15 of the Easements Act. In our opinion, it is not an easement, but a right exercised over Government waste by permission of Government.

The second appeal fails and is dismissed with costs.

As to the memorandum of objections the Judge was right in holding that kumki right did not entitle plaintiffs to a decree for possession. It is a right to do certain things over Government waste. As to land No. 2, it is found to be more than 100 yards from plaintiffs' warg and, therefore, they can have no kumki right over it. This is a finding of fact which is conclusive in second appeal, as there was evidence to support it. The memorandum of objections is also dismissed with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Handley.

1892. Sept. 5, 22.

VENKATAVARAGA (DEFENDANT), APPELLANT,

v.

THE DISTRICT BOARD OF TANJORE IN CHARGE OF THE NADAR CHATTRAM, (PLAINTIFF), RESPONDENT.*

Limitation Act—Act XV of 1877, sch. II, arts. 110, 120—Suit to recover customary dues payable on account of a chattram—Rent.

In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various merais, being customary dues payable by the defendants for the benefit of the chattram on account of lands held by them, the defendants raised no objection on the ground that there had been no exchange of pattas and muchalkas, but among other defences they relied upon a plea of limitation:

Held, (1) that the defendants should be considered to have admitted tacitly that the exchange of pattas and muchalkas had been dispensed with;

(2) that the suit was governed by Limitation Act, sch. II, art. 120, and not by art. 110 as a suit for rent.

SECOND APPEAL against the decree of J. A. Davies, District Judge of Tanjore, in appeal suit No. 807 of 1890, confirming the

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* Second Appeals Nos. 1440, 1441 and 1548 of 1891 and Civil Revision Petition No. 378 of 1891.

VENKATAVARAGA. v. DISTRICT BOARD OF TANJORE.

decree of S. Ramasami Ayyangar, District Munsif of Tiruvadi, in original suit No. 132 of 1890.

Suit by the District Board in charge of a certain chattram to recover certain sums of monies alleged to be the value of certain merais, called Easvaram Kovil merai, Kalvadi merai, Kanakkaruppu merai, water-shed merai and one-eighth share in Arthamania melvaram, besides ready-money payments for kattukarai theervah and kaval fees, alleged to be due by the defendants for faslis 1293 and 1294 in respect of the nunja and punja lands included in defendant's merais.

The defendants had executed no muchalkas and recovered no pattas on account of the land in question, but they raised no objection to the maintainability of the suit on this account. It appeared that these dues had been collected on account of the chattram as of right for many years, and the District Munsif passed a decree as prayed. The District Judge confirmed this decree, and the defendants preferred this second appeal.

Rama Rau for appellant in second appeals Nos. 1440 and 1441 of 1891.

Pattabhirama Ayyar for respondent.

Parthasaradhi Ayyangar for appellant in second appeal No. 1548 of 1891, and civil revision petition No. 378 of 1891.

Pattabhirama Ayyar for respondent.

JUDGMENT.—The principal point argued in these appeals is limitation. For appellant it is contended that the amendment of the plaint ordered by the District Judge by which the District Board was substituted for the President of the Local Fund Board was in fact the substitution of a new plaintiff, and that, therefore, by section 22 of the Limitation Act, the suit must be deemed to have been instituted at the date of the order, and at that date (12th March 1890) the suit was barred by limitation, being a suit for merais for faslis 1293, 1294 which ended 30th June 1885. The appellant's vakil argues that the suit comes under article 110 of schedule II of the Limitation Act, suits for arrears of rent, and that the period of limitation is therefore three years. We think this is not a suit for arrears of rent. The merais or customary dues sued for are not claimed by plaintiff as landlord, but as due to the chattram by custom. There is no definition of the term rent in the Limitation Act, and we must construe it strictly in the case of a disenabling statute. So construing it we think it does not include customary

dues of the kind claimed in this suit. The relation of landlord and tenant does not exist between the plaintiff and defendants and we think there is a clear distinction between suits like the present and ordinary suits for arrears of rent, a distinction which is recognized by the Provincial Small Cause Courts Act by placing the two kinds of suits under different heads in the schedule (articles 8 and 13 of schedule II of Act IX of 1887). If the suit does not come under article 110 of the Limitation Act, it does not appear to fall under any other description of suits in the schedule, and therefore is governed by article 120 as a suit for which no period of limitation is provided elsewhere in the schedule and the period is six years. Even regarding the suit as instituted at the date of the District Judge's order of 12th March 1890 it is brought within six years from the date of the cause of action and is therefore not barred.

In this view it is unnecessary to consider the question whether section 22 of the Limitation Act applies to the case, and we therefore express no opinion upon it.

Another point raised is that exchange of pattas and muchalkas was a condition precedent to the plaintiff's right to sue. This contention was not raised by the defendants themselves, and, we agree with the District Judge that this amounted to a tacit admission that pattas and muchalkas had been dispensed with by the parties. Lastly, it is argued that the merais claimed are unreasonable. Both Courts have found that they are fair and reasonable and have been claimed as of right for a long period.

The second appeal fails and are dismissed with costs. Civil revision petition No. 378 of 1891 is also dismissed with costs.