Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Unnoda Persaud Mookerjee and others v. *Kristo Coomar Moitro and others, from the High Court of Judicature at Fort William, in Bengal; delivered 26th November,* 1872.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THE single question to be decided in this Appeal is, whether to an action for rent brought in the Collector's Court under Act X of 1859, (The Rent Act), the bar of limitation applicable to it is that provided by the 32nd section of the same Act, or that provided by Act XIV of 1859, passed six days later.

If the limitation of section 32 of Act X is still in force, the action is barred; but if, as the Appellant contends, that section has been repealed and the limitation of Act XIV is applicable to the case, then it is not.

The 32nd section of Act X enacts, that suits for the recovery of arrears of rents shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeyt of the Fusly or Willayuttee year, in which the arrear shall have become due.

By Act XIV, section 1, clause 8, the limitation applicable to suits for the rent of any buildings or

lands is the period of three years from the time the cause of action arose.

The present suit would be barred even under Act XIV, but for the operation of clause 14 of that Act which provides that in computing the period of limitation prescribed by that Act, the time occupied in prosecuting an abortive suit, shall, under certain conditions, be excluded. There has been litigation, which would bring the present case within this section and prevent the suit being barred if Act XIV is applicable to it. There is no analogous provision in Act X, and it is admitted by the Appellant that if that Act governs, the suit is barred.

Act X is not expressly and specially repealed; but the enactments of the later Act are no doubt in their terms large enough to include the limitation contained in it; for section 1 of Act XIV enacts, that "no suit shall be maintained 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 among the suits to which it is enacted that, "the same shall be applicable" are, "all suits for the rents of any buildings or lands (other than summary suits before the Revenue Authorities under Regulation V, 1822, of the Madras Code." Section 18 of the same Act also enacts that "all suits to which the provisions of this Act are applicable shall be governed by this Act, and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding."

The question, however, arises whether the special legislation contained in Act X is not of such a special kind, that, according to a well established rule for the construction of Statutes, it should be presumed that the Legislature did not intend by the general enactment to interfere with it. The reason for this rule of construction is well expressed by Lord Hatherley, when Vice Chancellor, in Fitzgerald *v.* Champneys 30 Law J., 782, and in terms which appear to be very applicable to the legislation their Lordships have to consider in the present Appeal;—

"The reason is that the Legislature having had its attention directed 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,

where it makes no special mention of its intention to do so."

Act X established a Rent Law for the Bengal Mofussil only; it was intended to form a special and complete Code of Procedure with regard to the trial of questions relating to rent and the occupancy of land in the Mofussil, and by which all the proceedings before the Collectors were to be regulated and governed. The preamble shows an intention to deal with questions regarding the rights of ryots in relation to the occupancy of lands. One of the objects was to prevent oppression. It recites that it was expedient to extend the jurisdiction of the Collectors, and to prescribe rules for the trial of the above questions as well as of suits for the recovery of arrears of rent, and section 23 (clause 4) enacts that "all suits for arrears of rent due on account of land either Kherajee or Lakheraj, or on account of any rights of pasturage, forest rights, fisheries, or the like," shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of the Act, and shall not be cognizable by any other Court or in any other manner.

This enactment gives exclusive jurisdiction to the Collectors, and clearly indicates the intention of the Legislature to be, that the special questions which are thus made the subject of peculiar legislation, shall be tried according to the procedure established by the Act, and in no other manner.

The provision for the limitation of suits is a part of the procedure thus established.

The period prescribed by Act X, as already stated, is "three years from the last day of the Bengal year, or from the last day of the month of Jeyt, of the Fusly or Willayuttee year in which the arrears became due." A proviso is added that if the suit is for enhanced rent, not confirmed by a competent Court, the suit must be brought within three months from the end of the year, as above defined, on account of which the enhanced rent is claimed. The period thus defined and prescribed, and the provision as to enhanced rent, show that these rules were framed with especial reference to the case of Ryots and other tenants in the Mofussil, and to their times and modes of paying rents.

Act XIV has no provision as regards enhanced rent, and it could hardly have been intended that

part of the limitation, as regards the rents of Ryots, should be found in one Act, and part in another.

Reading together the 23rd and 24th sections of Act X, it will be found that the Act prescribes the same period of limitation for rent of land, and of rights of pasturages, forest rights, fisheries, or the like. Act XIV, by the enactment relied on as superseding this limitation, relates to rents, "of buildings, or lands" only. These words, clearly, would not comprehend rent of rights of pasturage, forest, and the like. It is plain also that the longer periods mentioned in Act XIV would not be applicable to suits for these rents, in consequence of the 3rd clause of that Act. Such suits would still be governed only by the limitation in Act X; and the consequence therefore of holding that the limitation as regards suits for rents of land in Act X is repealed by the later Statute, would be to establish different periods for suits for rents of land, and those for rents of pasturage and the like.

