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of the parties, or of either of them, that the bargain was to depend upon the unfettered discretion of Mr. Gregory.

I agree with the Chief Justice that this appeal must be dismissed with costs.

Appeal dismissed.

Attorneys for the appellant: Messrs. *Gregory & Jones.*

Attorneys for the respondent: Messrs. *Dignam, Robinson & Sparkes.*

A. A. C.

APPELLATE CIVIL.

Before Mr. Justice Norris and Mr. Justice Ghose.

1890 *June* 27.

RAMDHAN BHADRA AND ANOTHER (DEFENDANTS) *v.* RAM KUMAR DEY AND ANOTHER (PLAINTIFFS).*

Limitation—Bengal Tenancy Act (VIII of 1885), *s.* 184, *Sch. III, Art.* 3—*Suit for possession by an occupancy ryot.*

Having regard to the provisions of section 184 of the Bengal Tenancy Act, 1885, the period of limitation for a suit for the recovery of land by an occupancy ryot is two years, as prescribed by Article 3, Sch. III of the Act.

Saraswati Dasi v. *Horitarun Chuckerbutti* (1) followed.

IN this appeal the question was raised whether the period of limitation for a suit for the recovery of possession of land by a person claiming as an occupancy ryot was two years, as provided by Article 3, Schedule III of the Bengal Tenancy Act, 1885, or 12 years under the Limitation Act, 1877. For the purposes of this report the facts of the case and the arguments are sufficiently stated in the judgment of Ghose, J.

Baboo *Grish Chunder Chowdhury* for the appellants.

Baboo *Dwarka Nath Chuckerbati* for the respondents.

The following judgments were delivered by the Court (NORRIS and GHOSE, JJ.):—

GHOSE, J.—This is a suit to recover possession of certain lands under a *jote* right. The plaintiff's allegation is that he acquired a

* Appeal from appellate decree No. 1122 of 1889, against the decree of Baboo Atool Chunder Ghose, Subordinate Judge of Mymensingh, dated the 30th of March 1889, affirming the decree of Baboo Anand Mohun Biswas, Munsiff of Hosseinpore, dated the 24th of February 1888.

(1) I. L. R., 16 Calc., 741.

right of occupancy in the lands by holding as a tenant for a long time, but that the defendants wrongfully dispossessed him therefrom on the 28th of Assin 1291, corresponding to the 13th October 1884; and the plaint asks that possession may be awarded to the plaintiff by establishing his *jote* right. The defendants, who are the landlords, deny the plaintiff's right, and set up the plea of limitation under Article III, Schedule III of the Bengal Tenancy Act.

Both the lower Courts have decreed the suit, being of opinion that the plaintiff has an occupancy right in the lands in suit, and that the defendants were not justified in evicting him. They have also held that the limitation applicable to the suit is not two years under Article 3 of Schedule III of the Bengal Tenancy Act, but 12 years under the Indian Limitation Act of 1877, there being a dispute of title between the parties. On appeal to this Court, it has been contended before us that the case falls within Article 3 of Schedule III of the Bengal Tenancy Act, and the period of limitation applicable is two years, and not 12 years; and in support of this contention, a decision of a Division Bench of this Court (PRINSEP and HILL, JJ.) in *Saraswati Dasi* v. *Horitarun Chuckerbutti* (1) has been quoted. That decision was pronounced in a suit which was of a similar character to the suit now before us, and is to the effect that, although under the old rent law (Bengal Act VIII of 1869, section 27), as expounded by the decisions of this Court, the suit could have been brought within 12 years from the date of dispossession, the title of the tenant being disputed and put in issue in the case, still, under the Bengal Tenancy Act, the plaintiff has only two years to bring the suit.

It was, however, argued on the other side that the law under Article III of the 3rd Schedule of the Bengal Tenancy Act is substantially the same as it was under section 27, Bengal Act VIII of 1869, and that, therefore, the plaintiff having sought for a declaration of his title, and that title being disputed by the landlord, the suit is well within time, it having been instituted within 12 years from the date of the cause of action.

Section 27 of Bengal Act VIII of 1869 is as follows (omitting passages which are unimportant for the present question)—

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"All suits to recover occupancy of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, * * * shall be commenced within the period of one year from the date of the accruing of the cause of action and not afterwards." And it has been held in several cases by this Court that the said section 27 refers only to possessory actions against the landlord, and not to a suit where title is set up, and where the plaintiff seeks to have right declared and possession given in pursuance thereof; but that where the existence of the tenure is not disputed, and the plaintiff's original title as tenant is not and never has been questioned, and where there is no question of title either raised in the suit or raised before the suit, the case is governed by section 27, Bengal Act VIII of 1869 : see *Nistranee* v. *Kalee Pershad Doss Chowdhry* (1); *Asman Singh* v. *Obeedooddeen* (2); *Dhurjobutty Chowdhrain* v. *Chamroo Mundul* (3); *Forbes* v. *Sree Lal Jha* (4); *Joyunti Dassi* v. *Mahomed Ally Khan* (5); *Imam Buksh Mondul* v. *Momin Mondul* (6); *Srinath Bhattacharji* v. *Ram Ratan De* (7); and *Basarut Ali* v. *Altaf Hosain* (8).

