANGINI DEBI v. MOKRURA BIBI.* [12th February, 1901.]

Landlord and Tenant—Bengal Tenancy Act (VIII of 1885), ss. 67, 74, 178 (c) (h), 179—Rate of interest—Permanent tenure—Interpretation of statute.

Held, by the majority of the Full Bench (AMEER ALI, J. dissenting) that s. 67 of the Bengal Tenancy Act does not control the provisions of s. 179 of that Act, and that therefore a contract for the payment of interest on arrears of rent, entered into by a landlord and a permanent tenure-holder under him, is enforceable by law, although it may contravene the provisions of s. 67 of the Bengal Tenancy Act.

Basanta Kumar Roy Chowdhry v. *Promotha Nath Buttacharjee* (1) overruled.

THE defendants Matangini Debi and others appealed to the High Court.

The plaintiffs sued the defendants for arrears of rent due on account of a permanent tenure, and claimed interest at the rate of Rs. 3-2 per cent. per month, in accordance with the terms of a *kabuliat* executed by the defendants in January 1893. The Munsiff gave a partial decree, awarding interest at 12 per cent. per annum only, as laid down in s. 67 of the Bengal Tenancy Act. On appeal by the plaintiffs, the District Judge awarded interest at the stipulated rate, holding that s. 179 of the Bengal Tenancy Act overrides the general provisions regarding interest laid down in ss. 67 and 178 of the Act.

The appeal originally came on for hearing before RAMPINI and PRATT, JJ., who referred it to the Full Bench with the following opinion :—

In this case the question is whether the plaintiff is entitled to interest on arrears of rent at the rate specified in the *ijara* [675] *kabuliat* executed in his favour by the defendant, viz., Rs. 3-2 per month, or whether he is restricted to the rate of 12 per cent. per annum, allowed by s. 67 of the Tenancy Act. The lease is a permanent *mocurari* lease, and it is contended on behalf of the plaintiff that s. 179 of the Tenancy Act renders the provisions of s. 67 inapplicable to such leases. The Judge in the Court below has held, on the authority of the case of *Atulya Churn Bose* v. *Tulsi Das Sarkar* (2), that the plaintiff is entitled to the rate contracted for with him by the defendant. The ruling in this case fully supports the view held by him. On the other hand, it is urged

* Reference to the Full Bench in Appeal from Appellate Decree No. 2562 of 1898.

(1) (1898) I. L. R. 26 Cal. 130. (2) (1895) 2 C. W. N. 548.

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by the learned pleader for the appellant that this case is in conflict with that of *Basanta Kumar Roy Chowdhry* v. *Promotha Nath Bhuttacharjee* (1), in which it has been laid down that a contract by a tenant holding under a permanent *mocurari* lease to pay interest on arrears at a higher rate than 12 per cent. per annum is not enforceable in law. The rulings in the two cases are in direct conflict. We are therefore bound to refer this case to a Full Bench, which we accordingly do.

We may add that we are of opinion that the ruling in the case of *Atulya Churn Bose* v. *Tulsi Das Sarkar* (2) is correct. One of the members of this Bench was a party to the decision in *Basanta Kumar Chowdhry* v. *Promotha Nath Bhuttacharjee* (1), but he concurs in the opinion that that case was not rightly decided.

We are fortified in the view we take of the question at issue by the ruling in the case of *Krishna Chandra Sen* v. *Sushila Soondury Dassee* (3), which, though not directly in point, yet lays down that the provisions of s. 74 do not control s. 179, but the contrary.

The questions we propound for the decision of the Full Bench are—

First—Whether the plaintiff in this case is entitled to interest at the rate specified in the *kabuliat* executed by the defendant, or **[676]** whether s. 67 of the Tenancy Act controls the provisions of s. 179 of the same Act; and

Second—Whether the case of *Basanta Kumar Roy Chowdhry* v. *Promotha Nath Bhuttacharjee* (1) has been rightly decided.

Dr. *Rashbehary Ghose* and Babu *Naliniranjan Chatterjee* for the appellants.

Mr. *P. O'Kinealy* and Moulavis *Siraj-ul-Islam* and *Mustafa Khan* for the respondents.

MACLEAN, C. J. If it had not been for the view entertained by my learned colleague, I should have thought that this was a reasonably clear case. The question submitted to us is whether the plaintiff in this case is entitled to interest at the rate specified in the *kabuliat* executed by the defendant, or whether s. 67 of the Bengal Tenancy Act controls the provisions of s. 179 of the same Act. Construing the Act by the ordinary rules of construction applicable to statutory enactments, the case does not to my mind present any real difficulty. S. 67 is general: s. 179 is particular and specific, and by it the Legislature has thought fit to make special provision in relation to permanent tenures in permanently settled areas.

