

(1865) 01 CAL CK 0003

Calcutta High Court

Case No: Regular Appeal No. 294 of 1863

Madhusudan Pal Chowdhry

APPELLANT

Vs

John Poulson

RESPONDENT

Date of Decision: Jan. 18, 1865

Judgement

Norman, Officiating C.J.

1. The preamble of Act XIV of 1859, "An Act to provide for the limitation of suits," states that "it is expedient to amend and consolidate the laws relating" to the limitation of suits, and for that purpose it enacts that "no suit shall be maintained in any Court of Judicature within any part of the British Territories in India in which this Act shall be in force, unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any law or regulation to the contrary notwithstanding, and the period of limitation and the suits to which the same respectively shall be applicable shall be the following." Then comes the enumeration, amongst which, in clause 8, section 1, is suits for the rents of any buildings or lands (other than summary suits before the Revenue authorities under Regulation V of 1822 of the Madras Code), the period of three "years from the time the cause of action arose." The question is whether, under the description of suits for "rents of buildings or land," suits for arrears of rent under Act X are meant to be included. The argument, on behalf of the respondent, is that Act XIV is the general law of limitation, and that the intent of the Legislature was that the period of limitation in all suits to be instituted after that Act came into operation should be regulated by it. Clauses 1 to 15 of section 1 enumerate a great number of different suits to which different periods of limitation are respectively to be applicable, and clause 16 provides a period of limitation for all suits to which no other limitation is thereby expressly provided. At first sight, therefore, it might appear that the Act is meant to be applied to all suits of whatever nature or kind. But in section 18, it is enacted that "all suits to which the provisions of this Act are applicable, that shall be instituted after the expiration of two years from the date of the passing of this Act, shall be governed by this Act, and no other Law of Limitation, any Statute, Act, or

Regulation now in force notwithstanding." The Act, then, is not universal in its application. It is clear that the Legislature contemplated that there were some suits to which the provisions of the Act would not be applicable. It can hardly be said that the Act is not applicable to cases when shorter periods of limitation than those prescribed in section 1 are kept alive by section 3, because, first, the Act does apply to them in keeping alive such shorter limitation; and, secondly, in every other respect, except the period of limitation, they are probably meant to be regulated by Act XIV.

2. Act X of 1859 received the sanction of the Governor-General only six days previously to the passing of Act XIV.

3. Now, it is a sound rule of construction that "the law does not favor a repeal by implication, unless the repugnance be quite plain; and, such repeal carrying with it a reflection on the wisdom of former Parliaments, it has ever been confined to repealing as little as possible of the preceding statute. Although then two Acts of Parliament are seemingly repugnant, yet, if there be no clause of non obstante in the latter, they shall, if possible, have such construction that the "latter may not be a repeal of the former by implication" Dwarris on Statutes, 533. If the words "suits for the rents of any buildings or lands" had been intended to include suits dealt with by section 32 of Act X, we should have been obliged to say that the Legislature, by section 32, created a limitation of three years from the end of the month of Chaitra to remain in force for two years; but after a period when the limitation in Act X had become thoroughly well known and understood by the agricultural community, without any particular reason for the change, they would find that suits must be brought within three years of the cause of action if for arrears on account of land, or six years if on account of pasturage, forest rights, fisheries, &c., with privileges as to the extension of the period in the latter case which it was not thought necessary to provide in the former. It would be difficult to assign any just reason why, in Acts of the Legislature which were under consideration at the same time applicable to the same matter, one set of Regulations as to limitation should be established at once, and another and totally different set of rules should be enacted to take effect at a date arbitrarily fixed at two years after the passing of the second Act. I cannot doubt that if the period of limitation and the qualifications contained in Act XIV had been intended to apply to rents, under Act X, the Legislature would have declared that these provisions should have come into operation at once. It is equally difficult to understand why there should be a new classification of suits for rent to take effect at such future time.

4. Act X of 1859 is a special statute applicable only to the Presidency of Fort William in Bengal, and containing a complete code regulating the rights and duties of the agricultural population, with respect to the occupation, management, and rent of land, and the recovery of such rent in Collectors' Courts within the Presidency. Now, it is a well-known principle of legal construction that general statutes are not to be

taken as repealing special statutes, unless there is a clear expression of the intention of the Legislature to that effect. Mere general words are not enough. The rule which was stated by Judge Jenkyns in his "Eight Centuries of Reports," case 41, page 120, was recognized by the Lords Justices of Appeal in Chancery in 1853--*The Trustees of the Birkenhead Docks v. The Birkenhead Dock Company* 23 L.J. (N.S.), Ch., 457, and in 1861 by Vice-Chancellor Wood in *Fitzgerald v. Champneys* 30 L.J. (N.S.), Ch., 777. The reason given by the Vice-Chancellor is as follows:-- "The Legislature having had its attention drawn to a special subject, and observed all the circumstances of the case and provided for them, does not intend, by a general enactment afterwards, to derogate from its own act when it makes no special mention of its intention so to do."

