APPELLATE CIVIL.

Before Mitter and Akram JJ.

PROVINCE OF BENGAL

v.

MRITYUNJAY RAY CHAUDHURI.*

1939

Aug. 21, 22, 29.

Lâkhirâj—*Limitation for resumption—Repeal of the law of limitation, Effect of—Classification of non*-bâdshâhi lâkhirâj—*Resumption, how effected—Lands excluded from the register of* lâkhirâj—*Presumption—Second Appeal—New plea of non-registration of* lâkhirâj—*Bengal Revenue-free Lands (Non*-Bâdshâhi *Grants) Regulation (XIX of 1793), ss. 2, 3, 6, 7, 10, 22, 26—Limitation Regulation (II of 1805), s. 2, cl. 2—Bengal Revenue-free Lands Regulation (VIII of 1800), s. 2—Repealing Act (VIII of 1868), Sch.—Summary Dispossession Act (XIV of 1859), s. 17.*

Section 2, cl. 2, of Regulation II of 1805 for the first time prescribed sixty years as the period of limitation within which the Government could institute proceedings for the resumption of invalid *lâkhirâjes* created since August 12, 1765, but before December 1, 1790. This period of sixty years would run after the origin of the cause of action, which, in such cases, dates from the time when the invalid grant had been made or at least when the grantee took possession under such grant. Knowledge of the Government about grantee's possession is irrelevant to the question of limitation.

Chundrabullee Debia v. *Luckhea Debia Chowdrain* (1) followed.

Section 2, cl. 2, of Regulation II of 1805 became unnecessary by the lapse of time and was repealed in 1868 by the Repealing Act VIII of 1868. This repeal in 1868 could not revive the Government's right to assess any invalid *lâkhirâj* when such right was already barred under Regulation II of 1805 prior to its repeal in 1868.

Appasami Odayar v. *Subramanya Odayar* (2) and *Khunni Lal* v. *Gobind Krishna Narain* (3) referred to.

It is not correct to say that the provision of s. 2, cl. 2, of Regulation II of 1805, which provides a period of limitation to resume public property, was repealed by necessary implication by the Limitation Act XIV of 1859, because s. 17 of that Act states that none of the provisions of the said Act shall extend to any public property or right.

*Appeal from Appellate Decree, No. 935 of 1938, against the decree of R. L. Chakrabarti, District Judge of Rangpur, dated Mar. 2, 1938, affirming the decree of the second munsif of Rangpur, dated July 31, 1937.

(1) (1865) 10 M. I. A. 214.
(2) (1888) I. L. R. 12 Mad. 26 ; L. R. 15 I. A. 167.
(3) (1911) I. L. R. 33 All. 356 ; L. R. 38 I. A. 87.

Section 2, cl. 1, s. 3, cl. 1 and s. 10 of Bengal Revenue-free Lands (Non-*Bâdshâhi* Grants) Regulation XIX of 1793, dealing with non-*bâdshâhi lâkhirâj* grants classify such *lâkhirâjes* into three principal classes according to point of time namely :—

(*i*) If the *lâkhirâj* grant is *proved* to have been made prior to August 12, 1765, and the possession of it was actually and *bona fide* obtained before that date, such *lâkhirâj* grant cannot be questioned, if the lands comprised in the grant were not subsequently rendered subject to the payment of revenue by the officers or orders of the Government.

(*ii*) If the *lâkhirâj* grant had been made since August 12, 1765, but previous to December 1, 1790, the grant of such *lâkhirâj* is to be deemed invalid, unless made by the Government and confirmed by the Government or by a duly authorised officer of the Government.

(*iii*) If the *lâkhirâj* grant had been made since December 1, 1790, it is null and void, unless made by the Governor-General in Council or by the Local Government.

Under s. 7 of Bengal Regulation XIX of 1793 the right to assess the revenue and appropriate the same belongs to the Government in respect of invalid *lâkhirâj* grants falling within class (*ii*) stated above, if the area of such a grant is more than 100 *bighâs*.

In respect of invalid grants not exceeding 100 *bighâs*, under class (*ii*) stated above, and with regard to all invalid grants coming within class (*iii*), all rights of resumption or assessment, in view of the provisions of ss. 6 and 10 of Regulation XIX of 1793, belong to the proprietor of the permanently settled estate within the ambit of which lands of such grants lie and no such right of resumption or assessment is retained by the Government unless such lands are held in *khâs* by the Government.