The location of s. 179 is not without some importance in relation to the question we are now discussing; for it comes after s. 67 and after clause (*h*) of sub-section 3 of s. 178, and the section says: "Nothing in this Act"—I pause there for a moment to point out that "nothing in this Act" must cover the provisions of s. 67—"shall be deemed to prevent the proprietor or holder of a permanent tenure in a permanently-settled area from granting a permanent *mocurari* lease on any terms that may be agreed on between himself and his tenant." The language is clear and precise: why are we not to give its ordinary meaning to it? I can find no good reason nor have I heard any valid argument against our so doing. The provisions in the case before us as to payment of interest is, speaking with all respect to the view taken by the learned Judges **[677]** who decided the case of *Basanta Kumar Roy Chowdhury* v.

(1) (1898) I. L. R. 26 Cal. 130.
(2) (1895) 2 C. W. N. 543.
(3) (1899) I. L. R. 26 Cal. 611.

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Promotha Nath Bhuttacharjee (1), undoubtedly a term agreed upon between the landlord and his tenant, and I am quite unable to accept the subtle but unconvincing reasoning as to what the expression "term" means, as suggested in the last mentioned case. To my mind if we were to accept the view laid down in that case, and from which view, it is not unimportant to mention, that one of the learned Judges has already resiled, we might just as well strike s. 179 out of the Act.

The language of the section is plain and clear, and there is nothing in any other part of the Act to warrant us in qualifying it, or putting a construction upon it which the words, read in their ordinary acceptation, do not bear.

The question ought to be answered by saying that the plaintiff is entitled to the interest specified in the *kabuliat*; that s. 67 does not control the provisions of s. 179; and that the case of *Basanta Kumar Roy Chowdhury* v. *Promotha Nath Bhuttacharjee* (1) has not been rightly decided.

The result is that the appeal must be dismissed with costs, including the costs of this reference.

PRINSEP J. The question submitted to the Full Bench in this case is whether, in granting a permanent lease, within the terms of s. 179 of the Bengal Tenancy Act, a condition that interest shall be payable at a higher rate than 12 per cent. per annum, as allowed by s. 67 of that Act, is permissible. It is strange that in s. 178 of the Act it should be declared in clause (*h*), sub-section 3, that nothing in any contract made between a landlord and a tenant after the passing of the Act shall affect the provisions of s. 67 relating to interest payable on arrears of rent, and that following on that section, s. 179 should declare that nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a premanently-settled area from granting a permanent *mocurari* lease on any terms agreed on between him and his tenant. It seems to me, however, that the words "nothing in [678] this Act shall be deemed to prevent" such person "from granting a permanent *mocurari* lease on *any terms*" agreed to between him and his tenant, really conclude the matter, though they are inconsistent with the terms of clause (*h*) of sub-section 3 of s. 178 which precede that section.

BANNERJEE J. I am of the same opinion. The question which we have to determine in this case is, whether s. 67 of the Bengal Tenancy Act controls the provisions of s. 179 of the same Act: in other words, whether the contract for the payment of interest on arrears of rent at a higher rate than 12 per cent. per annum, entered into between a zemindar and a permanent tenure-holder under him, is enforceable by law.

The question has been referred to the Full Bench by reason of the conflict between the cases of *Atulya Churn Bose* v. *Tulsi Das Sarkar* (2) and *Basanta Kumar Roy Chowdhury* v. *Promotha Nath Bhuttacharjee* (1).

The determination of the question must depend upon the language of s. 179 of the Bengal Tenancy Act. That section enacts that "nothing in this Act shall be deemed to prevent a proprietor or holder of a permanent tenure in a permanently-settled area from granting a permanent *mocurari* lease on any terms agreed on between him and his tenant."

(1) (1898) I. L. R. 26 Cal. 130. (2) (1895) 2 C. W. N. 543.

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Now s. 67 of the Act, which provides that "an arrear of rent shall bear simple interest at the rate of 12 per cent. per annum," * * * is a provision of the Act, and so also is clause (*h*) of sub-section 3 of s. 178, which enacts that "nothing in any contract made between a landlord and a tenant after the passing of this Act shall affect the provisions of s. 67 relating to interest payable on arrears of rent." And these are the provisions in the Act which, if they stood alone, would have prevented a proprietor or a holder of a permanent tenure from recovering from his under-tenant interest otherwise than in accordance with the provisions of s. 67. But s. 179 expressly enacts that nothing in the Act shall be deemed to prevent the [679] landlord from granting a permanent *mocurari* lease on any terms agreed on between him and his tenant. It was, therefore, competent to the parties in this case to enter into a contract stipulating for the payment of interest on arrears of rent at any rate agreed upon between them, even if it was higher than that mentioned in s. 67.

