realization and for disallowing compound interest and compensation for default in payment of interest. It appears to us that they should be allowed up to the date on which we allow the contract rate of interest to run on the principals of the bonds. As far as we can see there is no good reason why compound interest at the modified rate we would allow the plaintiffs and compensation for the failure to pay interest should not be allowed up to the date mentioned by us above. We accordingly allow them.

The other grounds of cross appeal are not important. The stipulation for the payment of the higher rate of interest is certainly a penalty, as has been said in dealing with the appeal. In our opinion the Subordinate Judge has made up the accounts between the parties perfectly correctly. He has acted quite fairly in crediting the defendants' payments to interest in the first instance.

[54] We accordingly decree the appeal and cross appeal in the manner indicated above.

A fresh account will now be drawn up of the liabilities of the defendants to the plaintiffs, and a decree prepared according to the provisions of s. 88 of the Transfer of Property Act. The amount mentioned in the decree must be paid within three months from the date of the signing of the decree, failing which the plaintiffs will be at liberty to sell the mortgaged properties in the manner specified in the Subordinate Judge's decree. Each party to get costs in proportion to his success or failure in the appeal and cross appeal.

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29 C. 54.

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

KEDAR NATH BANERJEE *v.* ARDHA CHUNDER ROY.* [31st July, 1901.]

Limitation—Bengal Tenancy Act (VIII of 1885) Schedule III, Art. 6—Limitation Act (XV of 1877) Schedule II, Art. 179—Whether an application for execution of a decree for a sum not exceeding Rs. 500, obtained by a co-sharer landlord for his share of the rent, is governed by the special rule of limitation as laid down in Bengal Tenancy Act or by the general law of limitation as laid down in the Limitation Act.

An application for execution of a decree for a sum not exceeding Rs. 500, obtained by a co-sharer landlord for his share of the rent, is governed by Article 179 of the Second Schedule of the Limitation Act (XV of 1877) and not by Article 6 of the Third Schedule of the Bengal Tenancy Act (VIII of 1885).

THE judgment debtor, Kedar Nath Banerjee, appealed to the High Court from the decision of the District Judge.

These appeals arose out of applications for execution of decrees obtained by Ardha Chunder Roy, one of several joint landlords, **[55]** for his share of the rent. The decrees, which were for sums not exceeding Rs. 500, were passed on the 21st December 1893 and were confirmed on appeal by the High Court on the 30th June 1896. On the 5th June 1899 applications for execution of these decrees were made, which did not contain the lists of properties, but the decree-holder produced a list on the 25th July 1899. On the 12th August 1899 these

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*** Appeal from Order No. 267 of 1900 against the order of F. E. Pargiter, Esq., District Judge of 24-Pergunnahs, dated the 15th of May 1900, affirming the order of Babu Amrito Lal Mookerjee, Munsif of Alipur, dated the 14th of February 1900.**

applications were struck off the file on the ground that applications for execution could not be carried out without amendment, and no amendment could be made after the application had been admitted and registered under s. 245 of the Civil Procedure Code. The present applications were made on the 5th September 1899 with a prayer that they might be taken as applications in continuation of the previous applications of the 5th June 1899. The judgment-debtor objected to the execution proceedings on the ground that the applications were barred by limitation under Article 6, Schedule III of the Bengal Tenancy Act; and that these applications could not be taken to be in continuation of the previous applications. The Court of First Instance having held that Article 179 of the Second Schedule of the Limitation Act applied to the case and that it was not barred by limitation, allowed the applications for execution. On appeal to the District Judge of 24-Pergannas, Mr. F. E. Pargiter, the decision of the First Court was confirmed.

JULY 8, 12, and 15. Appeal No. 267 of 1900. Babu *Saroda Churn Mitter* and Babu *Soroshi Churn Mitter* for the appellant.

Babu *Nil Madhub Bose* and Babu *Benode Behary Mookerjee* for the respondent.

