

independent title created in the defendant. This is a false conclusion, and is no ground for dismissing the suit. Had this point stood alone, we should have deemed it necessary to remand the suit to the Judge for retrial; but we find that a remand is really unnecessary, because both Courts recognize the long continued occupation of the defendant in the capacity which he himself acknowledges, and so the right of action on which the plaintiff bases this suit entirely fails.

We think, therefore, that the suit was rightly dismissed. We accordingly affirm the order of dismissal, but we differ from the lower Court in this, that we affirm no adverse title in the defendant, arising out of long continued non-payment of rent or occupation of the land. The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Maclean.*

PANDAH GAZI (PLAINTIFF) v. JENNUDDI AND OTHERS (DEFENDANTS).\*

1878  
July 25.

*Standing Crops—Immoveable Property—Limitation Acts (IX of 1871), Sched. ii, art. 26; (Act XV of 1877), Sched. ii, arts. 36, 47—Registration Act (III of 1877), s. 3.*

Standing crops are immoveable property within the meaning of the Limitation Act.

THIS was a suit brought in the Small Cause Court for recovery of compensation for crops alleged to have been wrongfully removed by the defendants on the 24th and 25th December 1875. This suit was instituted on the 22nd of December 1877, and on the 21st January 1878 was dismissed on the ground of being barred by limitation under Act IX of 1871, sched. ii, art. 26. The plaintiff applied for a review of judgment, alleging that, for the purposes of this suit, standing crops should be considered as immoveable property; and submitted further that, even if standing crops were moveable property, the Court had

\* Small Cause Court Reference, No. 846 of 1878, from an order made by Baboo Baroda Prosuuno Shome, Sudder Munsif of Zilla Tipperah, dated the 11th June 1878.

1878  
 PANDAH GAZI  
 v.  
 JENNUDDI.

erred in applying the provisions of Act IX of 1871 to the case; the law of limitation legally applicable being Act XV of 1877, sched. ii, art. 49. In support of the first contention, the attention of the Court was called to *Tofail Ahmud v. Banee Madhub Mookerjee* (1) and *Chowdhry Roostum Ali v. Dhandoo* (2). On this point the Court, although admitting that the distinction drawn between immoveable and moveable property in the cases quoted, as well as by the then Chief Justice in the Full Bench case of *Nattu-Miah v. Nand Rani* (3), supported the contention that standing crops were immoveable property, yet considered it was debarred from adopting this view by the definition of these words to be found in Act III of 1877, the Registration Act, passed after the delivery of the judgment in the Full Bench case already alluded to. On the further question, as stated by the Court, whether a suit once barred could not be revived by a change in the law of limitation, the Court referred to the decision of Holloway, J., in the case of *Valia Tamburatti v. Vira Rayan* (4), and itself entertaining doubts referred the matter under s. 617 of the Code of Civil Procedure to the High Court. At the request of the pleader, the Court included the first contention raised in behalf of the plaintiff in its letter of reference. The two questions, therefore, submitted to the High Court, were—

*First.*—Whether standing crops are not moveable property under Acts X and XV of 1877.

*Secondly.*—Whether art. 49 of the present law of limitation (Act XV of 1877) revives and saves plaintiff's right of action from the operation of limitation.

The parties were unrepresented.

The judgment of the Court was delivered by

MITTER J. (who, after stating the facts of the case and finding of the Court below, proceeded as follows):—We are of opinion that the definition given in the Registration Acts is expressly given for the purposes of those Acts, and ought

(1) 24 W. R., 394.

4 Agra Rep., 157.

(3) 8 B. L. R., 509.

(4) I. L. R., 1 Mad., 228.

not to govern the decision of the questions raised in this case. 1878  
 Following the principle of distinction between moveable and PANDAH GAZI  
 immoveable properties as laid down in *Raj Chandra Bose v.* v.  
*Dharmo Chandra Bose* (1), *Nattu Miah v. Nand Rani* (2), and JENNUDDI.  
 the ruling directly upon the point in *Tofail Ahmud v. Banee*  
*Madhub Mookerjee* (3) we think that standing crops are not move-  
 able property. Consequently, supposing the Limitation Act of  
 1871 was applicable to this case, the Munsif was wrong in apply-  
 ing art. 26 of the second schedule of that Act. We think  
 that art. No. 40 was applicable. Therefore, the remedy of the  
 plaintiff was not barred until the new Limitation Act came  
 into operation.

This being so, the second question referred does not arise.  
 The Munsif ought there to have decided the question of  
 limitation in this case with reference to Act XV of 1877;  
 and under art. 36 of that Act the suit is not barred. We  
 may, however, draw the attention of the Munsif to the case of  
*Krishna Mohun Bose v. Okhil Moni Dossee* (4), which decides  
 the point raised in the second question.

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## APPELLATE CRIMINAL.

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*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, and  
 Mr. Justice McDonell.*

### THE EMPRESS *v.* TSIT OOE.\*

*Jurisdiction — Special Court at Rangoon — Case Transferred — Criminal  
 Procedure Code (Act X of 1872), s. 64 — Burma Courts Act (XVII  
 of 1875), s. 35.*

1878  
 Dec. 11.

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The Special Court of British Burma has power to entertain an appeal from  
 a sentence of death or other sentence passed by the Judicial Commissioner, in  
 a case transferred by him to his own Court from that of the Sessions Judge,

(1) 8 B. L. R., 510.

(3) 24 W. R., 394.

(2) *Ibid.*, 509.

(4) I. L. R., 3 Calc., 331.

\* Criminal Reference, No.  $\frac{C.A.}{31}$  of 1878, from an order made by John  
 Jardine, Esq., Judicial Commissioner of British Burma, dated 29th of August  
 1878.