APPELLATE CIVIL.

Before Sir Charles A. Turner, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (PLAINTIFF), APPELLANT,

and

VÍRA RAYAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

1880. September 14. 1885. May 2.

Forest lands, Malabar—Presumption as to ownership—Rights of Crown and of occupier of waste land under Hindú law—Suit by Crown for declaration of title and possession—Plaint—Cause of action within Statutory period not alleged—Burden of proof—Limitation—Regulation II of 1802—*Remedy suspended, Right surviving—Act XIV of* 1859—*Claim by Crown not affected—Limitation Act,* 1871—*Effect on subsisting rights—Limitation Act,* 1877, *ss.* 2-28—*Construction.*

In the district of Malabar and the tracts administered as part of it, there is no presumption that forest lands are the property of the Crown.

According to the Hindú law a right to the possession of land is acquired by the first person who makes a beneficial use of the soil, the right of the Sovereign being to assess the occupier to revenue.

Assuming that the Crown has the right to oust any person who, without sanction, occupies waste land which has not been appropriated for any public purpose, it cannot, by a suit brought for a declaration of title, or for ejectment, the date at which the cause of action arose not being stated in the plaint, compel a defendant to prove possession for 60 years.

As a general rule, a plaintiff must not only show he has a title, but that he has a subsisting title, which he has not lost by the prescriptive sections of the Limitation Act.

The probable explanation of the ruling in *Radha Gobind Roy's Case* (Suth. P. C. Cases 309) is, that when a plaintiff proves title and possession, it is to be presumed that his possession continues till the defendant proves that the possession was interrupted, but that where the plaintiff can prove title only, and not possession, he must prove that the adverse possession of the defendant or the acts of which he complains as impugning his title, occurred within the period prescribed by the Limitation Act.

In a suit instituted in March 1879 by the Crown for a declaration of title to certain forest land and for possession of a portion thereof, the defendants alleged that the land has been in their possession for more than 60 years.

Held, that it was incumbent on the Crown, under art. 149 of sch. II of the Indian Limitation Act, 1877, to show possession of the proprietary rights claimed

* Appeal 100 of 1879.

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within 60 years, or, if the defendants proved possession, that such possession commenced or became adverse within such period.

The District Court having held, that up to April 1, 1873, when the Limitation Act of 1871 came into force, the limitation for such a suit was 12 years from the time when the cause of action arose, and that the suit was barred by adverse possession for 12 years prior to April 1, 1873:

Held, that, even if Regulation II of 1802 applied to claims by the Crown, inasmuch as the Regulation only barred the remedy and did not extinguish the right and Act XIV of 1859 did not extend to such a claim, the right subsisted when the Limitation Act of 1871 came into operation, and as long as that Act was in force, and that the Crown, being entitled under that Act to sue within 60 years from the date of the cause of action, and under s. 28 of the Limitation Act of 1877, to sue within 2 years from the 1st of October 1877, the suit was not barred, provided it could be shown that the cause of action arose within 60 years from the date of its institution.

THIS was an appeal from the decree of H. Wigram, District Judge of South Malabar, in suit No. 15 of 1879.

The facts and arguments appear from the judgment of the Court (Turner, C.J., and Muttusámi Ayyar, J.)

The Acting Government Pleader (Mr. *Shephard*) for appellant.

Mr. *Branson*, Mr. *Johnstone*, *Bháshyam Ayyangár* and *Sankaran Náyar* for respondents.

JUDGMENT.—This suit was brought by the Secretary of State against nine persons, of whom Nos. 8 and 9 were described as holding under No. 2 to obtain a declaration that the lands, hills and forests forming part of the upper water-shed of the Bhawáni river and known as the Attapadi valley are the property of Government, and that no one of the defendants had any right or title thereto, to obtain an injunction restraining the defendants Nos. 1—7 from cutting timber on the lands, hills, forests, and to recover possession from defendants Nos. 8 and 9 of 500 acres of land described in the 2nd schedule to the plaint as "To be selected from out of the lands on the Elamala hills being a part of the hills before mentioned."