The preamble to Bengal Regulation XIX of 1793 made it clear that any *lâkhirâj* created before December 1, 1790, cannot be subjected to the payment of revenue until the title of the holder of such *lâkhirâj* was adjudged invalid by a final decree of civil Court. This power of adjudication, which formerly vested in the civil Court, was subsequently given to the Court of the Collector by s. 5, cl. 1, of Regulation II of 1819.

The Collector's Court must be considered to be a civil Court within the meaning of s. 2, cl. 2, of Regulation II of 1805.

Mahatab Chund v. *Government of Bengal* (1) followed.

In view of the incompleteness of the registers kept either under s. 22 of Regulation XIX of 1793 or under s. 2 of Regulation VIII of 1800, it cannot be taken or presumed that a *lâkhirâjdâr*, in respect of *lâkhirâj* created before December 1, 1790, had omitted to take steps to register his *lâkhirâj* land and, therefore, under s. 26 of Regulation XIX of 1793, it cannot be held that the land included in such grant has become subject to the payment of revenue in the same manner as if it had been adjudged liable to the payment of revenue by a final decree of the civil Court.

Bipradas Pal Chowdhury v. *Manorama Debi* (2) referred to.

(1) (1850) 4 M. I. A. 466. (2) (1917) I. L. R. 45 Cal. 574.

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In Second Appeal, no new point can be taken relating to the non-registration of *lákhirájes* in violation of the provisions of s. 26 of Bengal Regulation XIX of 1793.

APPEAL FROM APPELLATE DECREE preferred by the defendant, arising out of a suit by the plaintiff for a declaration that certain lands are not liable to be assessed with revenue.

The material facts of the case and the arguments in the appeal are sufficiently set out in the judgment.

The Assistant Government Pleader, Ramaprasad Mukhopadhyaya, for the appellant.

Heramba Chandra Guha and *Narendra Nath Banerjee* for the respondent.

Cur. adv. vult.

The judgment of the Court was as follows:—

This appeal is by the defendant, the Province of Bengal, from the judgment and decree of the District Judge of Rangpur, dated March 2, 1938, by which the judgment and decree of the Munsif, Second Court, Rangpur, dated July 31, 1937, has been affirmed. The subject matter of the suit is 199·23 acres of land in *mouzâs* Ganeshpur and Pirabad held without payment of revenue from at least 1805. No attempt had been made on the part of the Government to assess it with revenue before 1935. The plaintiff respondent is the owner of a permanently settled estate, being *touzi* No. 161 of the Rangpur Collectorate. The lands in suit lie within the geographical limits of that estate. When settlement proceedings under Chapter X of the Bengal Tenancy Act was in progress, resumption proceedings were started by the Settlement Officer, which culminated in a resolution passed by the Board of Revenue on July 31, 1935, declaring that the said lands were liable to be assessed with revenue. In pursuance of the said resolution, a sum of Rs. 381 was assessed as revenue. Shortly after, the plaintiff brought this

suit for a declaration that the lands were not liable to be assessed with revenue and the assessment made was illegal. The grounds on which he wished to sustain his suit are two in number :—

(i) that he and his predecessors had been holding the lands as revenue-free property from before August 12, 1765 (the date of the accession of the East India Company to the *Dewâni*) under a revenue-free grant from Raja Man Singh. The Government has accordingly no right to challenge his revenue-free title, in view of the provisions of s. 2 of Regulation XIX of 1793;

(ii) that the right of the Government to assess it with revenue was barred by time.

Both the Courts below have negatived the plaintiff's claim based on the first ground, but the second contention of the plaintiff has been given effect by both Courts below. The lower appellate Court found that the plaintiff's predecessors were in possession at least from 1805 without payment of revenue. The first ground taken by the plaintiff cannot be re-agitated by him before us, as findings of fact conclude him. The only point, therefore, which we have to consider is whether the Government's claim is barred by the lapse of time.

