a proper consideration of the matter now before us. The proceedings are all of dates not only later than that mentioned in sub-section 2, s. 120, but even later than that of the passing of the Bengal Tenancy Act. We think, therefore, that we should not be justified in remanding this case, so as to prolong these proceedings. The appeal must, therefore, be dismissed with costs.

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NILMONI CHUCKERBUTTI v. BYKANT NATH BERA.

J. V. W. *Appeal dismissed.*

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

ISWARI PERSHAD NARAIN SAHI, LUNATIC, REPRESENTED BY HIS MOTHER, GUARDIAN AND NEXT FRIEND BHUPESWAR KOER (PLAINTIFF) *v.* CROWDY AND OTHERS (DEFENDANTS).*

1890. *February* 5.

Bengal Tenancy Act (VIII of 1885), Sch. III Art. (2)—Limitation for rent-suit—Rent payable under a lease—Registered lease.

The Bengal Tenancy Act (VIII of 1885) prescribes one period of limitation for all suits for rent brought under its provisions.

Article 2 of the third Schedule of that Act includes a suit to recover arrears of rent payable under a lease, and there is no distinction as to the form of the lease or as to whether it is registered or not.

Umesh Chunder Mondul v. *Adarmoni Dasi* (1), and *Vythilinga Pillai* v. *Thetchanamurti Pillai* (2) distinguished.

THIS was a suit to recover arrears of rent under a registered ticca kabuliyat.

Under the kabuliyat, which was executed on the 21st of September 1880, and duly registered, the proprietors of the Belsand Concern held in ticca the plaintiff's half-share in the 8 annas divided putti of Mouza Parsurampore, Pergunnah Mahila, in the District of Mozufferpore, for a term of seven years from 1288 to 1294 (1880-1886) inclusive at an annual *jumma* of Rs. 2,000, payable in three instalments of Rs. 1,000 in Kartick, Rs. 500 in Cheyt, and Rs. 500 in Joisto. It was also provided in the kabuliyat that upon the expiration of the said term of seven years the proprietors should pay rent up to the 10 annas instalment in 1295 for the *zerat* lands in the plaintiff's putti, on which there might be the indigo-plantation of the Belsand Concern, and that they should

* Appeal from Original Decree No. 285 of 1888, against the decree of Baboo Grish Chunder Chatterjee, Subordinate Judge of Tirhoot, dated the 6th of July 1888.

(1) I. L. R., 15 Calc., 221. (2) I. L. R., 3 Mad., 76.

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give up the lands after cutting the first and second crops of indigo.

The rent for a portion of 1291 and the years 1292, 1293 and 1294, and also the rent on account of the 10 annas instalment for 1295 in respect of the *zerat* indigo lands having fallen due, the plaintiff, on the 2nd of April 1888, filed a suit for the recovery of the arrears for 1292, 1293 and 1294, alleging that the portion for 1291 was barred by limitation. He also sued for the sum of Rs. 203-2 on account of the 10 annas instalment of rent for the year 1295 in respect of 100 bigahs of *zerat* indigo lands: and for damages for nonpayment of rent. Subsequently, on the 11th of May 1888, the plaintiff was allowed to amend his plaint by including a claim for the two sums of Rs. 500 each, which fell due on 13th Cheyt and 29th Jeyt 1291 respectively, subject to any objection the defendants might take.

The defendants contended that the plaintiff's claim in respect of the two sums of Rs. 500 each, which became due in 1291, was barred by limitation; that his claim for the rent of *zerat* indigo lands on account of the 10 annas instalment in 1295 was incorrect; and that the plaintiff was not entitled to more than Rs. 134-15-3, which was his proportionate share of the rent for the 89 bigahs of *zerat* lands in possession of the Belsand Concern.

It appeared that after the settlement of issues the plaintiff applied to the Subordinate Judge for an enquiry as to the area and the rate of rent of the *zerat* lands in the possession of the Belsand Concern, on the ground that he had no witnesses to prove the area or rate of rent. This application was refused by the Subordinate Judge: and the reason for his refusal was that the expenses of the enquiry would far exceed the amount in dispute between the parties, which was Rs. 68.

The Subordinate Judge held that the case of *Umesh Chunder Mundul* v. *Adarmoni Dasi* (1) was distinguishable, and that Art. 116, Sch. II of Act. XV of 1877 was not applicable to the present case; that Sch. III of the Bengal Tenancy Act, 1885, applied to all suits for rent, and a suit for rent upon a registered kabuliyat was not excluded from its operation. He therefore held that the claim for 1291 was barred by limitation.

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As the plaintiff adduced no evidence, he allowed Rs. 134-15-3 only as rent for the *zerat* lands for 1295. He disallowed the plaintiff's claim for damages. Accordingly the Subordinate Judge passed a decree only partly allowing the plaintiff's claim.

