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nary course this would be with costs; but regard being had to the defence which has been unnecessarily set up on the part of the Government, not only in the Court below but in this Court, that is to the effect that the action taken by the Government had the effect of transferring the property from the hands of the plaintiff to the defendant, we are of opinion that the Government is not entitled to its costs.

We think that as regards the defendant Jogendro Narain, the appeal should be dismissed with costs, and the decree of the lower Court affirmed; but, as regards the Government, the decree of the lower Court must be reversed, and the suit dismissed without costs.

We do not think we ought to interfere with the order made in the lower Court, directing Jogendro Narain to pay the costs of Mr. Lyon.

Appeal allowed as regarded the Government, and dismissed as regarded the other appellant.

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Dec. 22.

Before Mr. Justice Phear and Mr. Justice Morris.

GOBINDO COOMAR CHOWDHRY (PLAINTIFF) *v.* W. B. MANSON AND OTHERS (DEFENDANTS).

W. B. MANSON (ONE OF THE DEFENDANTS) *v.* GOBINDO COOMAR CHOWDHRY (PLAINTIFF).*

Limitation—Act XIV of 1859, *cl.* 1, *ss.* 1 & 14—*Act X of* 1859, *s.* 32—*Beng. Act VIII of* 1869, *ss.* 21 & 29—*Suit for Arrears of Rent—zemindar Talookdars—Joint Sharers.*

The words of s. 29, Beng. Act VIII of 1869, are intended to apply specially, and exclusively of Act XIV of 1859, to the same class of cases as those to which s. 32, Act X of 1859, applied, though that class cannot now be defined as it formerly could, by reference to the jurisdiction of the Court in which the cases fall to be entertained. The class is limited to suits for arrears of rent simply, as "arrears of rent" are defined in s. 21, Beng. Act VIII of 1869.

* Regular Appeals, Nos. 255 and 268 of 1873, against a decree of the Subordinate Judge of Zilla Mymensingh, dated the 9th July 1873

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Where a part-proprietor of a certain talook, who was also a co-sharer in a fractional portion thereof, brought suits against his co-talookdars in the Revenue Court for arrears of rent without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction, and afterwards brought a suit for the rent for the same period in the Civil Court,—*held*, that the suit was not one for the recovery of arrears of rent within the meaning of s. 29, Beng. Act VIII of 1869, but was governed by the provisions of Act XIV of 1859. The suit was one for rent of land, and fell within the scope of cl. 8, s. 1 of that Act; and the plaintiff was, in computing the limitation, entitled under s. 14 to a deduction of the period during which he was prosecuting his suit in the Revenue Courts. *Held* also, that a zemindar, by becoming a co-sharer in the talook, does not lose his right to the joint responsibility of all the other co-sharers for the due payment of the rent; he only becomes bound to make an allowance for that portion which he as a co-sharer ought to pay.

THE plaintiff in this suit was the proprietor of a 4-anna share in Talook Rajessuri. This talook belonged to, and was in the possession of, several talookdars, holding under the zemindar by apportionment into kismats, each kismat being held jointly by two or three shareholders in undivided but ascertained shares. The plaintiff had also acquired by purchase an 8-gunda talookdari share in one of the kismats. The talook bore a fixed jama, a defined aliquot part whereof was assessed upon each of the constituent kismats or mehals of the talook, but no apportionment had taken place among the talookdars of their joint liability to pay the jama in its entirety and as a whole to the zemindar.

The plaintiff sued the defendants, his co-talookdars, to recover a fourth share of the rent due to him as part proprietor for the years 1271 to 1275 (1864—1869), deducting an amount proportionate to his own talookdari share in the talook, *viz.*, 8 gundas.

The defendants pleaded, *inter alia* that the plaintiff's claim was barred by lapse of time; and that the suit being in effect a suit for a partial partition of the talook could not be entertained unless a complete partition of the talook among all the shareholders with the assigment of a separate jama to each was carried out.

It appeared that the plaintiff had previously instituted two suits in the Collector's Court against the defendants, the first on

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the 17th of April 1867 for the arrears of 1271—1273; and the second on the 27th of July 1869 for those of 1273—1275. Both these suits were dismissed on the 1st of May 1871 for want of jurisdiction; and the plaintiff then brought the present suit in the Civil Court.

The Subordinate Judge held on the first point, that the plaintiff's claime was governed by the provisions of Act XIV of 1859, and that he would be in time provided he came within six years from the dismissal of his suit in the Revenue Court; on the second point, the Judge held the suit was maintainable. But being of opinion that the plaintiff was guilty of fraud upon his co-talookdars in not making a proportionate deduction respecting his own share in the claim preferred by him in the Revenue Court, he disallowed the rents for the period during which the two former suits were pending in that Court, and simply gave him a decree for the period from 25th Magh 1273, to Choitro 1275 (February 1867 to March 1869)

The plaintiff appealed to the High Court from that portion of the Judge's order which disallowed his claim respecting the arrears of 1271—1273; and one of the defendant Manson appealed from the portion decreeing the plaintiff's claim.

Baboos *Hem Chunder Banerjee* and *Nullit Chunder Sen* for Gobindo Coomar Chowdhry.