The first Regulation of importance is Regulation XIX of 1793, the Regulation dealing with non-*bâdshâhi* grants. We need not consider the provisions, though they are of a similar nature, of Regulation XXXVII of 1793, which relates to *bâdshâhi* grants, as the plaintiff does not claim revenue-free title from a *bâdshâhi* grant. The provisions of Regulation XIX classify *lâkhirâjes* into three principal classes according to point of time: (i) If the *lâkhirâj* grant is proved to have been made before August 12, 1765, the date of *Dewâni* to the East India Company, the grant is not to be questioned. (ii) If the grant had been made *after* August 12, 1765, and before December 1, 1790, the

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grant is to be deemed invalid, unless made or confirmed by the Government or by a duly authorised officer of the Government. (iii) If the grant had been made *after* December 1, 1790, without the authority of the Governor-General in Council, it is to be void and of no effect. There is a fundamental distinction between invalid grants falling in second class and those falling within the third class. The grantees falling within the second class of invalid *lâkhirâjes* are not to be dispossessed. Their proprietary rights are recognised; they are not to be dispossessed; but their lands are to be assessed with revenue only (ss. 4 and 5), according to the principles laid down in the Regulation. The grantees falling within the third class of invalid grants are to be dispossessed and their lands annexed to the permanently settled estate within the ambit of which they lie.

Invalid grants falling within the second class are sub-divided into two divisions in reference to area. If the area be 100 *bighâs* or more, the right to assess would remain in the Government and the Government is to have the assessed revenue. If the area be less than 100 *bighâs*, the *zemindâr*, within the ambit of whose estate they lie, is given the right to assess and to have the benefit of the revenue assessed without being required to pay more to the Government than what he has to pay as revenue on account of his permanently settled estate. These provisions accordingly give the Government right to assess land, which form the subject of an invalid *lâkhirâj* grant created within the period of August 12, 1765, and December 1, 1790, provided that the lands included in one single grant is 100 *bighâs* or more in area.

With regard to invalid grants of the third class, whatever the area thereof be, all the rights conferred by s. 10 of the Regulation belong to the proprietor of the permanently settled estate within the ambit of which the lands lie and no right is retained by the Government, unless the Government was in *khâs* possession, *i.e.*, unless the lands lay not within the ambit

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of a estate permanently settled to a proprietor but within an area held in *khâs* by the Government. The *zemindâr* is given the right to summarily dispossess the grantee. He may, at his option, however, allow the grantee to retain possession and assess him with rent. In view of these provisions, the Government would have no right to assess the lands in suit except on the assumption that they are included in an invalid revenue-free grant created after August 12, 1765, and before December 1, 1790. As the point was not raised in this form we would, in deciding the question of limitation, proceed on the hypothesis that the lands in suit were included in an invalid revenue-free grant which the Government could in law resume. The finding of the learned District Judge is that the grantee was in possession from 1805 at least and that finding is supported by the fact that the person in possession made a return to the Collector in 1212 B.S. (1805) (Ex. 2) showing there that he was in possession under a revenue-free grant made for maintenance *khângi petbhâtâ* maintenance for family.

The said Regulation provides for the preparation and maintenance of periodical registers of *lâkhirâj* lands, *i.e.*, lands held, *i.e.*, actually possessed, revenue-free under grants made previous to December 1, 1790 (s. 23) and grantees in possession who may claim to hold under grants made before the said date are required, under a penalty, to register their lands (s. 24) within a year of the publication of the notice, the terms and the manner of publication of which are set out in s. 25. Section 26 provides that if such a grantee omits to register his grant with the particulars required within the said time, the land included in his grant shall become subject to payment of revenue "as if it had been adjudged liable to the "payment of revenue by a final decree of a Court of "judicature." Section 27 provides that, after the expiry of the period limited for registration of such grants, all grants not on the register are to be taken

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as invalid as far as exemption from revenue was concerned. In both cases the Collector is to proceed to assess revenue. We will have to consider now the significance of the sentence which we have quoted above within inverted commas.

The preamble to the Regulation states that to obviate all injustice and extortion the claim of the public on the land of the grantees "(provided they "register their grants as required in the Regulation)", shall be tried in Courts of judicature, so that no such exempted lands may be subjected to the payment of revenue, until the title of the proprietor shall have been adjudged invalid by a final judicial decree. The enactments on the subject are in ss. 12 and 14. The object of the register is to let the Collector have in his possession the particulars of lands actually held revenue-free so that he may initiate steps for the establishment of the right of the Government to assess. Section 14 requires the Collector to report to the Board of Revenue if he believed that a piece of land was improperly held and possessed free of revenue. That section provides that proceedings to impose the public demand are to be started by the Collector only with the sanction of the Board of Revenue and s. 12 enacts that such proceedings must be started in the Courts of *Dewâni Adawlat* (Courts of Civil Judicature). That section enacts in express terms that the *nullum temporis* principle is to apply to such proceedings. The cardinal principle, therefore, that is formulated in this Regulation is that *lâkhirâjes* created between August 12, 1765, and December 1, 1790, cannot be assessed to revenue till they are adjudged invalid by a decree of the civil Court. Accordingly, in s. 26 the effect of the omission to register is stated in that form, namely, as if there was a final decree of a Court of Civil Judicature, pronouncing the grant to be invalid.