The plaint avers that lands, &c., of which the extent is estimated at about 232 square miles are the property of Government, and that no private persons have any proprietary rights therein: that the Government always received and still receives plough dues and spade dues and formerly received grazing rent in respect of some of the lands: that the defendants Nos. 1—7 claim jenm or proprietary rights over the lands or portions of them, but that the plaintiff does not know what portions of them are respectively

claimed by the defendants: that the defendants Nos. 1—7 or some of them have of late years been granting leases of the said lands to various persons: and that in particular defendant No. 2 has granted to defendant No. 9 a lease of the lands described in the 2nd schedule attached to the plaint, dated September 11, 1877, for 25 years, and that defendant No. 9 has entered into possession of the lands so leased, and cleared some of them: that defendant No. 8 has some interest in the lease: and that the defendants Nos. 1—7 have of late years been granting leases to cut timber in the said lands to various persons and have in various ways been attempting to exercise acts of ownership over the lands. It will be seen that the plaint in many respects violates the requirements of the Code of Civil Procedure. It does not state any common ground of action against the defendants Nos. 1—7. It asserts a claim to 232 square miles of country without specifying of what lands the defendants Nos. 1—7 severally claim possession. The reason assigned for this omission was not sufficient unless it had been shown that application had been made to the several defendants to state in respect of what lands they claimed rights and they had refused to give it or had laid claim to the whole extent. And although want of information on the part of the plaintiff's agents might have excused the presentation of the plaint in this form if reasonable diligence had been used to procure better information, yet when the defendants had been summoned, they should have been examined and the plaint amended and made more precise.

Again, the plaint contained no statements of the date when the cause of action arose except in respect of 500 acres leased by defendant No. 2 to defendant No. 1. This defect should, if possible, have been corrected, especially when it was found that the contesting defendants set up a plea of limitation. At the hearing of the appeal we were unable to understand the bearing of much of the evidence adduced, as the maps which were before the Court did not show the names of the hills nor could we ascertain precisely what portions of the valley were claimed by the several defendants. We therefore adjourned the further hearing and directed that maps should be prepared, and that the respondents (defendants) should point out what lands they severally claimed. A map was prepared and produced in compliance with our order. It shows that a large block of land on the west and a small block on the east marked green are claimed by neither party:

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that some lands are claimed by respondent No. 1 only, some by respondent No. 2 only, some by both, and some by these respondents and by respondent No. 8, Colonel Scott, who claims under the respondent No. 2. Of the original defendants, Nos. 3, 4, 5, 6 and 7 averred they had some ancestral rights in the tract, but expressed their willingness to surrender them, and No. 9 alleged he had relinquished his rights to No. 8. The suit proceeded against the defendants Nos. 1, 2 and 8 who are the respondents to the appeal. Respondent No. 1 is Víra Rayan, Eralpád, or holder of the second stánam in the family of the Zamorin. He objected to the frame of the plaint, denied that the Government has ever taken possession of the lands which he claimed, and asserted he had enjoyed them as part of his ancestral domain for a period of upwards of 60 years adversely to the claim made by Government. Respondent No. 2, who is the Mannargát Mupil Náyar, also took exception to the frame of the plaint, and averred that the Government had not held the jenm right in the lands claimed by him though it had collected revenue from some of his tenants: that the lands to which he laid claim formed a part of Malabar and had before British rule been held by petty chiefs of the Vallavanád family as part of the property attached to their stánam: that he and his ancestors had held jenm rights throughout the whole period of British rule: that with the knowledge of Government officials he has spent large sums of money on improvements: and that he had granted subordinate tenures to persons who ought to be made parties.

Respondent No. 8, Colonel Scott, set up a title under the respondent No. 2 and alleged that he was induced to acquire a lease from defendant No. 2 by reason of the representations of the officers of Government, and that he had expended moneys in obtaining the lease and in effecting improvements.

We have allowed the case to stand over for some time, as we were informed that the parties contemplated a compromise, but we have recently been informed that the negotiations have failed, and we must therefore dispose of it.

The tract of country known as the Attapadi valley lies to the east of the Western Ghats through which a stream has worked its way and formed a pass by which access is afforded to Malabar. On the east it is bounded by Coimbatore. A question was raised as to whether it formed a part of the District of Coimbatore or of

