

## ORIGINAL CIVIL.

*Before Mr. Justice Sale.*LUTCHMEE NARAIN AND OTHERS *v.* BYJANAUTII LAHIA  
AND OTHERS. \*1897  
April 8.*Practice—Exceptions to report—Rule 565 of Belchambers' Rules and Orders of the High Court, Original Side.*

In making an application to discharge or vary a report, it is necessary that notice should be given within the time required by Rule 565 of the Rules and Orders of the High Court, Original Side, and that such notice should be accompanied with the grounds of exceptions relied on by the party objecting to the report.

THE facts of the case necessary for the purpose of this report appear from the judgment.

Mr. *R. Mitra* for the plaintiffs.

Mr. *A. Chaudhuri* for the defendants.

SALE, J.—This case was placed in the peremptory list for further directions on the report of the Second Assistant Registrar to whom it had been referred to take an account.

The report is dated the 1st day of February 1896, and was filed on the 8th day of July 1896. On the 17th of July, on an application by summons, the defendants obtained three weeks' further time to file exceptions to the report. Exceptions were filed on the 10th of August, that is, within the extended period, but no further steps were taken till the 15th of March, when the case was placed on the peremptory list for further directions on the report.

No notice of motion was given by the defendants to discharge or to vary the report, and at the hearing for further directions the plaintiff took the objection that under the terms of Rule 565, which is to be found at page 230 of Belchamber's Rules and Orders, the exceptions could not be heard. Rule 565 is as follows :—

“ An application to discharge or vary a certificate or report shall be made by motion upon notice to be given within fourteen days from the date of the filing thereof, or within such further

\* Original Civil Suit No. 591 of 1892.

1897  
 LUTCHMEP  
 NARAIN  
 v.  
 BYJANATH  
 LAHIA.

time as may be obtained for that purpose, but in that case the notice shall mention that it has been given with the leave of the Court. An application for further time may be made by petition in Chambers, without notice."

It was said that, though the rule expressly provides that notice to discharge or vary a report shall be given within the time mentioned in the rule, or such further time as the Court may allow, the practice has not been uniformly in conformity with that provision, and that the Court has in some cases allowed exceptions which had been filed within the period mentioned in the rule to be heard and disposed of, although no notice had been given as required by the rule.

Under these circumstances I thought it desirable that an enquiry should be made as to the practice which has prevailed in this Court in regard to this matter. A note (1) has been

(1) Note by Mr. Belchambers, Registrar of the High Court, Original Side, dated 26th March 1893.

"Rule 565 at page 230 of Belchambers' Rules and Orders was passed with effect from 1st May 1875. The practice previously was that exceptions to a report were filed and were set down for argument on requisition. The course prescribed by Rule 565 is that, instead of filing exceptions, an application to discharge or vary a report should be made by motion upon notice. An application under this rule would require that the grounds should be stated. This may be done in the notice itself or separately.

"Appended is a note of cases from which it will appear that, notwithstanding Rule 565, the practice which previously existed has been followed in some cases, and that in other cases, in which application has been made under Rule 565, the grounds have been stated in the form of exceptions.

"The following are the cases to which I have referred.

"*Suit No. 107 of 1887.*

"Exceptions were filed by the defendant, and on the same day notice of an application to discharge or vary the report was given under Rule 565, the fact that exceptions had been filed being stated at foot of the notice.

"*Suit No. 397 of 1889.*

"Exceptions were first filed by a defendant, and exceptions were then also filed by the plaintiff. Both sets of exceptions were set down for argument on requisition, and were heard and disposed of without notice of an application to discharge or vary the report being given under Rule 565.

furnished by the Registrar, which shows that there has been no uniform course of practice ; that in some cases exceptions have been heard on notice of motion to vary or discharge the report, and that in other cases exceptions have been set down for disposal on requisition, and heard, although no notice to vary or discharge had been given under Rule 565. As it is desirable that there should be a uniform practice, I thought it right to consult my learned colleague, Mr. Justice Jenkins, and our opinion is that the procedure laid down in Rule 565 and followed in suits No. 197 of 1887 and 221 of 1893 should be strictly adhered to. It is necessary that notice should be given within the time required by the Rule, or such further time as the Court may allow, and that such notice should be accompanied with the grounds of exception relied on by the party objecting to the report.

In the absence of any such notice, given in the manner now indicated, the report will be regarded as confirmed by effluxion of time. The Rule should not be applied strictly, to exceptions already filed. As regards such exceptions the alternative course may, I think, be permitted, namely, the hearing and disposing of them merely on the requisition of the parties.

Attorneys for the plaintiffs : Messrs. G. C. Chunder & Co.

Attorney for the defendant : Babu G. C. Dhur.

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1897

LUTCHMEER  
NARAIN  
v.  
BYJANATH  
LALIA.

*" Suit No. 544 of 1891.*

" Exceptions were filed by one of the parties and were set down for argument on requisition, and were heard and disposed of without notice of an application to discharge or vary the report being given under rule 565.

*" Suit No. 591 of 1892.*

" In this case further time to file exceptions was obtained, on summons, and the exceptions were set down for argument on requisition, and were heard and disposed of without notice of an application to discharge or vary the report being given under Rule 565.

*" Suit No. 221 of 1893.*

" Exceptions were filed, and notice of an application to vary the report" on the ground set forth in the exceptions, was given under Rule 565.

*Suit No. 374 of 1894.*

" Exceptions were filed and were set down for argument on requisition and were heard and disposed of without notice of an application to discharge or vary the report being given under Rule 565."