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SUDHANSU
DAS.

But this is a different case; the plaintiff has put forward a distinct allegation of possession founded on a deed of sale. The Subordinate Judge found that his allegation of possession was false, and also had before him a former case, in which the defendants had sued the cultivators for rent; the present plaintiff had on that occasion intervened, and the Munsif had decided against him. It appears to us, therefore, that this is not a case in which the general rule ought to be relaxed, and the plaintiff assisted to establish a case which he did not put forward; and even if the matter was one of discretion which, under the circumstances of the case, we are inclined to doubt, the Court of first instance having made a very proper exercise of its discretion, the lower Appellate Court was not justified in reversing the first Court's decision.

We, therefore, reverse the order of the Judge remanding the case, and restore the order of the first Court.

Appeal allowed.

Before Mr. Justice Markby and Mr. Justice Prinsep.

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April 5
and
May 9.

PURRAN CHUNDER GHOSE (PLAINTIFF) v. MUTTY LALL
GHOSE JAHIRA (DEPENDANT).*

*Limitation—Suit for Arrears of Rent—Close Holiday—Date of Filing
Plaint—Beng. Act VIII of 1869, s. 29.*

A rent suit under Beng. Act VIII of 1869 must be brought strictly within the term of three years prescribed by s. 29 of that Act, which contains the only law of limitation applicable to the case. Where, therefore, the last day of the term so fixed was a close holiday, and the plaint in such a suit was filed on the following day,—*Held*, that inasmuch as s. 29 contains no provision for relaxing the term fixed by it, such as is contained in the general law of limitation, the suit was barred.

THIS was a suit for arrears of rent instituted under Beng. Act VIII of 1869. The last day upon which the suit could have

* Special Appeal, No. 771 of 1877, against the decree of Baboo Mohendro Nath Bose, Subordinate Judge of Zilla Nuddea, dated the 10th of January 1877, affirming the decree of Baboo Anundo Kumar Surbadhikari, Munsif of Ranaghat, dated the 20th April 1876.

been brought within the period of limitation fixed by s. 29 of that Act was a close holiday, and the plaint was filed on the following day. At the hearing, the Court of first instance raised the issue of limitation, and, on the ground that the plaint had not been filed within the time fixed by the section, dismissed the suit. An appeal preferred from this decision having been dismissed by the lower Appellate Court on the authority of *Poulson v. Modhoosoodun Paul Chowdhry* (1), the plaintiff, thereupon, appealed to the High Court.

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Baboo Saroda Prosonno Roy for the appellant.—The Full Bench case referred to by the lower Appellate Court does not apply. When that decision was given, the Limitation Act (Act XIV of 1859) in force contained no special provision to meet the circumstances of the present case. The new Limitation Act (Act IX of 1871) specially permits the filing of a plaint on the day following the time when the period of limitation has lapsed, when the last day of such period of limitation is a close holiday. It is open to the Court to modify the case of limitation in s. 29 of Beng. Act VIII of 1869 by reference to the general law of limitation now in force; see *Phoolbas Koonwur v. Lalla Jogeshur Sahoy* (2), Sched ii, art. 110 of Act IX of 1871 fixes a period of limitation in suits for arrears of rent. It must be taken, therefore, that the legislature intended to extend the general law of limitation to rent suits under Beng. Act VIII of 1869.

No one appeared for the respondent.

The judgment of the Court was delivered by—

MARKBY, J.—This is a suit for arrears of rent under Beng. Act VIII of 1869. It has been dismissed by the Court of first instance as barred by limitation; and plaintiff's appeal having been dismissed, he has brought the matter before us in special appeal.

Section 29 of the present Rent Law declares that "suits for the recovery of arrears of rent shall be instituted within three

(1) 2 W. R., Act X Rul., 21.

(2) I. L. R., 1 Calc., 226.

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years" from certain specified dates; and, like Act X of 1859, which it has replaced, contains no provisions for relaxing that term, such as are contained in the general law of limitation.

On the last day allowed for filing the plaint in the suit now before us the Courts were closed, because it was a close holiday; and the plaint was presented on the next and first open day. Now, under the general law of limitation (Act IX of 1871), this would be allowed, as special provision is made for such a contingency; but the matter for consideration is, whether that law applies to suits under the Rent Law, and whether the law of limitation for such suits is contained only in the Rent Law.

The judgment of the Full Bench in the case of *Poulson v. Modhoosoodun Paul Chowdhry* (1), on which both the lower Courts have relied in dismissing this suit, has clearly laid down that the general law of limitation does not apply to rent suits under Act X of 1859; but it is argued before us that the terms of the general law of limitation are not now (Act IX of 1871), the same as they were then (Act XIV of 1859), and that the Rent Law of 1859 has also been replaced by Beng. Act VIII of 1869, which has made rent suits triable not by Revenue, but by Civil Courts.

We may at once dismiss the objection arising out of any alteration of jurisdiction, since that cannot affect the point in dispute, the terms of the two Rent Acts being similar in providing for limitation in suits for the recovery of arrears of rent; nor does the mere fact that limitation for arrears of rent is provided for in sched. ii, art. 110 of Act IX of 1871, in our opinion, affect the reasoning on which the judgment of the Full Bench proceeded. If it had been the intention of the Legislature to extend the general law of limitation to suits for the recovery of arrears of rent brought under Beng. Act VIII, 1869, we think that the provisions of the Rent Act relating to limitation would have been entered in the repealing schedule to the Act of 1871. As they are not so repealed, they would seem to be saved by s. 6 of that Act.

We, therefore, think that this suit was rightly dismissed,

(1) 2 W. R., Act X Rul., 21.

because it was not brought strictly within the term of three years prescribed by s. 29, Beng. Act VIII of 1869; and we dismiss this special appeal.

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PROSUNNO COOMAR SIRCAR AND OTHERS (PLAINTIFFS) v. RAM
COOMAR PAROOEY (DEFENDANT).*

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May 2.

Jalkar—Fishery Rights—Public Navigable Rivers.

A private right of fishery in a tidal navigable river must, if it exists at all, be derived from the Crown, and established by very clear evidence, as the presumption is against any such private right.

Quære.—Whether such right can be created at all?

A mere recital in quinquennial papers that a person is the owner of jalkar rights in a zemindary permanently settled with him by Government is not sufficient to give to such person a right of fishery in a public navigable river; any right granted under such word “jalkar” would be perfectly satisfied if construed to apply exclusively to a right to fish within enclosed water, such as a jheel.

THIS was a suit brought to recover rent due for the years 1280, 1281, 1282 from the defendant, a fisherman, who held a jamma under the plaintiff. The defendant admitted that he fished in certain rivers included in the jamma in question; but objected to the claim for rent on the ground that no person can have a private right to fish in tidal navigable rivers; and denied that he had ever entered into an agreement to pay rent to the plaintiff, nor had he ever paid rent to him, or ever held the jamma under him.

The Munsif found that the defendant used to pay some rent, the amount of which was not fixed, to the plaintiff, but that he had long since discontinued to do so; but that as the right of fishery in tidal rivers was a public right, the plaintiff had no right to claim rent from any person fishing in such rivers, and,

* Special Appeal, No. 868 of 1877, against the decree of H. B. Lawford, Esq., Officiating Judge of Zilla 24-Pargannas, dated the 23rd April 1877, affirming the decree of Baboo Madhub Chunder Chuckerbutty, Second Munsif of Satkheera, dated the 14th February 1877.