that of Malabar. We agree with the Judge that there is no proof that it ever formed part of Coimbatore. On the other hand, there is evidence that it was dependent on, if it was not a part of, Malabar before British rule. Dr. Buchanan, who visited Malabar in 1800, described it as having been ruled by an hereditary chief from whom the Zamorin exacted tribute in order that the residents of Attapadi might pass through the ghat and trade in Malabar. It cannot be ascertained whether the Attapadi valley was ceded with Malabar by the treaty of 1792. It is known that certain of the adjoining territories were claimed by the British as forming part of Malabar, and that the claim was disputed by Tippu. The Attapadi valley appears in Sartorius's map of 1793 as forming part of Malabar. It was regarded by Buchanan, who would have gained his information from the Collector, as part of Malabar, and the earliest official acts of which we have information were executed by Malabar officials. Mr. Ward in 1826 describes it as included in Malabar, and it has throughout been administered as part of the Malabar District. The question is important, because it is argued that there is a distinction respecting the right of the Crown to question the occupation of waste in Malabar and its right to question the occupation of waste in raiyatwárí districts: and it was probably in reference to this presumed distinction that there is an argumentative statement in the plaint that the land formed part of Coimbatore. According to what may be termed the Hindú common law, a right to the possession of land is acquired by the first person who makes a beneficial use of the soil. The Crown is entitled to assess the occupier with revenue, and if a person who has occupied land omits to use it and the claim of the Crown to revenue is consequently affected, the Sovereign is entitled to take measures for the protection of the revenue. Whether the practice which has obtained in certain districts of requiring a person who desires to cultivate waste to apply to the local revenue officer for permission to do so has abrogated in those districts the Hindú law, or whether it may be justified by the establishment in those districts before British rule of the analogous doctrine of the Muhammadan law, we consider it unnecessary to determine in this suit, for we have found that the land appertains to the district of Malabar, and we agree with the Judge that there is no presumption in that district and in the tracts administered as a part of it, that forest lands are the property of the Crown. At the commencement

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of the century it was the policy of the Government to allow all lands to become private estates where that was possible. Despatch of Lord Wellesley quoted in *Baskarappa* v. *The Collector of North Canara*.(1) The despatch and order of the Governor-General in Council on the annexation of Malabar, dated the 31st December 1799 and the 18th June 1801, have not been adduced, but their purport appears from the despatch of the 19th July 1804, quoted in *Vyakunta Bapuji* v. *Government of Bombay*.(2) It was intimated that it never could be desirable that the Government itself should act as the proprietor of the lands and should collect the rents from the immediate cultivators of the soil. When in 1808 the Board of Revenue suggested that an augmentation of revenue might be derived from waste lands reserved, they were informed that the Government did not look to any advantage of that nature beyond the benefit of increasing the amount of the public taxes in proportion to the existing taxes of the country (Fifth Report, Appendix 30, page 902. Revenue and Judicial Selection, Volume I, p. 842). It will be seen that at that time the Government so far from abrogating the Hindú law intended to assert no proprietary right to the waste, but limited itself to its claim to revenue. At the time Malabar came under British rule, all the forests were claimed as private property (I.L.R., 3 Bom. 586). In their despatch of 17th December 1813, relating to the settlement of Malabar, the Directors observed that in Malabar they had no property in the land to confer, with the exception of some forfeited estates (Revenue Selection, Volume I, p. 511). Although a different policy was subsequently pursued in other districts, and, especially in more modern times, rules have been framed for the sale of waste lands, there is nothing to show that any such change was notified in Malabar up to a period much later than that at which there is considerable evidence to show that the respondents Nos. 1 and 2 were in possession of and recognized as proprietors of the lands they claim by Government officials. But assuming that even in Malabar the Crown had the right to oust any person who without its sanction occupied waste land which has not been appropriated for any public purpose, the question that presents itself for determination at the outset of this case is whether it is competent for the Crown by instituting a suit for a declaration of right or ejectment without

(1) I.L.R., 3 Bom., 550. (2) 12 Bom. H.C.R., 144.

specifying a date at which the cause of action arose to compel a defendant to prove possession for 60 years.

The proposition appears unreasonable. We apprehend that the Crown must, as other suitors, disclose in its plaint a cause of action and aver that it arose within the period of limitation or the existence of some of those circumstances which extend the period allowed by the Limitation Act, and that the rule respecting the burden of proof where the existence of a subsisting title in the plaintiff is challenged by a plea of limitation, is the same whether the suit is brought by the Crown or by a private suitor.

