

**(1880) 01 CAL CK 0007**

**Calcutta High Court**

**Case No:** None

Soorjee Kanto Roy Chowdhry

APPELLANT

Vs

Woomesh Chunder Bose

RESPONDENT

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**Date of Decision:** Jan. 15, 1880

**Citation:** (1880) ILR (Cal) 713

**Hon'ble Judges:** Tottenham, J; Jackson, J

**Bench:** Division Bench

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### **Judgement**

Jackson, J.

The plaintiff appealed, and his appeal was heard by the Judge of Jessore. In that Court the plaintiff appears to have relied upon a judicial interpretation of Section 27 of Act VIII, but the Judge concurred with the Court below in holding that that did not apply to Section 29. The Judge then cited Act I of 1868 of the Indian Council. That Act, which is commonly known by the name of the General Clauses Act, is in terms an Act for shortening the language used in the Acts of the Governor-General in Council, and is therefore not applicable to the Acts of the Bengal Legislature. The Judge considered that it was "legal and equitable to accept the guidance of the superior;" but I am not aware of any rule of law or equity, which extends an interpretation clause of the superior legislature, which is limited to the enactments of that legislature, to those of another legislature, though it may be subordinate. The Judge went on to say: "It is also to be noted that the 30th Cheyt, 1283 was a close holiday, and the law forbids the filing of suits on such days by closing the Courts. It is true that the general law of limitation does not apply to local Acts according to judicial ruling; but Indian Courts are Courts of Equity, and I think it fair ground for equitable relief to argue that a party should not be told that because he has not performed an impossibility he is out of Court." That is a sentence which I have had a good deal of difficulty in following. It was quite possible for the plaintiff to have filed his suit on the 29th Cheyt, if he had been so disposed; and if we are to use equitable considerations for the purpose of overruling clauses of limitation, legislation would be vain. Therefore, if the matter stood there, we should have been

unable to concur with the Judge, and we must have reversed his judgment. But it appears to us that another question arises, and that is upon the construction of Section 29, which governs this suit. The words which apply are "suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year in which the arrears claimed shall have become due." It has not been brought to our notice that the question has been expressly raised and decided; but it seems to have been rather assumed in some cases, which came before the Court, that the time here spoken of is the year to which the rent related. Now, if the legislature had meant to say that, there is no reason why they should not have employed the same phraseology which is used in the last clause of the same section, referring to a suit for rent at an enhanced rate, for there they say, that the "suit shall be instituted within three months from the end of the Bengal year, on account of which such enhanced rent is claimed." If these had been the words employed in the first clause of the section, there would have been no doubt whatever, that, for the rent claimed for the year 1280, the suit ought to have been brought within three entire years from the last day of Cheyt of that year,—that is to say, within the last day of Cheyt, 1283, and no rule of law being, applicable to suits for rent in Bengal by which the plaintiff might have an allowance for the day, if his period of limitation expired on a close holiday, this suit probably would have been barred. But what the Legislature say is, three years "from the last day. of the Bengal year in which the arrear claimed shall have become due." Now an arrear is defined in Section 21 to be "any instalment of rent which is not paid on or before the day when the same is payable according to the potta or engagement, or if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage." I do not understand that there was any written specification of the time of payment in this case, nor apparently has there been evidence given of the time when such instalment was payable according to established usage. The suit was for the rent of the year 1280. Now, I apprehend, that the tenant would not be liable in respect of the whole rent of the year 1280, if his occupation were disturbed at any time before the conclusion of that year. It could not be positively stated that his occupancy had so continued until the last day of the year had expired, and therefore, I apprehend there would be no arrear due until the commencement of the first day of the following year. That being so, the year 1281 would be the year in which an arrear on account of 1280 would be payable, that is, assuming the year's rent to be payable in one sum. Of course, as regards any instalment payable during the currency of the year 1280, the last day of the year would be the time from which the period would begin to run, otherwise I think it would be the last day of 1281. This suit, therefore, ought, I think, to have been brought within the 30th Cheyt, 1284. On these grounds it appears to me that the suit, is not barred. Of course, if there be any specification of time in the contract between the parties by which the whole rent is payable at any time before the conclusion of the year, then the suit would be barred on that ground, not on the general ground.

2. The appeal will be dismissed with costs.