

## APPELLATE CIVIL.

Before Mr. Justice Pontifex and Mr. Justice McDonell.

TARUCK CHUNDER MOOKERJEE (DEFENDANT) v. PANCHU  
MOHINI DEBYA (PLAINTIFF).\*

1881  
Feb. 17.

*Suit for Rent—Splitting Claims—Code of Civil Procedure (Act X of 1877),  
s. 43.*

At the close of the Bengalee year 1283, which was on the 11th of April 1877, the defendant owed to the plaintiff, his landlord, the rents of his holding for the years 1281, 1282, and 1283. The plaintiff, in the month of April 1878, before the close of the year 1284, instituted a suit for the rent for 1281 only, and obtained a decree. On the 10th of April 1879, he instituted another suit for recovery of the rents for the years 1282, 1283, and 1284. *Held*, that the claim for the years 1282 and 1283 was barred under s. 43 of the Code of Civil Procedure.

The cases of *Raju Sutto Churn Ghosal v. Obhoy Nund Doss* (1), *Ram Soondur Sein v. Krishno Chunder Goopto* (2), and *Kristo Kinkur Paramanick v. Ram Dhun Chettungiu* (3) are overruled by s. 43 of Act X of 1877.

THE facts of this case are set forth in the above headnote and in the judgment of Mr. Justice PONTIFEX. The plaintiff obtained a decree in the Court of first instance, and this decree was affirmed on appeal. The defendant then appealed to the High Court.

Baboo *Gurudas Banerjee* and Baboo *Nogendra Nath Roy* for the appellant.

Baboo *Amarendronath Chatterjee* for the respondent.

Baboo *Gurudas Banerjee* for the appellant.—The lower Courts are wrong in holding that the claims for 1282 and

\* Appeal from Appellate Decree, No. 2111 of 1879, against the decree of Alexander T. Maclean, Esq., Judge of the 24-Pargannas, dated the 12th of August 1879, affirming the decree of Baboo Romesh Chunder Lahiri, First Munsif of Basirhat, dated the 26th of May 1879.

(1) 2 W. R., Act X Rul., 31.

(2) 17 W. R., 380.

(3) 24 W. R., 326.

1881  
 TARUCK  
 CHUNDER  
 MOOKERJEE  
 v.  
 PANCHU  
 MOHINI  
 DEBYA.

1283 are not barred under s. 43 of the Code of Civil Procedure. At the time the previous suit was instituted in April 1878, the plaintiff's title to the rents of 1282 and 1283 had accrued. The claim for the rent of 1281 arose out of the same cause of action as the claim for the rents of 1282 and 1283,—namely, the nonpayment of rent due under the defendant's lease; and as the claim under the later years was not insisted on then, it cannot be put forward now. The lower Courts' judgment cannot be supported, except on the ground, that each year's rent constituted a separate cause of action; but that is clearly not the case, since the passing of the illustration to s. 43 of Act X of 1877, whatever it may have been before that Act came into force.

Baboo *Amarendronath Chatterjee* for the respondent contended, that the present case was concluded by *Raja Sutto Churn Ghosal v. Obhoy Nund Doss* (1), *Ram Soondur Sein v. Krishno Chunder Gopto* (2), and *Kristo Kinkur Puramanick v. Ram Dhun Chettangia* (3).

The judgment of the Court (PONTIFEX and McDONELL, JJ.) was delivered by

PONTIFEX, J.—In April 1878 rent being due from the defendant to the plaintiff for the years 1281, 1282, and 1283, the plaintiff instituted a suit for the rent of 1281, for which she obtained a decree.

Although that suit was instituted after Act X of 1877 came into force, the plaintiff did not include in her suit the rents for 1282 and 1283, which were also then due.

In April 1879, the plaintiff instituted the present suit for the rents of 1282, 1283, and 1284. With respect to the rents of 1284, it appears from the judgments of the Courts below that, at the time of the institution of the former suit, the year 1284 had not expired, and therefore the entire rent for that year had not become due. The present suit would, therefore, lie for the rent of 1284.

(1) 2 W. R., Act X Rul., 31.

(2) 17 W. R., 380.

(3) 24 W. R., 326.