It cannot reasonbly be presumed that, when the Legislature, in the particular legislation, specially devised to meet the case of all these rents, had put them in the same category, it intended by the subsequent general Act to separate and assign different periods to them. No reason can be suggested for such a separation, or for supposing that the Legislature meant that the provisions to be found in clauses 11 to 14 of Act XIV, suspending or prolonging the periods of limitation when certain disabilities exist, should extend to one set of these rents, and not to the others. It should be observed that none of these provisions are introduced into Act X, and it may well be that the Legislature thought they were not adapted to the cases for which the simple procedure established by that Act was intended to provide.

Another point arises on a comparison of the Acts which is material to be regarded in construing them. Act X was to come into operation at once, Act XIV only after an interval of two years; and different provisions were made in the two Acts as to suits for arrears due at the time of the passing of the Acts. It does not seem a violent presumption to suppose that the Legislature in framing the two Acts with these distinctive provisions, intended that both should have independent force.

The fact that the Acts were virtually contemporaneous, appears strongly to support the presumption arising from the above considerations, viz.: that it was not meant that the harmony of the system of the Special Act, which had been designed for special objects, should be disturbed by the general Act.

The words "rent of any buildings or lands" which occur in Act XIV are, no doubt, sufficiently large in themselves, to comprehend all lands; and their Lordships cannot assent to one of the reasons given by Chief Justice Norman for his Judgment in the case of Poulson, junr. *v.* Chowdry, (2 Weekly Reporter, 21), viz., that the words "rent of lands" might be construed to be confined to lands appurtenant to buildings. They think the words cannot be so limited, for Act XIV was a general law intended to have force throughout the British territories in India. But these comprehensive words will have effect and operation, without holding them to apply to the special legislation of Act X, which is confined to the Bengal Mofussil.

It should be observed that although Act XIV proposes to consolidate the laws relating to the limitation of suits, it clearly was not intended to be of universal application. It is confined by section 18 to suits "to which the provisions of the Act are applicable." The Legislature therefore contemplated some cases of limitation which would remain unaffected by the general legislation. It would certainly be an unfortunate result of the attempt to consolidate the law, if the effect of the legislation was, that as to suits for rents triable by the Collectors under Act X, the limitation of them was to be found partly in that Act, and partly in Act XIV. It would seem to conform more to the spirit of the legislation so to construe the Acts as to prevent this result.

The exception in Act X of summary suits before the Revenue authorities under Regulation V, 1822, of the Madras Code, has been strongly relied on by the Appellants as indicating an intention not to except suits before the Collector under Act X. Undoubtedly, this exception adds to the difficulty of construction. But the Madras Regulation related to summary suits. Suits of that kind were abolished

in Bengal by Act X, and a Code of special procedure with special Rules, including one of limitation, substituted for them. It may not have occurred to the framers of Act XIV when referring to these summary suits in Madras, that it was necessary to except by express words suits of another kind regulated in their entirety by special legislation.

Difficulties have frequently been imposed on Courts of Justice in construing Statutes, arising from the apparent conflict between special and general legislation; and the rule of construction that special legislation is not repealed by general enactments, unless a clear implication of that intention can be found, was adopted in early times to meet these difficulties, and has been acted on in numerous modern instances. (See Thorpe *v.* Adams, L. R. 6, C. B., 125. The Queen *v.* Champneys, Id., 384). In the latter case, Bovill, C. J., says, "It is a fundamental rule in the construction of Statutes, that a subsequent Statute in general terms is not to be construed to repeal a previous particular Statute, unless there are express words to indicate that such was the intention, or unless such an intention appears by necessary implication."

Their Lordships, upon a comparison of the two Statutes in question, with reference to their objects, and considering that they were virtually contemporaneous Acts, have come to the conclusion that the intention to repeal the particular law is not made distinctly to appear, either by express words or necessary implication, and, consequently, that the limitation of Act X remains in force.

They are not dealing with the question as *res integra*, for the same construction was given to the Acts by the Full Bench of the High Court of Bengal, in the case of Poulson *v.* Chowdry, already referred to, which was decided in the year 1865. It is true that this decision preceded, by a short time only, the Judgment now under Appeal; but it has probably been acted upon in the numerous suits which must since have arisen in the Bengal Presidency under Act X. Unless, in this condition of things, their Lordships found that the above decision of the Full Court was manifestly wrong, they ought not to disturb it. They have not arrived at this

conclusion, and it will, therefore, be their duty in the present case to advise Her Majesty to dismiss this Appeal, and to affirm the Judgment of the High Court.

PRINTED AT THE FOREIGN OFFICE BY T. HARRISON.—30/11/72.