

1871 the late issue of the process as an excuse for delaying the final hearing of the case.

HARIDAS  
BAISAKH  
v.  
MIR MOAZAM  
HOSSEIN.

I would call the attention of the Courts below to the remarks of Mr. Justice L. S. Jackson in the case of *Anurup Chandra Mukhopadhyaya v. Hiramani Dasi* (1).

1871  
Sept 8.

Before Mr. Justice Phear.  
In Chambers.

KALAS CHANDRA BOSE v. BHUBAN CHANDRA BOSE AND OTHERS.  
*Rule of Supreme Court.*

Rule 176 of the Rules and Orders on the Plea Side of the Supreme Court is still in force.

An order, dated September 1st, 1871, had been made in this case on the application of the defendants that the plaintiffs should attend on September 2nd and show cause why they should not admit certain documents relied on by the defendants in the suit.

The affidavit of S. Gabriel, a clerk in the office of Messrs. Carruthers and Dignam, attorneys for the defendants, stated:—"That the plaint in the suit was filed on August 13th, 1870; that the suit was brought to have a declaration of the right of the plaintiffs to a one-third share of and in the premises in the plaint and in certain property left by one Gakul Chandra Bose, deceased, and for a partition and receiver &c., until partition, and for an injunction to restrain the defendants from collecting the rents; that on August 12th, a writ of summons was issued, and on 22nd served on Prasannakumar Sirkar and Pyaricharan Sirkar two of the defendants, who duly appeared; that on 4th January the defendants filed their written statement, and on 5th the plaintiff filed his written statement; that on 24th August 1871, some of the defendants, by Messrs. Carruthers and Dignam their attorneys, caused a notice to be served on the plaintiff's attorneys, Messrs. Dhur and Mitter, to admit certain documents relied on by the defendants in the suit; that in pursuance of such notice, on 26th August, the plaintiff, and a clerk in the office of Messrs. Dhur and Mitter, called at the office of Messrs. Carruthers and Dignam, inspected the said documents, and stated that they would write and say whether they would admit the documents or not; that they had not written or in any way consented to such admission."

The order of September 1st was, "that the plaintiff do attend on 2nd September and show cause why the plaintiff should not admit the documents, and why, in case of his refusing to admit them, the plaintiff should not pay the costs of proving such documents at the trial of the suit whatever may be the result, and why the plaintiffs should not pay the costs of this application.

Mr. Dignam for the defendants submitted, that Rule 176 of the rules and orders on the Plea Side of the Supreme Court (2) applied by virtue of Rule

(1) 3 B. L. R., App., 38.

(2) Skinner's Rules and Orders, App., 103.

of the High Court No. I, dated January 1st, 1865, and Rule No. 83, dated January 2nd, 1866, see Broughton's Civil Procedure, 4th Edition, pages 719 and 742 (1).

PHEAR, J.—I was at first inclined to think this rule was obsolete, but on reconsideration, I do not think so, and that it may be useful in some cases. But as this suit would have been on the Equity Side, and the Rule is one on the Plea Side of the Supreme Court, I think it does not apply. The order will be refused, but without costs.

1871  
KAILAS CHAN-  
DRA BOSE  
v.  
BHUBAN  
CHANDRA  
BOSE.

*Before Mr. Justice Kemp and Mr. Justice E. Jackson.*

PANCHUDAS (PLAINTIFF.) v. SRIMATI SHUDHAMAYI (DEFENDANT.)\*  
*Criminal Procedure Code (Act XXV of 1861), s. 316—Maintenance of Children—Willingness of Father to support them.*

1871  
Dec. 2.

In this case the prosecutrix applied for an order against her husband under section 316 of Act XXV of 1861 for maintenance. The Deputy Magistrate held that she had failed to establish her right to maintenance under section 316, but awarded maintenance to her for their two infant children, although the husband was willing to take charge of them and also to support the mother if she would live with him.

(1) *Rule 176.*—“Either party, after plea pleaded and a reasonable time before trial, may give notice to the other in the form annexed to this rule, or the like effect, of his intention to adduce in evidence certain written or printed documents; and unless the adverse party shall consent, by indorsement on such notice, to make the admission specified, the party requiring such admission may call on the party required, by summons to show cause before a Judge why he should not consent to admission, or in case of refusal be subject to pay the costs of proof. And unless the party required shall expressly consent to make such admission, the Judge shall, if he think the application reasonable, make an order that the costs of proving any document specified in the notice which shall be proved at the trial to the satisfaction of the Court, certified by the prothonotary's indorsement thereon, shall be paid by the party so required, whatever may be the result of the cause.

*Rule 1, January 1st, 1865.*—“All rules which at the time of the abolition of the Supreme Court of Judicature at Fort William in Bengal, were in force in that Court, shall, so far as the same are applicable, be continued as rules of the High Court, with regard to all matters in which that Court has original jurisdiction, civil or criminal, except so far as the same may be contrary to the provisions of the Act 24 & 25 Vict., c. 104, or the Letters Patent granted in pursuance thereof; or to the provisions of Act VIII of 1859, or as the same have been or shall hereafter be altered or modified by the Court.”

*Rule 83, January 2nd, 1866.*—“All rules which were in force in the High Court on 31st December shall continue in force until further orders, except so far as they have been altered in regard to grants of probate and letters of administration by Act X of 1865.”

\*Reference under Section 434 of the Code of Criminal Procedure by the Officiating Sessions Judge of Midnapore.