In the present case the title of the plaintiff as a tenant is disputed, and he seeks to establish his title and recover possession of what he claims to be his *jote;* and if we had to apply the law as it was expounded under Bengal Act VIII of 1869, there could be no doubt that the suit, having been instituted within 12 years from the cause of action, would be within time.

But then, what we have to consider is whether the case is not governed by Article 3, Schedule III of the Bengal Tenancy Act. That article runs thus:—"To recover possession of land claimed by the plaintiff as an occupancy ryot," "two years" from "the date of dispossession." And section 184 of the Act provides that "the suits, appeals, and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively."

(1) 21 W. R., 53.
(2) 23 W. R., 460.
(3) 25 W. R., 217.
(4) I. L. R., 8 Calc., 365.
(5) I. L. R., 9 Calc., 423.
(6) I. L. R., 9 Calc., 280.
(7) I. L. R., 12 Calc., 606.
(8) I. L. R., 14 Calc., 624.

The decision in *Saraswati Dasi* v. *Horitarun Chuckerbutti* (1) is a direct authority upon the question we have to decide in this case; and it seems to me that we ought to adopt it, unless we are clearly of opinion that it is erroneous.

There is a marked difference of phraseology in the two corresponding sections of the two Acts. Act VIII of 1869, section 27, speaks of "suits to recover occupancy of any land, farm, or tenure from which a ryot, farmer or tenant has been illegally ejected;" whereas Article 3 of the Bengal Tenancy Act speaks of suits "to recover possession of land claimed by the plaintiff as an occupancy ryot." The former Act referred to tenants of every class, and contemplated cases where the tenant being illegally ejected would be entitled to recover the *occupancy* of the land, that is to say, as has been held by this Court, it referred to *possessory* actions by tenants, whether they be ryots having or not having rights of occupancy, or whether they be middlemen; whereas the new Act refers to occupancy ryots alone and contemplates suits to recover *possession* of land *claimed* by a plaintiff as an *occupancy ryot*, *i.e.*, where, by the very nature of the action, the ryot has to set out his *title* to the land claimed. It can hardly be, therefore, said that the Legislature intended simply to substitute, as it was contended on behalf of the respondent, the period of two years for that of one year, as provided by section 27 of Act VIII of 1869. The words of Article 3 of the new Act would rather seem to indicate, although the matter is not very clear, that *all* suits for recovery of possession, wherein an occupancy right may be claimed, are to be governed by the limitation prescribed in that article. I observe that the Select Committee to which the Bengal Tenancy Bill was referred for consideration, on the 14th March 1884, referring to "Limitation," reported as follows:—"We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy ryot of land comprised in his holding and, following the precedent presented by section 81 of the Central Provinces Tenancy Act, 1881, we have fixed the period at two years from the date on which he is ejected, adding a proviso to guard against the revival of causes of action already barred." And this was adopted by the Legislature. It may

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seem somewhat remarkable that, on the face of the various rulings of this Court with reference to section 27 of the old Act, the Legislature intended to curtail, greatly to the disadvantage of the ryot, the period of limitation from 12 years to two years; and it may seem equally remarkable that it is only in cases of occupancy ryots that this curtailment has been made, and not in regard to tenants of any other class; but what we have to do is simply to administer the law as we find it.

A contention was raised before us by the learned vakeel for the respondent to the effect that, the cause of action having arisen before the Bengal Tenancy Act came into operation, the plaintiff would be entitled to bring his suit within 12 years, that being the time within which he might have sued if the Bengal Tenancy Act had not been passed; but I am unable to accept this contention as correct. Section 184 of the Bengal Tenancy Act declares that suits specified in Schedule III of the Act *shall* be instituted within the time prescribed in that schedule. And there is no saving clause for suits in which the cause of action had arisen before that Act was passed.

Another contention was raised before us to the effect that the suit as laid was not a suit against the defendant as *landlord*, but as a person having no title whatsoever, and, therefore, it did not fall within Article 3 of the Act. But it seems to me that, the defendant being in fact the landlord, it does not matter whether the plaintiff described him as such in the plaint or not.

For these reasons I think that the decree of the lower Court is wrong and should be reversed with costs.

NORRIS, J.—I concur in reversing decree of the lower Appellate Court.

C. D. P. *Appeal allowed.*

ORIGINAL CRIMINAL.

Before Mr. Justice Wilson.

1890
July 23.

QUEEN-EMPRESS *v.* SOLOMON.

Practice—Prosecutor's right of reply—Criminal Procedure Code (Act X of 1882), *ss.* 289, 292.

The putting in, as evidence on his behalf, of any documentary evidence by an accused person during the cross-examination of the witnesses