

1891
 SURNOMOY
 DEBIA
 v.
 GHISH
 CHUNDER
 MOITRA.

Churn Mitter v. Moorrory Mohun Ghose (1) as expressing opinions different from that which they are inclined to hold. In the last case, which was the case of a sale in the beginning of the year, the Court held that "it would be no sufficient plea if the notification had been published on, instead of previous to, the 15th Bysack;" and that even assuming that the publication took place on the 15th, "still the defaulter had two days more than is prescribed by the Regulation," because the sale did not take place until the 3rd Jeyt. For the reasons already expressed, we are unable to agree in the views expressed in this decision.

As regards the other case referred to, we observe that it was decided upon a ground which does not really touch the question involved in this case.

Upon these grounds we are of opinion that the question referred to us must be answered in the affirmative. The appeal will be dismissed with costs.

T. A. P.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot, Mr. Justice O'Keefe, Mr. Justice Macpherson, and Mr. Justice Ghose.

NAGENDRO NATH MULLICK (PLAINTIFF) v. MATHURA
 MAHUN PARHI AND OTHERS (DEFENDANTS).*

1891
 March 24.

Limitation Act (XV of 1877), s. 14—Computation of period of limitation—Suits for arrears of rent—Act X of 1859.

The provisions of section 14 of Act XV of 1877 are not applicable to suits for arrears of rent under Act X of 1859.

REFERENCE to a Full Bench by NORRIS and BEVERLEY, JJ.; the referring order was as follows:—

"This was a suit for arrears of rent for the years 1292, 1293, and 1294 of the Amli era. The lower Court has held that under section 32 of Act X of 1859 (which is the law of landlord and tenant in the district) the rent for 1292 is barred, and this is the sole point that is questioned before us in appeal.

"It appears that the plaint was presented to the Collector of Balasore on 13th June 1888. It should have been presented,

(1) I. L. R., 1 Calc., 175; 24 W. R., 453.

* Full Bench reference in appeal from original decree No. 29 of 1890, against the decision of Baboo Satish Chunder Bose, Roy Bahadur Deputy Collector of Balasore, dated the 21st October 1889.

however, to the Subdivisional Deputy Collector at Bhuddruck, as the property is situated in that subdivision. It was accordingly returned by the Collector of Balasore on 2nd February 1888, and on the 4th idem (the intervening day being Sunday) was presented at Bhuddruck. On that date the arrears for 1292 Amli had become barred, unless the plaintiff can be allowed the benefit of the provisions of section 14 of the Limitation Act (XV of 1877).

1891
 NAGENDRO
 NATH
 MULLICK
 v.
 MATHURA
 MOHUN
 PARI.

“We entirely dissent from the grounds on which the Deputy Collector has held that the plaintiff cannot be allowed the benefit of that section. But it has been contended before us that the provisions of the Limitation Act are not applicable to suits under Act X of 1859.

“On this question the authorities appear to us to be in conflict.

“In the cases of *Poulson v. Madhusudan Pal Chowdhry* (1), *Dinonath Panday v. Roghoo Nath Panday* (2), *Unnoda Persaud Mookerjee v. Kristo Coomar Moitra* (3), *Purran Chunder Ghose v. Mutty Lall Ghose Jahira* (4), it was held that the provisions of the old Limitation Acts did not apply to suits under the Rent Act X of 1859 or Bengal Act VIII of 1869. On the other hand, the following cases decided that certain provisions of the present Limitation Act, XV of 1877, are applicable to suits under special Acts:—*Behari Loll Mookerjee v. Mungolanath Mookerjee* (5), *Golap Chund Nowchuckha v. Kristo Chunder Dass Biswas* (6), *Khoshelal Mahton v. Gunesh Dutt* (7), *Khetter Mohun Chuckerbutty v. Dinabashy Shaha* (8).

“More recently in *Girija Nath Roy v. Patani Bihee* (9), Tottenham and Ghose, JJ., have ruled that the provisions of section 7 of the present Limitation Act are not applicable to rent suits.