Baboo *Bhowani Churn Dutt* for Manson.

Baboo *Hem Chunder Banerjee*.—The Judge was clearly wrong in disallowing plaintiff's claim for the period spent in the Revenue Court. The reasons assigned are purely arbitrary. The suit not being for arrears of rent within the meaning of s. 21 of Beng. Act VIII of 1869 does not come within the purview of s. 29 of that Act. It is clearly governed by the provisions of the general Limitation Act (XIV of 1859). S. 14 of Act XIV of 1859 expressly provides that the time spent by the plaintiff in the *bonâ fide* prosecution of his claim in any Court of Justice, which from defect of jurisdiction or

other cause should have been unable to decide upon it, shall be excluded in computing the period of limitation. The plaintiff in this case was diligently and *bonâ fide* engaged in prosecuting his claim up to May 1871, and is clearly entitled to the exclusion of the time so occupied. This is in no sense a suit for a partition of the estate or the jama, but merely a claim for what is due from the defendants, who in equity should not be allowed to defeat the plaintiff's claim upon a mere technical ground.

Baboo *Bhowani Churn Dutt*.—The main object of the present suit is to obtain a declaration of the separate liability of the plaintiff in proportion to his talookdari interest. He ought for this purpose to have applied regularly under the provisions of Act XI of 1859 to separate the liabilities of all the shareholders. The suit is misconceived and ought to be dismissed. In the second place, the suit being clearly for arrears of rent within the meaning of s. 21 of Beng. Act VIII of 1869 is barred by s. 29. But even under the general limitation law, the claim is barred by lapse of time; no deduction ought to be allowed to the plaintiff in computing the period of limitation, inasmuch as the Judge has expressly found he was not prosecuting his claim *bonâ fide* in the Revenue Court.

Baboo *Hem Chunder Banerjee* was not called upon to reply.

The judgment of the Court was delivered by

PHEAR, J. (who, after stating the facts of the case, continued):—The question of limitation is not altogether a simple one. The defendants contend that the enactment of s. 29 of Beng Act VIII of 1869 alone governs the case, and if it does, the whole of the plaintiff's claim is unquestionably barred. If, however, the general law of limitation, which is to be found in Act XIV of 1859, applies, either in conjunction with s. 29 of Beng. Act VIII of 1869, or alone, then the plaintiff may be entitled to sue for a part, or even the whole, of his claim.

The words of s. 29 of Beng. Act VIII of 1869 are identical with those of s. 32 of Act X of 1859, and it has been decided both by

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a Full Bench of this Court in the case of *Poulson* v. *Madhusudan Paul Chowdhry* (1), and by a judgment of the Privy Council in *Unnoda Persaud Mookerjee* v. *Kristo Coomar Moitro* (2), that the

(1) B. L. R. Sup. Vol., 101.

(2) PRIVY COUNCIL. *

The 26th November 1872.

UNNODA PERSAUD MOOKERJEE *v.* KRISTO COOMAR MOITRO.

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Limitation—Suit for Arrears of Rent—Act X of 1859, *s.* 32—*Act XIV of* 1859.

The limitation in a suit for arrears of rent brought in the Collector's Court, under Act X of 1859, is that provided by s. 32 of that Act, and not that provided by Act XIV of 1859.

APPEAL from a decision of the High Court at Calcutta (Morgan and Seton-Karr, JJ.), dated 21st April 1865.

Mr. *Leith* and Mr. *Doyne* for the appellant.

The respondent did not appear.

The judgment of their LORDSHIPS was delivered by

SIR M. E. SMITH.—The single question to be decided in this appeal is, whether to an action for rent brought in the Collector's Court under Act X of 1859 (The Rent Act), the bar of limitation applicable to it is that provided by the 32nd section of the same Act, or that provided by Act XIV of 1859, passed six days later.

If the limitation of s. 32 of Act X is still in force, the action is barred; but if, as the appellant contends, that section has been repealed and the limitation of Act XIV is applicable to the case, then it is not.

The 32nd section of Act X enacts, that "suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeyt of the Fusly or Willayuttee year, in which the arrear shall have become due."

By Act XIV, s. 1, cl. 8, the limitation applicable to suits for the rent of any buildings or lands is the period of three years from the time the cause of action arose.

The present suit would be barred even under Act XIV, but for the operation of cl. 14 of that Act, which provides that in computing the period of limitation prescribed by that Act, the time occupied in prosecuting an abortive suit, shall, under certain conditions, be excluded. There has been litigation, which would bring the present case within this section, and prevent the suit being barred if Act XIV is applicable to it. There is no analogous provision in Act X, and it is admitted by the appellant that if that Act governs it, the suit is barred.

Act X is not expressly and specially repealed; but the enactments of the later Act are no doubt in their terms large enough to include the limitation contained in it; for s. 1 of Act XIV enacts, that "no suit shall be maintained unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any Law or Regulation to the contrary notwithstanding," and

* *Present* SIR J. W. COLVILE, SIR B. PEACOCK, SIR M. E. SMITH SIR R. P. COLLIER, AND SIR L. PEEL.