But objection was taken by the defendant to the suit so far as it related to the rents of 1282 and 1283, on the ground, that they should have been included in the former suit in accordance with the provisions of s. 43 of Act X of 1877.

Now it was decided in *Raja Sutto Churn Ghosal v. Obhoy Nund Doss* (1) that a separate suit would lie for the rents of each year, and that decision became the foundation of two other decisions by this Court—in *Ram Soonder Sein v. Krishno Chunder Gupto* (2) and *Kristo Kinkur Poramanick v. Ram Dhun Chettangia* (3).

Speaking for myself, I do not consider that the reasons given in the decision of *Raja Sutto Churn Ghosal v. Obhoy Nund Doss* (1) are satisfactory; and I should have been reluctant to be bound by it. But s. 43 of Act X of 1877, with the illustration thereto, is a direct legislative reversal of that decision. Now, so far as the Court is concerned, that decision, with the two other cases founded on it, had established a procedure which, until Act X of 1877 came into operation, would have been a sufficient authority for the course pursued by the plaintiff in her suit No. 467 of 1878. But a different procedure having been ordained by s. 43 of Act X of 1877, which came into force on the 1st of October 1877, the authority of the three cases referred to has, in my opinion, been swept away.

It is true the illustration to s. 43 represents only the exact state of circumstances which existed in the case of *Raja Sutto Churn Ghosal v. Obhoy Nund Doss* (1), and it would have been clear if the illustration had been general and not confined to the peculiar circumstances of that case. But it was certainly intended to reverse the decision of *Raja Sutto Churn Ghosal v. Obhoy Nund Doss* (1), and with it the entire foundation of the decisions in the two other cases likewise fails. In my opinion, there can be no reason to distinguish between a suit omitting to claim an earlier rent and a suit omitting to claim a later rent which is due at the date of its institution. The illustration certainly treats a claim to all arrears of rent as a single cause of action.

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(3) 24 W. R., 326.

1881  
 TARUCK  
 CHUNDER  
 MOOKERJEE  
 v.  
 PANCHU  
 MOHINI  
 DEBYA.

1881  
 TARUCK  
 CHUNDER  
 MOOKERJEE  
 v.  
 PANGHU  
 MOHINI  
 DEBYA.

I am unable, therefore, to agree with the interpretation which the learned Judge in the Court below has placed on s. 43 of Act X of 1877, and I am of opinion that the plaintiff was bound by that section to claim in her suit of 1878 the rents of the years 1282 and 1283, and that, having failed to do so, her present suit does not lie for these rents. The decrees of the Courts below will, therefore, be reversed so far as relates to the rents of 1282 and 1283, and will be affirmed so far as relates to the rent of 1284.

This being a case of a defaulting lessor, we think there should be no costs either in this or in the lower Courts.

*Decree varied.*

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## ORIGINAL CIVIL.

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*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Pontifex.*

1881  
 Feb. 1, 2, 7,  
 8, and 28.

SARKIES (PLAINTIFF) v. PROSONOMOYEE DOSSEE AND OTHERS.  
 (DEFENDANTS).

*Dower—Introduction of English Law—Freehold Estates of Inheritance—Armenian Widow—English Law how far applicable in Calcutta—Succession Act (X of 1865), s. 4—Estoppel—Admissions by Conduct—21 Geo. III, c. 70, s. 17—Dower Act (XXIX of 1839).*

The widow of an Armenian, married before the Dower Act (XXIX of 1839), is entitled to dower out of lands which her husband held during the marriage for an estate of inheritance, as against a Hindu purchaser for value from the husband during his life, the English law of dower having been recognized in this country amongst Europeans and Armenians as a branch of the law of inheritance.

*Per* GARTH, C. J.—Estates which have been held by British subjects under the name of freehold estates of inheritance, are, in all essential respects, the same estates which have been held in England under the same name.

The case of *The Mayor of Lyons v. The East India Co.* (1) does not mean to decide that the Courts of this country are justified in adopting just so much of the law of inheritance, or of dower, or of any other law, as they consider equitable, and rejecting the rest. It only points out that there are certain portions of the English Statute law which from their very nature were

(1) 1 Moore's I. A., 175.