“We accordingly refer the following point for the decision of a Full Bench:—

“Whether the provisions of section 14 of the Indian Limitation Act, XV of 1877, are applicable to a suit for arrears of rent under Act X of 1859.

(1) B. L. R., Sup. Vol., 101; 2 W. R., Act X, 21.

(2) 5 W. R., Act X, 41.

(6) I. L. R., 5 Calc., 314.

(3) 15 B. L. R., 60, note; 19 W. R., 5.

(7) I. L. R., 7 Calc., 690.

(4) I. L. R., 4 Calc., 50.

(8) I. L. R., 10 Calc., 265.

(5) I. L. R., 5 Calc., 110.

(9) I. L. R., 17 Calc., 263.

1891
 NAGENDRO
 NATH
 MULLICK
 v.
 MATHURA
 MOHUN
 PABHI.

“ Besides the authorities above cited, we would refer to the difference in language between Act XIV of 1859, sections 3 and 14; Act IX of 1871, section 6; Act XV of 1877, section 6; and also to the provisions of section 185 of the Bengal Tenancy Act.

“ If the decision of the Full Bench upon the above point should be in the affirmative, the appeal will be allowed with costs; if in the negative, it will be dismissed with costs.”

Baboo *Troylukho Nath Mitter* (with him Baboo *Jagut Chunder Banerji*) for the appellant:—I contend that section 14 of the Limitation Act is applicable to this case. That section is a general section, laying down rules for the computation of the period of limitation, and there is nothing inconsistent in that equitable rule applying to suits under Act X of 1859. The decision in *Behari Loll Mookerjee v. Mungolanath Mookerjee* (1), a decision under section 6 of the Limitation Act, is strongly in my favour. To cases under the rent law of 1869, the Limitation Act, 1877, has been held applicable—*Golap Chund Nowluchha v. Kristo Chunder Dass Biswas* (2), *Hossein Ally v. Donselle* (3), and see the cases there cited; also *Khoshelal Mahton v. Gunesh Dutt* (4); in this last case, the case of *Purran Chunder Ghose v. Mutty Lall Ghose Jahira* (5) is dissented from. And in *Phoolbas Koonnur v. Lalla Jogeshur Sahoy* (6), section 246 of Act VIII of 1859 was held to be subject to modification by the Limitation Act then in force. Also in *Girija Nath Roy v. Patani Bibee* (7) it has been held that the provisions of section 7 of Act XV of 1877 are not applicable to rent suits. And on the same principle the time during which a suit is pending should be excluded.

Baboo *Hem Chunder Banerji* (with him Baboo *Mon Mohan Dutt*) for the respondents:—Section 32 of Act X of 1859 provides a special limitation for suits, and therefore the general limitation does not apply—*Pouison v. Madhusudan Pal Chowdhry* (8); *Unmoda Persaud Mookerjee v. Kristo Coomar Moitro* (9); *Juggernath Roy*

(1) I. L. R., 5 Calc., 110.

(4) I. L. R., 7 Calc., 690.

(2) I. L. R., 5 Calc., 314.

(5) I. L. R., 4 Calc., 50.

(3) I. L. R., 5 Calc., 906.

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

(7) I. L. R., 17 Calc., 263.

(8) B. L. R., Sup. Vol., 101; 2 W. R., Act X, 21.

(9) 15 B. L. R., 60, note; 19 W. R., 5.

Chowdhury v. Raj Chunder Roy (1); *Dinonath Panday v. Roghoo-nath Panday* (2); *Mohumud Buhadoor Khan v. Collector of Bareilly* (3); *Doyal Chunder Ghose v. Dwarakanath Misser* (4).

1891

NAGENDRO
NATH
MULLICK
v.
MATHURA
MOHUN
PARHI.

Baboo *Troylokho Nath Mitter* in reply.