The plaintiff appealed to the High Court for the portions of his claim which had been disallowed.

Baboo *Rajendra Nath Bose* and Baboo *Srinath Banerjee* for the appellant.

Baboo *Sharoda Churn Mitter* for the respondents.

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

The first question argued before us in this case is whether the plaintiff's claim for the two sums of Rs. 500 each, which became due, one on the 13th Cheyt 1291 Fusli, and the other on the 29th Joisto 1291, is barred by limitation. The time from which limitation would run under the provisions of the Rent Law was the last day of Joisto 1291 Fusli, that is, the 8th of June 1884. The suit was brought on the 2nd of April 1888, that is to say, more than three years and less than six years after the period of limitation began to run. The contention before us is that, in the first place, the provisions of the Bengal Tenancy Act do not apply to this case; and secondly that, if they do apply, the fact that the rent is payable under a registered lease makes the period of limitation six years. As regards the first question, it is quite clear that the defendants would come within the definition of the word "tenure-holder" contained in s. 5 of the Bengal Tenancy Act, and there seems to be no reason why they should be excluded from the operation of that definition.

On the second question, which is the real question for decision in the case, the argument of the learned pleader is based upon a decision of this Court by O'KINEALY and GHOSE, JJ., in the case of *Umesh Chunder Mundul* v. *Adarmoni Dasi* (1) and on a decision of the Madras High Court in the case of *Vythilinga Pillai* v. *Thetchanamurti Pillai* (2). It seems to us quite clear that these decisions are inapplicable to the present case. The decision of this Court in *Umesh Chunder Mundul* v. *Adar-*

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moni Dasi (1) is not a decision of any question under the Bengal Tenancy Act. Apparently the rent there claimed, if it be a rent at all, is not a rent to which the Tenancy Act is applicable; but whether that is so or not, there is no reference made in the judgment or in the case to the Bengal Tenancy Act, and the Judges treated the case as entirely governed by the Limitation Act XV of 1877. They held that, inasmuch as the lease under which rent was claimed was a registered lease, Art. 116 of Sch. II applied, and not Art. 110. The Madras decision does not carry the matter any further. There again this question could not have arisen, as the suit was a Small Cause Court suit, and the case was governed by Act XV of 1877, and no other Act. It seems to us quite clear that the Legislature in the Bengal Tenancy Act did not intend to make more than one period of limitation in suits for rent. Section 6 of the Limitation Act, which is by the Bengal Tenancy Act, s. 185, expressly applied to cases under that Act, provides that "when by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed." The Bengal Tenancy Act specially prescribes a period of limitation for rent suits brought in accordance with its provisions. It is clear that the 2nd Article of the 3rd Schedule of that Act is wide enough to include a suit of this description, *viz.*, a suit to recover rent, and there is no distinction as to the form of the lease under which the rent is payable or as to whether it is registered or not. The learned pleader suggests that by parity of reasoning the cases to which we have referred apply; but we think it is clear that the Legislature never intended to make this distinction, and the form of the Schedule shows that they apparently intended to provide one period of limitation only with regard to all suits for rent. There is an additional argument to be found from the fact that the time from which the period of limitation begins to run is different in the Bengal Tenancy Act from that provided in the general Limitation Act; and, therefore, if the learned pleader's contention was right, we should not only have a different period, but also a different time from which that

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period would run according as the contract was registered or not. This is a result which, we think, the Legislature never intended. It provided in the Rent Act for one period of limitation in all classes of suits for rent, and it is not possible to add to that a period of limitation not at all contemplated by the Legislature, *viz.*, a period of six years. We think, therefore, that with regard to these two sums of Rs 500, the plaintiff's claim is barred by limitation.

The other question raised before us is as to a small sum in difference between the parties. The complaint is that the learned Judge in the Court below did not make an inquiry asked for by the plaintiff with regard to the matters in difference between the plaintiff and defendants as to this sum. It appears that when the issues were settled, the plaintiff in this case said he had no witnesses to prove the area, and he applied for a measurement of the lands. His application was rejected, and the reason given by the Judge for rejecting it was that the expenses of the inquiry would be far more than the amount in dispute. The onus being on the plaintiff, if he had not his witnesses and evidence ready, he must run the risk of having an adjournment given him, or the inquiry asked for at the Judge's discretion. The Judge has refused the inquiry on the ground that the expenses of it would be greater than the amount in dispute, and this is a matter which the learned Judge might well take into consideration in determining whether he should or should not allow an adjournment. The plaintiff as a matter of right was not entitled to an inquiry. He should have had his witnesses ready. We think that the plaintiff's contention fails as to that also, and the result is that the appeal must be dismissed with costs.

C. D. P. *Appeal dismissed.*