The Courts have hitherto regarded *Maharajah Kooeur Baboo Nitrasur Singh* v. *Baboo Nund Loll Singh*(1) as the leading case on the subject. In that case the Privy Council observed: "The appellant is seeking to disturb the possession, admitted to have existed for about 11 years, of defendants who insist on a possession of much longer duration as a statutory bar to the suit. It clearly lies on him to remove that bar by satisfactory proof, that the cause of action accrued to him (for that is the way in which the Regulation puts it) or a dispossession within 12 years next before the commencement of the suit, and therefore that he or some person through whom he claims was in possession during that period. No proof of anterior title . . . . . can relieve him from this burden or shift it upon his adversaries by compelling them to prove the time and manner of dispossession." It will be noticed that this case fell to be decided under the Regulation which prohibited the Court from entertaining a suit if it was instituted more than 12 years after the cause of action had accrued: but the rule it declared was held to apply equally to cases governed by Act XIV of 1859, where the words are "No suit shall be entertained . . . unless the same is instituted within the period of limitation." *Pándurang Govind* v. *Bálkrishna Hari.*(2) In *Gossain Doss Koondoo* v. *Seroo Koomaree Debia*(3) Couch, C.J., observed, "The plaintiff must show that he or some one through whom he claims has had possession within twelve years before the suit. If he sues for the recovery of immovable property on the ground of having been dispossessed from it, he must show that he has come within 12 years from the time when his cause of action arose, the time when he was dispossessed. It is not enough for him to prove his title to

(1) 8 M.I.A., 220. (2) 6 Bom. H.C.R., 125. (3) 19 W.R., 193.

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the property which is the subject of the suit and leave it to the defendant to show that the suit is barred by the Law of Limitation by proving when the plaintiff was last in possession."

Notwithstanding the rulings to which we shall presently advert, the Courts have held that, as a general rule, a plaintiff must not only show that he has a title, but that he has a subsisting title, which he has not lost by the prescriptive sections of the Limitation Act. *Mano Mohun Ghose* v. *Mothura Mohun Roy*.(1)

The Code of Civil Procedure recognizes the rule in that it declares that the plaint must contain a statement of the circumstances of the cause of action and when it arose [s. 50 (*d*)] and that if the cause of action arose beyond the period ordinarily allowed by law for instituting the suit, the plaint must show the ground upon which exemption from such law is claimed (s. 50). It is, however, contended that the rule, which had been thus generally received, is impugned by the decision of the Privy Council in *Radha Gobind Roy* v. *Inglis*.(2) In that case, the plaintiff proved a title to the soil of a lake which afterwards became dry and culturable: the defendant denied the plaintiff's title and relied on adverse possession for more than 12 years. Their Lordships observed: "The question remains whether the disputed land had or had not been occupied by the defendant for 12 years before the suit was instituted, so as to give him a title against the plaintiff by the operation of the Statute of Limitation. On this question undoubtedly the issue is on the defendant. The plaintiff has proved his title: the defendant must prove that the plaintiff has lost it by reason of his (the defendant's) adverse possession."

This decision does not appear in the Law Reports, Indian Appeals, and we have no note of the argument so as to ascertain whether the ruling in *Maharajah Nitrasur Singh* v. *Baboo Nund Loll Singh*(3) was quoted or discussed at the hearing. The absence of any reference in the judgment to this leading case has led the High Court of Calcutta to the conclusion that their Lordships did not intend to reverse the earlier ruling, but that the circumstances of the particular case warranted an apparent departure from it. Mr. Justice Wilson considers that the facts established shifted the burden of proof by warranting the presumption that the possession of the plaintiff continued until the contrary was shown (p. 232)

(1) I.L.R., 7 Cal., 230. (2) Suth. P.C. cases, 809. (See I L.R., 7 Cal., 232).
(3) 8 M.I.A., 220.