The opinion of the Full Bench (PETHERAM, C.J., PIGOR, O'KINEALY, MACPHERSON, and GHOSE, JJ.) was as follows:—

The circumstances which have given rise to this reference are as follows:—Plaintiff sued the defendants under Act X of 1859 for arrears of rent due on account of the years 1292, 1293, and 1294 of the Amlī era. It is admitted that the arrears for 1292 Amlī have become barred, unless plaintiff can be allowed the benefit of section 14 of the Limitation Act, and the question which has been referred to us for decision is:—Whether the provisions of section 14 of the Limitation Act, XV of 1877, are applicable to a suit for arrears of rent under Act X of 1859.

Before the passing of Act X of 1859, summary suits for rent were heard and decided by the ordinary tribunals. That enactment made a complete change. The substantive law was modified, and new procedure was introduced, and special tribunals were established to carry out the provisions of the new law. Since that time Act X of 1859 has always been considered to be a Code complete in itself, and unaffected by the general laws of limitation of procedure.

There are several decisions in conformity with this view. Thus in *Poulson v. Madhusudan Pal Chowdhury* (5), a Full Bench of this Court decided that in a rent suit the plaintiff could not obtain the benefit of section 14 of Act XIV of 1859. This view of the law was upheld by their Lordships of the Privy Council in the case of *Unnoda Persaud Mookerjee v. Kristo Coomar Moitro* (6). Since then Act XIV of 1859 has been repealed. The present law of limitation is Act XV of 1877. Undoubtedly some changes have been made in the law of limitation

(1) W. R. (1864), Act X, 120.

(2) 5 W. R., Act X, 41.

(3) 13 B. L. R., 292; L. R., 1 I. A., 167.

(4) W. R. F. B., 47; Marsh, 148.

(5) B. L. R., Sup. Vol., 101; 2 W. R., Act X, 21.

(6) 15 B. L. R., 60, note; 19 W. R., 5.

1891 since 1859, but so far as the present question now before us is concerned, we do not think they are of such a nature as to affect the view adopted by their Lordships of the Privy Council, already referred to. Act X of 1859, where it is in force, is still, as then, a Code complete in itself, and section 14 of the present Law of Limitation is almost identical with section 14 of Act XIV of 1859. We think, therefore, that the judgment of their Lordships of the Privy Council disposes of this reference, and we hold that section 14 of Act XV of 1877 does not apply to suits under Act X of 1859.

NAGENDRO
NATH
MULLICK
v.
MATHURA
MOHUN
PARHI.

T. A. P.

Appeal dismissed.

SMALL CAUSE COURT REFERENCE.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot, and Mr. Justice Macpherson.

WALLIS & Co. v. BAILEY.*

1891
April 10.

Small Cause Court Presidency Towns—Jurisdiction—Presidency Town's Small Cause Court Act (XV of 1882), cl. 2, s. 1, s. 18—Army Act, 44 and 45 Vic., c. 58, sub-sect. 1, sect. 151—51 Vic., c. 4, sect. 7.

The words of section 7 of 51 Vic., c. 4, amending sub-section 1 of section 151 of 44 and 45 Vic., c. 58, are meant to restrict the words "within the jurisdiction, &c." (found in sub-section 1 of section 151) to persons resident within it, so as to meet and exclude the case of persons casually within the jurisdiction and not actually resident within it, and are limited to that purpose, and do not therefore affect the powers conferred by section 18 of Act XV of 1882.

CASE stated for the opinion of the High Court under section 607 of the Code of Civil Procedure.

The claim in this case was for Rs. 422, the price of goods sold and delivered, and interest. The case stated was as follows:—

"The plaintiffs are Ranken and Company, tailors of Calcutta, and the defendant is an officer of the 5th Lancers described as of Kurpur Tal, Naini Tal. The claim is on a tailor's bill for clothes

* Small Cause Court Reference No. 6 of 1890 made by R. S. T. MacEwen, Esq., 2nd Judge of the Court of Small Causes, Calcutta, dated the 9th of September 1890.