Appeal Nos. 291 to 295 of 1990. Babu *Soroshi Churn Mitter* for the appellant.

Babu *Benode Behary Mookerjee* for the respondent.

JULY 31. BANERJEE, J. In these appeals, which arise out of applications for execution of certain rent decrees for sums not exceeding Rs. 500, the main question for determination is whether an application for the execution of a decree obtained by two or more joint-landlords for their share of the rent is governed by the [56] special rule of limitation laid down in Article 6 of Schedule III of the Bengal Tenancy Act, or by the general law of limitation, namely, Article 179 of the Second Schedule of Act XV of 1877.

If the special law of limitation applies, the applications for execution are barred, unless, they can be treated as being in continuation of certain previous applications made within three years from the date of the decrees. If the general law of limitation governs the cases, the applications are in time. The Courts below have held that the applications, which are admittedly made by a co-sharer landlord for the execution of decrees for his share of the rent, are not governed by Art. 6 of Schedule III of the Bengal Tenancy Act, and are not barred by limitation; and hence these appeals by the judgment-debtor.

Babu *Saroda Churn Mitter* for the appellant contends that a suit by one of several joint landlords for his share of the rent, being a suit between landlord and tenant, is a suit under the Bengal Tenancy Act, and a decree made in such a suit is a decree under that Act, although certain provisions of the Act, namely, those relating to the sale of tenures and holdings in execution of rent decrees, may not apply to such a decree. He argues that, if it were otherwise, if the special law of limitation did not apply to these cases, anomalous results would follow, such as this, that whereas a rent decree for a sum not exceeding five hundred rupees, if obtained by all the joint landlords suing together, must be completely executed within three years a co-sharer landlord obtaining such a decree can keep it alive for execution against the tenant for twelve years by making successive applications at intervals of three years. And in support of his contention he relies upon ss. 143 and 144 of the Bengal

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Tenancy Act, and the cases of *Prem Chand Nuskur* v. *Mokshoda Debi* (1), *Narain Mahton* v. *Manofi Pattuk* (2) and *Parameswar Nomosudra* v. *Kali Mohun Nomosudra*. (3) On the other hand Babu *Nilmadhub Bose* for the respondent argues that the only rent decrees, which can be treated as decrees under the Bengal Tenancy Act, are decrees obtained by the entire body **[57]** of landlords, that a decree obtained by one of several joint landlords for his share of the rent is one obtained independently of that Act ; and that the anomaly pointed out by the other side may be explained by the fact that a co-sharer landlord cannot obtain satisfaction of his rent decree by the sale of the tenure or holding in arrear, and the Legislature may, in consideration of that fact, have thought it fit to allow him a longer time for realizing the amount of his decree. And in support of this argument reliance is placed upon s. 188 of the Bengal Tenancy Act, and the cases of *Beni Madhub Roy* v. *Jaod Ali Sircar* (4), *Durga Charan Mandal* v. *Kali Prasanna Sarkar* (5), and *Sadagar Sircar* v. *Krishna Chandra Nath* (6). It is further contended for the respondent that, even if the cases were governed by the special law of limitation, the applications were not barred, as they were made in continuation of previous applications, which were in time.

If the last-mentioned contention of the respondent be well founded, it would not be necessary to consider the question raised by the appellant. But I am unable to accept it as correct, seeing that the previous applications contained no list of properties to be attached, that they were not amended but were rejected, and that the present applications have been made as fresh applications. It is necessary, therefore, to determine the question stated at the outset. That question is not free from difficulty. After a careful consideration of the able arguments on both sides, the conclusion I arrive at is, that the decision of the Courts below that the cases are not governed by the special law of limitation is right.