5. Secondly, the word "lands" in clause 8 may have a sufficient meaning given to it by treating it as a term subordinate to houses,--that is, as applying to "houses and lands appurtenant thereto," as distinguished from "lands, forest rights, fisheries," and the like, in the sense in which the word is used in section 23 of Act X of 1859. It is a well-settled rule that an enumeration of different subjects in an Act of Parliament general words following specific words, may be construed with reference to the antecedent matters, and the construction may be narrowed by treating them as applying to things of the same kind as those previously mentioned. Compare Comyn's Dig. Parliament R., 36; *The King v. The Manchester and Salford Waterworks* 1 B. & C., 630; *The East London Waterworks v. Mile End Old Town* 17 Q.B., 512. Again, looking at the history of the enactment of clause 8, section 1, we find that, as originally proposed, clause 7, specially excepted "summary suits before the Revenue authorities regarding arrears and exactions of rent;" but after the passing of Act X, summary suits, except under Regulation V of 1822 of the Madras Code were at an end, and the clause was then amended, so as to except such last-mentioned summary suits only. This shows that even before the passing of Act X of 1859 there had been an express intention to exclude suits for rents of land from the operation of clause 8, and to deal with them by other legislation. We are therefore of opinion that suits for arrears of rent under Act X of 1859 are not affected by Act XIV of 1859, because no "period of limitation" is by the last-mentioned Act "made applicable to suits of that nature," so that the case is not brought within section 1, and such suits are therefore not "suits to which the provisions of that Act are applicable" within section 18 of Act XIV of 1859. We have gone into the case at length, because our decision is at variance with the case of *Syad Hussein Urkurree v. Gobind Narain S.D.* (N.W.P.), 14th March 1863, 218. Levinge, J.

6. I concur in Mr. Justice Norman's judgment, having no doubt that the special provisions of Act X of 1859, regulating the recovery of rent in the Bengal Presidency, are not repealed or interfered with by the provisions of the general law--Act XIV of 1859--passed for the three Presidencies, and that this is the true legal construction

to be given to these two Acts.

Pundit, J.

7. I agree with this opinion, though I see that, in many cases, this construction, which I am compelled to adopt, is likely to operate as injurious to the extent of depriving redress altogether. I feel no hesitation in holding that cases under Act X of 1859 are not affected by Act XIV of the same year.

Trevor, J.

8. The question which we have to determine in this case is whether, in a suit brought under Act X of 1859 for arrears of rent, the special limitation of section 32 of that Act applies, or whether those suits are governed by the provisions of clause 8, section 1, Act XIV of 1859. If the former law is applicable, a landlord will be able to institute a suit for arrears of rent at any time within three years from the last day of the Bengal year, or from the last day of the month of Jeth of the Fuslee or Willayati year, in which the arrears claimed shall be due, as the land is situated either in Bengal or elsewhere; whereas if the latter applies, the landlord must bring his suit within three years from the time the cause of action arose, but he will, u/s 14 of the Act, be entitled in the computation of the three years to the exclusion of any period during which a bona fide suit upon the same cause of action against the same defendant, or some person whom he represents, was pending either originally or in appeal, or both, and was dismissed for defect of jurisdiction.

9. It appears to me to be clear that the terms of section 32 of Act X of 1859 are unaffected by the provisions of Act XIV of 1859: first, inasmuch as a general law does not override or repeal by implication a special law, the more especially when the two laws are enacted contemporaneously; secondly, inasmuch as in the present instance the general law contemplates cases not falling within its provisions, and its terms are satisfied by the exclusion of these cases under Act X of 1859; and thirdly, inasmuch as the difference in the Law of Limitation under Act X and Act XIV of 1859 is such as to show that those laws were severally enacted for different classes of cases; the law in the latter case not being applicable to the former. In one word, the causes which exist for the enactments in the general law do not exist in the subject-matter of the special law--hence the difference between them.

10. The principle that a general law does not derogate from a special one admits of no question. It only remains to show that the subject-matter of Act X of 1859 is of a special, whilst that of Act XIV is of a general, nature. The title of Act X of 1859 is "An Act to amend the law relating to the recovery of rents in the Presidency of Fort William in Bengal," and the preamble of the law declares that it is expedient to re-enact with certain modifications the provisions of the existing law relating to the rights of ryots with respect to various matters, "to extend the jurisdiction of the Collector, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property

for such arrears."