Mr. Justice Field considered that it was the intention of the Privy Council to graft an exception on the general rule where the property in dispute is not susceptible of actual and visible possession (pp. 238, 241). While upholding the rule of law declared in *Maharajah Nitrasur Singh's case*(1) the High Court of Calcutta has in some cases held that the burden of proof is shifted if the land in dispute is *chur* land, land formed by alluvion or jungle or waste land. *Mahomed Ibrahim* v. *Morrison.*(2) We must express our concurrence with the observation of the learned Chief Justice of Calcutta in *Kally Churn Sahoo* v. *The Secretary of State*(3) that there cannot be one principle applicable in the case of jungle land and another principle applicable in the case of other lands. The owner of jungle land is as much bound as the owner of any other kind of land to watch his property, and if he omits the necessary precautions and a person enters and holds adverse possession of a peice of jungle for 12 years, he has obtained a title by prescription. The circumstance that the property was of such a character that it was more or less easy for the owner to discover the intrusion of a stranger is immaterial, unless there has been such fraud as to bring the case within the provisions of s. 18 of the Act. The ignorance of the owner will not prevent the accrual of a title by prescription. *Rains* v. *Buxton.*(4) Of course the enjoyment necessary to create a title by prescription must not be a mere succession of independent trespasses—it must be, if not continuous, at least of such a character that an intention to assert a right as owner may be inferred from it. We find nothing in the judgment of their Lordships in *Radha Gobind Roy's case* to intimate an intention to lay down an exception to a general rule founded on the peculiar character of the disputed property, and we therefore agree with Mr. Justice Wilson that the probable explanation of the ruling in *Radha Gobind Roy's* case is that when a plaintiff proves title and possession, it is to be presumed that his possession continues till the defendant proves that the possession was interrupted, but that where the plaintiff can prove title only and not possession, he must prove that the adverse possession of the defendant or the acts of which he complains as impugning his title, occurred within the period prescribed by the Limitation Act.

This suit was instituted on the 27th March 1879 and is

(1) 8 M.I.A., 220.
(2) I.L.R., 5 Cal., 36.
(3) I.L.R., 6 Cal., 725.
(4) 14 Ch. D., 537.

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governed by the Limitation Act, 1879, which prescribes (art. 149) that a suit in the name of the Secretary of State must be brought within 60 years from the date when the period of limitation will begin to run against a like suit by a private person.

It is therefore incumbent on the Crown either to show possession of the proprietary rights claimed within 60 years, or if the respondents prove possession, it is incumbent on the Crown to show that the possession of the respondents commenced or became adverse within the period of limitation.

The Judge has gone further, and has held that up to April 1st, 1873, when the limitation sections of Act IX of 1871 came into force, the period of limitation for a suit of this nature was 12 years from the time when the cause of action arose; and that inasmuch as the suit was not brought until Act XV of 1877 had come into force, and that Act provided that nothing therein contained should be deemed to revive any right to sue barred under the Act of 1871 or under any enactment thereby repealed, (a provision which was absent, it may be observed, from the Act of 1871,) if the right to sue was barred by more than 12 years' adverse possession on March 31st, 1873, it cannot now be revived; and holding that the Crown had failed to prove its title and that the respondents had held adverse possession for considerably more than 12 years prior to the 1st April 1873, the Judge has held the suit barred by limitation. A question is raised as to the propriety of the ruling that the right of the Crown to sue (if it otherwise could maintain suit) would have been lost by adverse possession on the part of the respondents for a period of 12 years prior to the 1st April 1873.

It has been a much vexed question whether in this Presidency suits by the Crown for the enforcement of public rights were affected by any Law of Limitation prior to the enactment of Act IX of 1871. It is true that Regulation II of 1802, s. 18, cl. 4, prohibited the Courts of Adálat from hearing, trying or determining the merits of any suit whatever against any person ... if the cause of action should have arisen 12 years before any suit should have been commenced on account of it, and that in Bengal, where a similar prohibition was laid on the Courts by Regulation III of 1793, s. 17, Regulation II of 1805 was enacted to declare that the condition of 12 years was not to be considered applicable to any suits for the recovery of the public revenue, or any public right or claim. But it is apparent from the

preamble and probably from the form of the late Regulation that doubts were already entertained as to whether Regulation III of 1793, s. 17, applied to suits in respect of public rights.

On the one hand, it is argued that a Regulation of the local Government could not bind the Crown, and that no enactment would bind the Crown unless the Crown was then expressly mentioned in it. On the other hand, it is argued that, although the East India Company enjoyed delegated Sovereign rights, it did not claim them in matters of litigation, and that the Crown, on resuming the rights it had delegated, voluntarily placed itself in such matters in the position of the Company. It is, however, unnecessary for us to determine the question whether the Regulation II of 1803, s. 18, did or did not apply to suits to enforce public rights; for the Regulation did not provide that when the period of limitation had expired, the right should be extinguished. It simply prohibited the entertainment of a suit after a certain period: the right subsisted but could not be enforced by being put in suit. Act XIV of 1859 did not extend to any public property or right, s. 17. The right then, if it had at any time subsisted, was in force when the limitation provisions of the Regulation were finally repealed by Act IX of 1871. By this repeal the prohibition, if it affected public rights, was removed and a period of limitation of 60 years was prescribed for suits by the Crown.