The special law of limitation relied upon by the appellant, namely, Article 6 of Schedule III of the Bengal Tenancy Act, is, by its express terms, limited in its operation to decrees made under that Act or any Act repealed by it. The decrees in these cases were not made under any of the Acts repealed by the Bengal Tenancy Act, as they were made after those Acts had been repealed. Then were they made under the Bengal Tenancy Act? **[58]** It is argued for the appellant that they were so made, because they were made in suits between landlord and tenant, and all suits between landlord and tenant are suits under the Bengal Tenancy Act. The minor premise in the above reasoning is true, but not so the major. It is true that a suit by a co-sharer landlord for his share of the rent payable by a tenant is a suit between landlord and tenant ; but to say that such a suit is one under the Bengal Tenancy Act would be to ignore the general scheme of the Act as indicated by s. 188, which says that anything which is required or authorized to be done by the landlord under the Act must be done by all the joint landlords acting together or by their authorized agent. Ss. 143 and 144 of the Act relied upon by the appellant no doubt speak of suits between landlord and tenant generally, but they do not show that a suit by a co-sharer landlord for his share of the rent is, in the face of s. 188, a suit under the Act. Such a suit is maintainable, not as a suit under the Bengal Tenancy Act, but as a suit independent of

(1) (1887) I. L. R. 14 Cal. 201.
(2) (1890) I. L. R. 17 Cal. 489.
(3) (1900) I. L. R. 28 Cal. 127.
(4) (1890) I. L. R. 17 Cal. 390.
(5) (1899) I. L. R. 26 Cal. 727.
(6) (1899) I. L. R. 26 Cal. 937.

the Act and outside its scope, as was in effect held in *Prem Chand Nuskur* v. *Mokshoda Debi* (1) and *Jugobundhu Pattuck* v. *Jadu Ghose Alkushi* (2). I may here add that the preamble of the Bengal Tenancy Act, which may be referred to as indicating its general scope (see Maxwell on the interpretation of Statutes, 3rd edition, p. 59 and *Turquand* v. *Board of Trade*) (3) shews that the Act is intended to amend and consolidate, not the entire law of landlord and tenant, but only certain enactments relating to that law.

The old law (see Act X of 1859, ss. 105 and 108 and Act VIII of 1869, B. C., ss. 59 and 64) contained provisions for the execution of rent decrees obtained by co-sharer landlords for their separate shares of the rents as well as those obtained by all the joint landlords acting in concert. But the Bengal Tenancy Act contains provisions only in respect of rent decrees of the latter sort, these being the only rent decrees which, regard being had to s. 188, can come within its scope. It has accordingly been held by a Full Bench of this Court in *Beni Madhub Roy* v. *Jaod Ali Sircar* (4) that s. 170 of the Act appplies **[59]** only to rent decrees obtained by all the joint landlords acting together. Moreover, the view I take that a decree obtained by a co-sharer landlord for his share of the rent is not a decree under the Bengal Tenancy Act, is in accordance with that taken in the case of *Durga Churan Mondal* v. *Kali Prosanna Sarkar* (5). There are no doubt several provisions in the Bengal Tenancy Act which are quite general in their terms, and some of these, as for instance those of s. 153 and of Article 3 of Schedule III have been held applicable to suits by or against one of several joint landlords. See *Narain Mahtan* v. *Monofi Pattuk* (6) and *Parameswar Nomosudra* v. *Kali Mohun Nomosudra* (7). But those cases were decided with reference to the language of the provisions of the Act bearing upon them. Thus in the first-mentioned case the words "amount of rent annually payable by a tenant" occurring in s. 153, were held to include the case of rent payable by a tenant to one of the co-sharer landlords, who collects his rent separately ; and in the second case Article 6 of Schedule III of the Act was held applicable to a suit against a co-sharer landlord. S. 188 has no bearing upon either of those two cases, and the decisions in those cases do not militate against the view I take of the meaning and scope of Article 6, which speaks not of decrees for rent, nor of decrees in suits between landlord and tenant, but of "decrees made under the Act," which must be held to mean decrees obtained in suits brought in accordance with and not in disregard of s. 188. It is argued for the appellant that as Article 6 of Schedule III is expressly applicable to decrees made under Act VIII of 1869 (B. C.) and Act X of 1859 (repealed by the Bengal Tenancy Act) and a decree obtained by a co-sharer landlord for his share of the rent would be a decree under either of those two Acts, if the suit was brought when those Acts were in force, it would be unreasonable to hold that the article is inapplicable to such a decree where the suit is brought after the repeal of those enactments. The answer to this argument is that the Legislature may have intended to make a change in the law, and there is reason for thinking that a