11. With a view of carrying out these objects, various roles were made; and by Section 32, it is enacted that "suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeth of the Fusly or Willayatti year in which the arrears claimed shall have become due. For arrears of rent due at the passing of this Act, suits shall be brought within three years after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire. Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice u/s 13, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year, or of the month of Jeth of the Fusli or Willayatti year on account of which such enhanced rent is claimed." Now, these are special rules for special points arising out of the special subject to which the Act refers,--viz.) the transactions arising out of the relation which exists between landlord and tenant in the Presidency of Fort William in Bengal.

12. Turning to Act XIV of 1859, which was passed on the 5th May 1859, seven days subsequently to that on which Act X was passed, its title is "An Act to provide for the limitation of suits," and its first section enacts that no suit shall be maintained in any Court of Judicature "within any part of the British Territories in India, in which this Act shall be in force, unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any law or regulation to the contrary notwithstanding." The general nature of the subject-matter of the Act cannot be questioned. It follows, therefore, the one Act being special, and the other general, and both passed with only an interval of seven days, that they do not in the least interfere with each other; but it has been contended that, unless the latter override the former law, its general and large terms are not satisfied, and this consideration must override any technical rule of construction regarding a general law not derogating from a special one, but the contention will not, it seems to me, admit of argument. The special law is only concerned with a special relationship within the Presidency of Bengal; the general law embraces all suits arising out of all relationships, except that special one, between man and man, within the British Territories in India, including the Presidencies of Madras and Bombay. This area and these relationships are large enough to warrant the use of the most general terms, without interfering with the special contemporaneous law made regarding a particular relationship in a particular part of the country. Read by this principle, the very general terms of section 1 of Act XIV embraces the various suits brought with a view of enforcing the obligations contracted by, and of repairing the injuries done by, individuals not standing to each other in the relationship of landlord and tenant in Bengal, and simply import that, when, concerning any suit falling within the general Limitation Law, there are or shall hereafter be made laws prescribing a

shorter limitation for the institution of them, the shorter limitation shall prevail. Moreover, section 18 shows clearly that there are suits to which the provisions of the law are not applicable; it may therefore be asserted that the very general, though not absolutely universal, application of the law quite satisfies the large terms used in the law itself.

13. The separate reading of the two laws which the rule of legal construction points to, not only satisfies the terms of both laws, but explains the causes of the difference in them on the point to which the present discussion refers. In the special law,--in cases, that is, between landlord and tenant,--the demand is for rent; rent is a demand arising yearly from the land, and must be satisfied yearly, in order to enable the zamindar to pay his revenue. If the zamindar is a minor, whether under the Court of Wards or otherwise, he must, under the laws in force, have a manager to whom they are to be paid, and who is legally empowered to grant receipts and to institute suits for their rents on his behalf, and special tribunals have been established in which alone suits for rent can be adjudicated: no other Court having jurisdiction over such matters in Bengal. Hence in these cases, having once fixed the date from which time shall run, there is no necessity for any allowance on account of minority, or for time expended in suits brought bona fide upon the same cause of action and against the same defendant in any Court of Judicature not having jurisdiction; whereas in other cases, from their variety, from the uncertainty as to the ability, power, or will of any party to take them up, and sometimes from the doubts as to the particular forum in which the suit should be brought, there is a necessity for not allowing time to run in cases of parties under legal disability when the right of action first accrues, and a necessity also for excluding from the computation of time running against a suitor, that period during which a suit brought bona fide on the same cause of action against the same defendant may have been pending in a Court without jurisdiction. This diversity of position arising from the different nature of the transactions, and the parties to them, sufficiently explains the difference between the two laws, and the reason for the same, and furnishes a conclusive proof that the intention of the Legislature was that these laws should be considered separate and distinct. For the above reasons, I have no hesitation in ruling that the terms of section 32 of Act X of 1859 are altogether unaffected by the provisions of Act XIV of 1859.

(1) Act X of 1859, s. 32.-- "Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeth of the Fusly or Willayatti year in which the arrear claimed shall have become due. For arrears of rent due at the passing of this Act, suits shall be brought within three years after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire. Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice u/s 13, and the

enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year or of the month of Jeth of the Fusly and " Willayatti year on account of which such enhanced rent is claimed."

(2) Act XIV of 1859, s. 11.-- "In computing any period of limitation prescribed by this Act, the time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, bona fide, and with due diligence, in any Court of Judicature, which, from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause, including the time during which such appeal, if any, has been pending, shall be excluded from such computation."