One thing is apparent from s. 14. It is that the Collector is to inform the Board of Revenue, whenever he finds lands exceeding 100 *bighâs* in area held

revenue-free, which, according to his opinion, is held under an invalid grant, no matter from what source he gets his information, either from an entry in the periodical register maintained under s. 22 or from any other source and the enactment in s. 12 is of universal application.

The preamble to Regulation VIII of 1800 shows that, by reason of the complicated provisions relating to the preparation and maintenance of the periodical registers under s. 22 of Regulation XIX of 1793 and of the several copies in different languages, such registers were left incomplete. The said preamble also indicates that the publication of the notice required by s. 25 had not also been made at all places within the province. That Regulation simplifies the register and directs the register to be kept in two parts, *mâl* and *lâkhirâj*, arranged according to local divisions—the *parganâs*. The Collectors were also required to publish again the notices under the procedure mentioned in s. 25 of Regulation XIX of 1793 (s. 19). Section 7 authorised the Collector to demand praticulars from *lâkhirâjdârs* and s. 10 extends the period for registration of *lâkhirâjes* by a further period of one year from the publication of the said notices and re-enacts that after the expiry of the said time *lâkhirâjes* not on the registers are to be assessed to revenue.

Although the *Parganâ* Register required to be started and maintained by Regulation VIII of 1800 was simpler in form than the Periodical Register to be prepared and maintained under Regulation XIX, there was not much improvement. That Register was kept incomplete: *Bipradas Pal Chowdhury* v. *Manorama Debi* (1). From the mere fact that there is no entry in the *lâkhirâj* part of the *Parganâ* Register relating to a particular *lâkhirâj* it cannot be taken or presumed that the *lâkhirâjdâr* had omitted to take steps to register his grant. In the case

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before us no such point was raised by the Government that the grant in respect of the lands in suit had not been registered under Regulation XIX of 1793 or Regulation VIII of 1800 and so copy of those registers have not been produced by the plaintiff. If the case of the Government had been (of which there is no indication either in the written statement or in the judgments of the Court below) that it is entitled to the benefit of s. 26 of Regulation XIX of 1793, it ought to have proved that the *lâkhirâjdâr* had omitted to register his grant.

Up to the passing of Regulation II of 1805 there was no limitation to a suit or proceeding by Government to resume and assess to revenue lands held under invalid *lâkhirâjes* which it had the right to resume, that is *lâkhirâjes* created between August 12, 1765 and December 1, 1790. Section II, Second, of that Regulation, however, imposed a limitaion of sixty years to such claims on the part of the Government. All claims on the part of the Government for the assessment of land held exempt from public revenue without legal and sufficient title in the several Courts of civil justice, to which the cognizance thereof may properly belong, preferred sixty years after the "origin of the cause of action" is to be barred.

At the time when the said Regulation was passed, claims on the part of Government to have the lands assessed to revenue (lands exceeding 100 *bighâs* in area and included in an invalid *lâkhirâj* grant made before December 1, 1790) had to be asserted in Courts of civil judicature (s. 12 of Regulation XIX of 1793). Since then the forum was changed by Regulation II of 1819. The Collector was given powers, which before that had been vested in *Dewâni Adawlats*. But under Regulation II of 1819, the proceedings before the Collector's Court were to be in the form of judicial proceedings. In *Mahatab Chund* v. *Government of Bengal* (1) the Judicial Committee of the Privy Council considered the effect of this change

