

1895
 BURMA MOYI
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 v.
 BURMA MOYI
 CHOWDHURANI.

a plaintiff suing for arrears of rent cannot insist on the pendency of another suit brought by him for possession of the land, as preventing limitation from running, where there has been no time during which such rent could not have been recovered if he had acted on his right of suing for it," and they explained that the decision in the case of *Swarnamayi v. Shashi Mukhi Barmani* (1) proceeded on the facts of that particular case. Several other cases were cited in the argument, but it is not necessary for us to notice them here.

The present case is governed by the provisions of the Bengal Tenancy Act, section 184, and Article 2 (b) of Schedule III to that Act. By that article the period of limitation in a suit for rent is three years from the last day of the Bengali year in which the arrear fell due, and as in this case the arrear fell due in the Bengali year 1297, which ended on the 12th of April 1891, and the suit was not commenced until the 14th of May 1894, it is manifest that the suit was not commenced within three years of the last day of the Bengali year in which the arrear fell due, and that none of the authorities quoted affect the case, and that the decision of the Subordinate Judge is correct.

The appeal will be dismissed with costs.

S. C. G.

Appeal dismissed.

CRIMINAL REVISION.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

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 August 26.

DAMRI THAKUR (PETITIONER) v. BHOWANI SAHOO (OPPOSITE PARTY)*
Bench of Magistrates—Absence of member of Bench—Hearing of part of the case by two members and decision by three—Criminal Procedure Code (Act X of 1882), section 350.

Only those Magistrates who have heard the whole of the evidence can decide a case. There is no provision of law which provides for a change in the constitution of Benches of Magistrates during the hearing of a case. Section 350 of the Criminal Procedure Code does not apply to cases tried by Benches of Magistrates.

Sambhu Nath Sarkar v. Ram Kamal Guha (2) and *Hardwar Singh v. Khega Ojha* (3) followed.

* Criminal Revision No. 455 of 1895, against the order of L. Haro, Esq., District Magistrate of Tirhoot, dated the 23rd of July 1895, affirming the order passed by the Honorary Magistrate of Mozufferpore, dated the 1st July 1895.

(1) 2 B. L. R., P. C., 60; 11 W. R., P. C., 5; 12 Moo. I. A., 244.

(2) 13 C. L. R., 212.

(3) I. L. R., 20 Calc., 870.

IN this case the petitioner was convicted under section 352 of the Penal Code, and sentenced to one week's rigorous imprisonment and a fine of Rs. 15, or in default to one week's further imprisonment. The order and sentence were passed by a Bench of three Honorary Magistrates of Mozufferpore, only two of whom heard the entire evidence; the third Magistrate was absent on the first day of the trial. The conviction and sentence were affirmed on appeal by the District Magistrate of Tirhoot. A rule was then obtained from the High Court to set aside the conviction and sentence, on the ground that the three Magistrates who decided the case did not hear the entire evidence.

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SAHOO.

Babu *Durga Mohun Das* for the petitioner.

Babu *Dasarathi Sanyal* for the opposite party.

The judgment of the High Court (MACPHERSON and BANERJEE, JJ.) was as follows :—

This case has been decided by a Bench consisting of three Magistrates, only two of whom heard the entire evidence. The third Magistrate was absent on the first day of the trial. We think it is clear that only those Magistrates who have heard all the evidence can decide the case; and although two of the Magistrates who took part in this decision have heard the evidence throughout, it is impossible to say to what extent their opinion may not have been influenced by the third Magistrate, who had only heard a portion of the evidence.

There is no provision of law which provides for a change in the constitution of Benches of Magistrates, and in the absence of any such provision we must hold that only those Magistrates who have heard the whole of the evidence can decide the case. Section 350 of the Code of Criminal Procedure provides that under certain circumstances a Magistrate who has not heard the evidence may decide the case; but that section cannot apply to cases of this description.

The view which we take is consistent with that which was taken in the cases of *Sambhu Nath Sarkar v. Ram Kamal Guha* (1) and *Hardwar Singh v. Khega Ojha* (2).

We accordingly set aside the conviction and order the release of the petitioner. The fine, if realized, will be refunded.

S. C. B.

Conviction set aside.

(1) 13 C. L. R., 212

(2) I. L. R., 20 Calc., 870.