It was argued that, if this be the true effect of s. 179, it would render nugatory the provisions s. 67, and clause (*h*) of sub-section 3 of s. 178. But that does not at all follow. The last-mentioned provisions relate to tenants generelly; s. 179 relates to a particular class of tenants, namely, the holders of permanent tenures or under-tenures; and it is a general rule of construction that of two clauses, one having a general application and the other applying only to a particular class of cases, the latter shall control the former, and not the reverse. The opposite view would render s. 179 nugatory.

It was next contended that, in construing s. 179 of the Bengal Tenancy Act, we must bear in mind the reason for its insertion in the Act, and if we bear that in mind, we shall find reason for holding that it was not intended to control any of the earlier provisions of the Act. And the reason for the enactment of s. 179, according to the argument of the learned Vakeel for the appellant, was this, that the Tenancy Act repealed Regulation V of 1812, which authorized proprietors of estates to grant permanent leases, and having repealed that Regulation, the Legislature thought it necessary to re-enact the provisions of the repealed Regulation in s. 179 of the Tenancy Act, which was an amending and consolidating enactment. But although that may account for the existence in the Tenancy Act of some provision authorizing proprietors and holders of permanent tenures to create permanent under-tenures, there was no reason why s. 179 of the Tenancy Act should contain the words "on any terms agreed on between him and his tenant," if the Legislature did not intend to authorize the granting of permanent leases on any terms agreed upon.

It was lastly argued that, if s. 179 be construed in the way we are construing it, it would render nugatory a salutary provision [680] of the law intended for the protection of tenants—the provision, namely, that interest upon arrears of rent shall not be allowed at a higher rate than 12 per cent. per annum. I think that it is a sufficient answer to this argument to say that, although the Legislature might have thought this provision necessary to protect certain classes of tenants, chiefly *raiyats* it might not have felt that the same necessity existed for the protection of the interest of a different class of tenants, namely, permanent tenure-holders.

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AMEER ALI J. The question which has been referred to us is one purely of interpretation.

When the case of *Basanta Kumar Roy Chowdhry* v. *Promotha Nath Bhuttacharjee* (1) came before me and Mr. Justice Pratt, we dealt with it as *resintegra*, and in construing s. 179 of the Bengal Tenancy Act expressed ourselves with reserve, as will appear from the concluding words of our judgment, which are as follows :—

"For these reasons, as at present advised, we think that the conclusion arrived at by the Subordinate Judge in this case is correct, and this appeal must be dismissed with costs."

Having regard to the arguments of learned Counsel for the respondent, speaking for myself, I should have liked to have had some opportunity of considering the matter further. Although the judgments of my learned colleagues make me feel some doubt regarding the view I then expressed, it seems to me that s. 179 of the Tenancy Act requires to be reconciled with the other provisions of the Tenancy Act. As I have ventured to point out in my judgment in *Basanta Kumar Roy Chowdhury* : " It is a well-recognized principle in the Interpretation of Statutes that an Act of the Legislature should be so construed as to give effect so far as possible, to all its enactments, nor must it be so construed as to allow one provision to stultify another." I have not heard any argument to-day to induce me to alter that opinion. S. 179 of the Bengal Tenancy Act therefore has to be reconciled with the provisions of clause (*h*) of the third proviso of s. 178 **[681]** and I think the only way in which we can reconcile them is by reading s. 179, as suggested by Dr. Rash Behari Ghose : in other words, s. 179 should be read as follows :—

"That nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently settled area from granting a permanent *mocurari* lease or any terms agreed on between him and his tenant, so far as they are not in conflict with the provisions of this Act."

RAMPINI, J. I think it is sufficient for me to say that I agree with the views of the majority of the learned Judges constituting this Bench, and I would accordingly answer the first part of the question referred to us in the affirmative, that is to say, I consider that the plaintiff is entitled to recover interest at the rate specified in the *kabuliat* executed by the defendant, and I would answer the second part of the question in the negative, that is to say, I do not consider that s. 67 of the Bengal Tenancy Act controls the provisions of s. 179 of that Act, but, on the contrary, that s. 179 controls the provisions of s. 67. I also consider that the case of *Basanta Kumar Roy Chowdhry* v. *Promotha Nath Bhuttacharjee* (1) has not been rightly decided.

Appeal dismissed.

29 C. 682.

[682] APPELLATE CIVIL.

Before Mr. Justice Hill and Mr. Justice Brett.

BARODA KANTA BOSE v. CHUNDER KANTA GHOSE.*

[25th June, 1902.]

Suit for possession—Benamidar—Beneficial owner—Party—Whether, in a proceeding for setting aside a sale, the beneficial owner is a necessary party—

* Appeal from Appellate Decree No. 1606 of 1899, against the decree of Babu Debendra Lall Shome, Subordinate Judge of Khulna, dated the 16th of June 1899, affirming the decree of Babu Monmohun Neogy, Munsiff of Bagirhat, dated the 19th of September 1898.

(1) (1898) I. L. R. 26 Cal. 130.