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of forum on the law of limitation as enacted in s. II, Second, of Regulation II of 1805. At p. 508 of the report it held that the Collector's Court must be considered to be a Court of civil Justice within the meaning of that section. In that case the Collector proceeded in 1836 to assess to revenue under Regulation II of 1819 the villages in question, which, in his opinion, were being held under invalid *lâkhirâj* grants. The Judicial Committee held that the claim of the Government was barred by time. The arguments of both the counsel proceeded upon the footing that "the cause of action originated from "the time when the grantees came into possession". In that case the Judicial Committee proceeded upon the assumption so made and did not, accordingly, decide when the cause of action arises in such a case. In the case before us the learned District Judge held that the cause of action for resumptions arises when the Government comes to know of the fact that the lands are being held revenue-free. On the facts he held that the Government must be taken to have known that fact when the return (Ex. 2) was made in 1805 by the predecessor of the respondent. In our judgment, however, the cause of action in such cases dates from the date when the invalid grant was made, at least when the grantee took possession under such a grant. The Government may know of it or not and the claim must be preferred in a "Court "of civil justice" as defined in *Maharaja of Burdwan's* case (*supra*) within sixty years from that time, as long as s. II, Second, of Regulation II of 1805 was in force. The meaning of the term "origin "of cause of action" occurring in s. III, Third, of the same Regulation has been given by the Judicial Committee in the case of *Chundrabullee Debia* v. *Luckhea Debia Chowdrain* (1). In that case the Judicial Committee had to construe a similar phrase occurring in s. III, Third, of the same regulation. There the plaintiff brought a suit to recover rent for six years in respect of an area of land for

(1) (1865) 10 M. I. A. 214.

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which all along up to the date of suit no rent had been paid. The Judicial Committee pointed out that the suit, although in form a suit for recovery of rent, could only succeed, if the plaintiff, whose case was that the *lâkhirâj* grant was invalid by reason of s. 10 of Regulation XIX of 1793 as it had been made after December 1, 1790, could at the time of his suit impose an assessment on the same. As the suit was instituted beyond sixty years of the date when the defendant's predecessors obtained possession under the invalid grant, the suit was held as barred by time. The date of the origin of the cause of action was taken as the date when possession was taken on the basis of the *lâkhirâj* grant. In the case before us, in any view of the matter, either on the view taken by the District Judge, or on the view we have taken, time began to run against the Government from 1805 but the exact meaning of the term "origin of "the cause of action" occurring in s. II, Second, of Regulation II of 1805 has to be determined in view of the argument advanced on behalf of the Province of Bengal, which we would now proceed to deal with. The claim would be barred under s. II, Second, of the Regulation II of 1805, in any event, in 1865. The repeal of that Regulation in 1868 by Act VIII of 1868 would not revive the Government's right to assess. The principle formulated in *Appasami Odayar* v. *Subramanya Odayar* (1) and *Khunni Lal* v. *Gobind Krishna Narain* (2) are applicable.

To meet this aspect of the matter the learned advocate for the Province of Bengal has submitted to us that s. II, Second, of Regulation II of 1805 had been repealed by necessary implication before 1865—in 1859 when Act XIV of that year was passed. We will have to examine this argument now.

The schedule to Act VIII of 1868 gives a large number of Acts and Regulations which are to be

(1) (1888) I. L. R. 12 Mad. 26; L. R. 15 I. A. 167.

(2) (1911) I. L. R. 33 All. 356; L. R. 38 I. A. 67.

removed from the statute book. One of the items of that schedule runs thus :—

Number of Regulation.	Title of Regulation.	Extent of Repeal.
II of 1805 ..	A Regulation to explain the existing Limitations of Time for the Cognisance of Suits in the Civil Courts of Justice ; to provide further Limitations with respect to certain Suits, regular and summary ; and to make other provisions relative to the Admission and Trial of original Suits and of Appeals.	So much as has not been repealed.

The express repeal or repeal by necessary implication of some of the provisions of Regulation II of 1805 before 1868, so far as we have been able to gather, is as follows :—

Section 4 : repealed by Act X of 1859.

Section 5 : superseded by s. 1 of Act IV of 1840 and by Act XIV of 1859.

Sections 6 and 7 : superseded by corresponding provisions of Act XIV of 1859.

Sections 8 and 9 : repealed by Act X of 1861.

Section 13 : superseded by s. 2 of Regulation VIII of 1891.

Section 14 : repealed by Act X of 1861.

The question is whether s. II, Second, of the said Regulation had been also repealed by necessary implication by the provisions of Act XIV of 1859.