(1) (1887) I. L. R. 14 Cal. 201.
(2) (1887) I. L. R. 15 Cal. 47.
(3) L. R. 11 App. Cas. 286.
(4) (1890) I. L. R. 17 Cal. 390.
(5) (1899) I. L. R. 26 Cal. 727.
(6) (1890) I. L. R. 17 Cal. 489.
(7) (1900) I. L. R. 28 Cal. 127.

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longer time may have been given to a co-sharer landlord to have [60] satisfaction of a rent decree obtained by him than is given to joint landlords acting together, seeing that the latter can obtain satisfaction of their decree by the sale of the tenure or holding in arrear.

And this circumstance will explain also the anomaly referred to in the appellant's argument.

For these reasons I think the order appealed against is right, and these appeals should be dismissed with costs.

MACLEAN, C. J. I concur.

Appeal dismissed.

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29 C. 60.

Before Mr. Justice Rampini and Mr. Justice Pratt.

AMRITO LAL MUKHERJEE *v.* RAM CHANDRA ROY.*
[13th December, 1901.]

Appeal— Second Appeal—Order dismissing a suit for default of appearance—Decree —Civil Procedure Code (Act XIV of 1882) *s.* 2.—*Remand.*

An order dismissing a suit for default of appearance is not a decree within the meaning of s. 2 of the Civil Procedure Code and therefore no first or second appeal lies therefrom.

***Jagarnath Singh* v. *Budhan* (1), *Anwar Ali* v. *Jaffer Ali* (2) and *Gilkinson* v. *Subramania* (3) referred.**

A suit was dismissed for default of appearance. On appeal by the plaintiff, the Lower Appellate Court set aside the dismissal of the suit and as a necessary consequence directed the Court of First Instance to proceed to try it.

***Held*, that this was not such an order as could be passed under the remand sections of the Civil Procedure Code and the order of the Court [61] of First Instance not being appealable, the Lower Appellate Court acted without jurisdiction in setting aside the decision of the First Court.**

ONE Ram Chundra Roy, the respondent, brought a suit for an account against a lessee to whom land was let at a rent to pay off from the usufruct a mortgage debt, in the Second Court of the Subordinate Judge of Hooghly on the 17th April 1900. After several adjournments, the plaintiff's pleader stated his case and examined a witness on the 7th September 1900, and asked for an adjournment of the case till the next day. On the next day the plaintiff not being present and no witnesses being in attendance, a petition was put in on his behalf praying that summons be issued on his witnesses and also for an adjournment of the case. The learned Subordinate Judge refused the said application and dismissed the suit. The material portion of his judgment was as follows :—

" The case was opened yesterday, but to-day the learned pleader for the plaintiff is absent. He examined one witness yesterday, whose evidence proves nothing material. To-day another petition for postponement was filed but that has also been rejected, neither the plaintiff nor his pleaders being present. The suit is dismissed for default."

*** Appeal from Order No. 17 of 1901, against the order of D. Cameron, Esquire, District Judge of Hooghly, dated the 11th of December 1900, reversing the order of Babu Hemango Chunder Bose, Subordinate Judge of that district, dated the 8th of September 1900, and remanding the suit to his Court for trial according to law.**

(1) (1895) I. L. R. 23 Cal. 115.
(2) (1896) I. L. R. 23 Cal. 827.
(3) (1898) I. L. R. 22 Mad. 221.