We have noticed that Act IX of 1871 contained no provision similar to that contained in s. 2, Act XV of 1877, declaring that nothing therein contained should be deemed to revive any right to sue barred under an earlier Limitation Law, and therefore between the time when Act IX of 1871 came into operation and the time when Act XV of 1877 came into operation, the Crown was, in our judgment, entitled to sue at any time within 60 years from the date of the cause of action even in cases in which the exercise of the right may have been suspended by the Regulation. But the clause of Act XV of 1877, which precluded the revivor of a right to sue barred was not confined to that Act but was extended to Act IX of 1871. The words are "All references to the Indian Limitation Act, 1871, shall be read as if made to this Act and nothing herein or in *that Act* contained shall be deemed to revive . . . any right to sue barred under that Act or under any enactment thereby repealed." Had this stood alone and had we come to the conclusion that Regulation II of 1802, s. 18, applied to public rights, we should have agreed with the Judge that 12 years'

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adverse possession would have barred the right of the Crown to sue, and that the right would, under s. 28 of the Act, have been extinguished, but the clause to which we have referred is followed by another which declares that "Notwithstanding anything therein contained .... any ... suit for which the period of limitation prescribed by that Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1871, may be brought within two years next after the said first day of October 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

The words "Where the period of limitation prescribed is shorter" have received a liberal interpretation and been held to apply to cases where a change of the date from which the computation is to be made operates to effect a shortening of the period of limitation, and on the same principle we consider it may be contended that when the effect of the provision prohibiting the revivor of suits operated to shorten the period of limitation, the provision we are considering takes effect and preserves a right of suit which subsisted under Act IX of 1871 for a period of two years from the 1st October 1877, and that as this suit was brought not on the 1st March 1879, the provisions of the preceding clause will not apply to it. The right of the Crown then to maintain suits had not been lost by adverse possession for 12 years before 1st April 1873, and if it could be shown that the causes of action asserted in this suit had arisen within 60 years before the date of the institution of this suit, the suit would not be barred by limitation, nor would the respondents be entitled to rely on prescription.

Taking the evidence for the Crown, we find no sufficient proof of possession on the part of the Crown and no proof that any cause of action has arisen against any of the defendants within 60 years before suit. The evidence adduced by the Government is extremely meagre.

It is customary in Malabar to collect the revenue more generally from the tenants than from their landlords, and it is also the occasional practice of Government to grant kauls to strangers for the cultivation of waste lands of private owners which the owner is considered at liberty to allow or disallow as he thinks fit, the kaul being regarded as a mere revenue engagement. This appears from Mr. Logan's recent report. Care must be taken then to distinguish between payments made as revenue and payments made to the Government as the sole superior. There is evidence to show that

the Government has collected dues on certain lands and that the payment varied according to the use made of the lands, but we are not able to contradict the conclusion of the Judge that these payments were revenue payments and consistent with the proprietary right of the respondents. It is shown that the land has throughout been regarded as jenm land and it is not shown that the Government has at any time held possession of the jenm rights. The parol evidence adduced on the part of the Government has been deemed by the Judge untrustworthy, and it was not relied on at the hearing of the appeal.

It is not shown that the respondents or those from whom they claim have ousted the Government or for the first time entered on the lands now in their possession or for the first time exercised rights over them within the period of limitation, and had they produced no evidence, we should have to hold that the suit failed on that ground.

We may add that a declaratory decree could not have been given in respect of lands of which it is proved the respondents are in possession.

But the respondents have adduced considerable evidence to prove their possession of the lands claimed by them . . . . . .

[After discussing the evidence, documentary and oral, the judgment proceeded as follows :—]

The evidence adduced by both the respondents is no doubt greatly wanting in precision, but this is due in a great measure to the defects in the plaint and also the nature of the property in dispute. The Attapadi Valley has never been properly surveyed nor boundary marks fixed. The rights of the different proprietors are known to the people of the country more or less imperfectly by natural features. But it is not shown that the Judge who had before him the headmen of the villages and could therefore have obtained better information as to localities than has been available to this Court has erred in finding that the respondents have long been in possession of the lands they severally claim. On the whole, we do not find ourselves at liberty to interfere with the decree of the Judge and must dismiss the appeal with costs in proportion to the value of the property claimed by the defendants severally. We observe that this judgment leaves unaffected the right of the Crown to revenue or the rights of inferior proprietors.