

(1878) 06 CAL CK 0028

Calcutta High Court

Case No: None

Bir Chunder Manikya

APPELLANT

Vs

Ram Sunker
Senaputty

RESPONDENT

Date of Decision: June 28, 1878

Acts Referred:

- Rent Law of Bengal, L.P. Act, 1869 - Section 31

Citation: (1879) ILR (Cal) 714

Hon'ble Judges: Tottenham, J; L.S. Jackson, J

Bench: Division Bench

Judgement

L.S. Jackson, J.

We are unable to agree in the interpretation put on Section 31 of Beng. Act VIII of 1869 by the lower Appellate Court.

2. It appears that in the covenant between the plaintiff and the defendant in this case there was a condition that the lands at that time uncultivated should commence to bear rent at the expiration of seven years from their being put under cultivation and the plaintiff's claim was for rent in respect of certain land which was alleged to have come within this category during the Bengal year.

3. The defendant made a deposit of rent u/s 31, putting in the amount which he had been previously accustomed to pay.

4. The Subordinate Judge thinks that the rules as to deposit of rent have no reference to rent which had not at that time been payable. In the case of Taramonee Koonwaree v. Jeebun Mundur (6 W.E., Act X, Rul. 98) it was held that the limitation of six months prescribed by Section 6 of Beng. Act VI of 1862 applies to deposits made after rents have become due. I am not aware of any authority for the limitation now proposed to be put upon the section. The additional rent payable was not payable by reason of any fresh contract, but it was an increment of payment due under the

contract itself. It is admitted that that increment had become due, if the plaintiff's allegations were true, and was payable at the end of the Bengal year, and that the deposit was made after that time. The defendant, therefore, was clearly entitled to the benefit of the section.

5. Then it remains to see on what date notice was served in accordance with the section, and how much of plaintiff's claim was barred by reason of such notice and failure to institute the suit within six months. The case must go back to the Appellate Court to determine this part of the case. Of course the plaintiff will also have to show that under the contract additional rent was due. The costs will abide the result.