

Before Mr. Justice Bayley and Mr. Justice Mitter.

May 4.

AHMED ALI (ONE OF THE DEFENDANTS) v. GOLAM GAFAR AND
OTHERS PLAINTIFFS)*

Presumption—Act X. of 1859, s. 15—Rent.

In determining whether a party is entitled to the benefit of the presumption under section 15, Act X. of 1859, or not, the question to be tried is not whether the rent has been paid at a uniform rate, but whether it has not been changed within 20 years prior to the institution of the suit.

Baboo *Baikant Nath Pal* for appellant.

No one for respondent.

MITTER, J, in his judgment in this case, made the following observations:—We further find that the Judge has committed another mistake in determining whether the defendant was entitled to the benefit of the presumption laid down in section 15 of Act X. of 1859. The Judge appears to have held that because the dakhilas produced by the defendant showed payment of different amounts on different dates, that fact was sufficient to rebut the presumption above referred to. But in determining whether a party is entitled to the benefit of that presumption or not, the question to be tried is not whether the rent has been paid at a uniform rate, but whether it has not been changed at any time within 20 years prior to the institution of the suit,

We frequently find that in dealing with this presumption, the Courts below instead of addressing themselves to the real question at issue, viz., whether the rent has been changed or not, confine their enquiry to one point, viz., whether one uniform rate has been paid or not? There may be cases in which a ryot might not have paid his rents for many years prior to the institution of the suit for enhancement, but if there has been no change in the rent payable by him, he is not to be deprived of the presumption which the law has expressly laid down for his benefit. The payment at a uniform rate is one mode of shewing that the tenure was held at a uniform rate, but what is only a particular mode of proceeding to the solution of a question ought not to be confounded with the question itself.

* Special Appeal, No. 3156 of 1868, from a decree of the Additional Judge of Chittagong, dated the 27th August 1868, affirming a decree of the Deputy Collector of that district, dated the 16th April 1868.