The Weekly Reporter,

APPELLATE HIGH COURT.

The 9th May 1865.

Present:

The Hon'ble C. B. Trevor and G. Campbell, *Judges.*

Limitation—Registration of Suit.

Case No. 3171 of 1864.

Special Appeal from a decision passed by the Additional Judge of Dacca, dated the 30th July 1864, affirming a decision passed by the Sudder Ameen of that District, dated the 25th April 1863.

Juggobundhoo Bose and others (Defendants), *Appellants,*

versus

Gour Monee Dossia (Plaintiff), *Respondent.*

Mr. A. F. Lingham and *Baboos Chunder Madhub Ghose* and *Sreenath Banerjee* for Appellants.

Baboos Onocool Chunder Mookerjee and *Kalee Mohun Doss* for Respondent.

The law does not declare that the date of registry of the plaint shall be taken to be the date of institution of a suit. A plaintiff, who has *bonâ fide* instituted his case within time, will not be prejudiced by delay in registration.

PLAINTIFF sued to reverse an order of the thakbust authorities passed on 26th May 1859.

The defendant pleaded limitation, inasmuch as the present suit was not instituted till 27th May 1862, and also that the lands in dispute belonged to him, and not to the plaintiff.

The first Court gave plaintiff a decree, and, on appeal, the Judge held that limitation did not apply, and affirmed the order of the first Court on the merits.

Defendant now appeals specially, urging that the suit was registered on the 27th May; that the date of registry must be taken to be the date of institution, and that plaintiff, therefore, is clearly out of time.

The lower Courts both found that the plaint was filed on the 26th May. There is nothing in the law declaring that the date of registry shall be taken to be the date of the institution of a suit; and though a plaint should be registered as soon after it is presented as possible, yet any failure on the part of a Civil Officer to act with proper despatch in this particular will not prejudice a plaintiff, who has *bonâ fide* instituted his case within time; and, as this seems to be the case with the present plaintiff, we dismiss the special appeal with costs.

The 9th May 1865.

Present:

The Hon'ble C. B. Trevor and G. Campbell, *Judges.*

Jurisdiction—Suit between ryots (for illegal appropriation of produce)—Mesne-profits.

Case No. 3167 of 1864.

Special Appeal from a decision passed by Mr. A. Pigou, Judge of Hooghly, dated the 11th August 1864, affirming a decision passed by the Additional Sudder

Ameen of that District, dated the 10th October 1863.

Joy Kishen Mookerjee and others (Defendants), *Appellants,*

versus

Jodoonath Ghose (Plaintiff), *Respondent.*

Baboos Banee Madhub Banerjee, Mohindro Lall Shome, and *Pearee Mohun Mookerjee* for Appellants.

Baboo Kishen Succa Mookerjee for Respondent.

A suit by one ryot against another for damages on account of illegal appropriation of the produce of the land, including the ryot's profits, by the defendant during certain years, is not a suit for mesne-profits, and is, therefore, unaffected by section 11, Act XXIII. of 1861. The question regarding amount cannot be settled in execution, but by separate suit.

PLAINTIFF first brought a suit for possession with mesne-profits of certain land of which he had been dispossessed by the defendant, Joy Kishen Mookerjee.

The Courts gave him a decree for possession and wasilat for 1266. He now sues for what he calls the mesne-profits of 1267, 1268, and 1269, that is, from the date of the former decree to the date of his acquiring possession under it.

Both the lower Courts gave plaintiff a decree, though the sum decreed by both Courts was not the same in amount

The defendant now appeals specially, urging that the present separate suit for mesne-profits between the date of the previous decree and possession acquired under it will not lie; that the question regarding their amount should have been settled under section 11, Act XXIII. of 1861, in execution, and not by separate suit; and that, consequently, the order of the lower Courts should be reversed, and the plaintiff's suit dismissed with costs.

We do not look upon the present suit as one for mesne-profits at all. It is a suit by one riot against another tenant for damages on account of the illegal appropriation of the produce of the land, including the ryot's profits by defendant during certain years, and it is measured at the value of that produce with certain deductions on account of expenses of cultivation. Such a suit, we think, is unaffected by the terms of section 11, Act XXIII. of 1861; and though, doubtless, the words "mesne-profits" have been used incorrectly, such incorrect usage will not affect the plaintiff's right to bring an action of this nature. We see no reason, therefore, to interfere in special appeal, but reject the application with costs.

The 10th May 1865.

Present:

The Hon'ble C. B. Trevor and G. Campbell, *Judges.*

Decision (Effect of, in one appeal by High Court on two others before Judge).

Case No. 3356 of 1864.

Special Appeal from a decision passed by the Judge of Dacca, dated the 22nd August 1864, reversing a decision passed by the Principal Sudder Ameen of that District, dated the 28th December 1859.

Mr. G. Gregory, executor to the estate of Mr. Catherina Arratoon (Plaintiff), *Appellant,*

versus

Huree Kishore Roy and others (Defendants), *Respondents.*

Mr. C. Gregory and *Baboo Kalee Mohun Doss* for Appellant.

Baboos Kishen Kishore Ghose and *Hem Chunder Banerjee* for Respondents.

Of three suits by different parties against the same defendant, the appeal lay in one to the High Court, and in the other two to the Judge. The Judge postponed the two cases before him until the decision of the High Court, when, taking it as a precedent, he decided, accordingly, in favour of the defendant. HELD that the decision of the one case, though not strictly a pre-adjudication binding on the other two plaintiffs, was, nevertheless, a good guide to enable the Judge to arrive at a correct finding on the facts.

THREE cases brought by three parties claiming shares in the same land as against a neighbouring zemindar were tried together. In one, the amount being beyond the limit, the appeal lay to the High Court; in the two others, the appeal lay to the Judge. The two cases before the Judge were postponed to await the decision of the High Court; and, that being given in favour of the respondent, the Judge on that 'precedent' decided the other two cases in his favour. Strictly, the decision of one case was not a pre-adjudication binding in law on the other two claimants, as the Judge would seem to put it; but it would, on evidence, go so far to guide his finding on the facts that we cannot doubt that practically his finding is right, and was meant to be a concurrent judgment on the facts, and that substantial justice does not require our interference. We dismiss the appeal with costs.