The preamble to Act VIII of 1868 is in these terms :—

"Whereas it is expedient that certain enactments (mentioned in the schedule to this Act)" (*a*) " which *have ceased to have force otherwise that by express* and *specific repeal*, or " (*b*) "*have by lapse of time and change of circumstances become unnecessary* or " (*c*) " which merely repeal prior enactments, should be expressly and specifically repealed ; it is hereby enacted as follows."

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We have indicated by the letters *a*, *b*, *c* the three objects of the Act. With the third head (c) we are not concerned.

The learned advocate for the Province of Bengal contends that Regulation II of 1805 was placed in the schedule to the said Act, because the remaining provisions thereof which had not been expressly repealed by prior enactments had ceased to have force because of the enactment of a consolidating Act dealing with limitation of suits, *etc.*, namely, Act XIV of 1859. His argument is that as the remaining portions of Regulation II of 1805 came within the first object—what we have numbered as (*a*), expressed in the preamble, the said Regulation was placed in the schedule. We cannot accept this argument. No doubt the preamble of Act XIV of 1859 states that the object of the Acts was to amend and consolidate the laws relating to the limitation of suits, but s. XVII expressly states that none of the provisions of the Act shall extend to any public property or right but that such suits shall continue to be governed by the laws and rules of limitation then in force. This provision makes it clear that the rights and claims of the Government were kept outside the scope of that Act. In the different sub-sections of s. I and in s. XV periods of limitation for different kinds of suits are provided. None of these provisions expressly deal with the rights of the Crown and s. XVII was inserted so that it may not be urged that the periods of limitation provided for in those sections and sub-sections were also applicable to suits of the descriptions mentioned in the said sections and sub-sections even if brought by the Crown. There cannot, therefore, be any scope for the argument that Act XIV of 1859 had by necessary implication repealed s. II, Second, of Regulation II of 1805.

We have already held that the Government had the right to assess revenue only on invalid *lâkhirâj* grants made before December 1, 1790, provided that

the area included in a single grant was 100 *bighâs* or more, and that it had given up in favour of *zemindârs* all rights to lands, whatever was the area, which had been included in invalid *lâkhirâj* grants created *after* December 1, 1790. We have also held that cause of action in respect of the right to assess invalid *lâkhirâjes* with revenue arises on the date of the invalid grant, at least when possession was taken on the basis of such grant. The right of the Government to assess revenue on all invalid *lâkhirâjes* had accordingly by force of s. II, Second, of Regulation II of 1805 been extinguished shortly after December, 1850. Even making allowances for some unusual cases where an invalid *lâkhirâj* grant had been made shortly before December 1, 1790, but the grantee took possession some years later, the Government's right to assess would have been dead and gone under the said provision a few years later than 1850. Section II, Second, of Regulation II of 1805 had accordingly *by lapse of time* become unnecessary. The remaining portions of the said Regulation which had not up to that time been expressly repealed was placed in the schedule of Act VIII of 1868 for that reason, that is, in accordance with the object, (*b*) of the preamble of the said Act.

We, accordingly, overrule the last mentioned contention of the appellant's advocate and hold that the assessment made by the Government was illegal, as at the time, when it was made, and long before it, its right to assess was dead and gone. In the view we have taken, it is not necessary to decide the question whether Art. 149 of the Limitation Acts of 1908 or the corresponding Articles of the Limitation Act of 1882 and 1877 are applicable. Those Articles defined the period of limitation of *suits* by Government. The question is whether proceedings by the Collector for assessment of revenue on invalid *lâkhirâjes* under the provisions of Regulation II of 1819 are suits within the meaning of that Article. The word suit usually connotes a proceeding in civil Courts of

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Judicature which is initiated on a plaint. If that be the meaning which the legislature intended to give to the word suit in Art. 149, the proceedings started by the Collector for resumption cannot come within that Article. This is the view expressed by a Division Bench of this Court in *Mahabunnessa Bibi* v. *Secretary of State for India* (1). It may be a question, in view of what the Judicial Committee of the Privy Council had said in *Maharaja of Burdwan's* case (*supra*), whether it is legitimate to put such a narrow meaning on the word suit, but on the view we have taken it is not necessary to pursue the point further.

The result is that this appeal must be dismissed with costs.

Appeal dismissed.

N. C. C.

(1) (1925) I. L. R. 53 Cal. 561.