very definite finding on this point, though, so far as we can learn his opinion, he seems to have thought that it was not true; but, that however that might be, the plaintiffs' real cause of action was the registration-proceedings. To make out his cause of action in a case of this kind, the plaintiff had to show the date on which he was dispossessed,—that to is say, to show that either on the particular date on which he stated the dispossession to have taken place, or some other period within twelve years from the date of the institution of the suit, he was in possession of this land. As an authority for this view of the law we would refer to the judgment of the Privy Council in the case of *Rajah Sahib Perhlad Sein* v. *Maharajah Rajender Kishore Singh* (1), *Dawkins* v. *Lord Penrhyn* (2), and *Noyes* v. *Crawley* (3). In the present case, until the plaintiffs could show that their suit was not barred by limitation,—that is to say, that they were in possession within twelve years from the date of the institution of the suit,—they could not call upon the defendant to prove his title under the alleged verbal gift. We, therefore, remand this case to the lower Appellate Court, that it may re-try the appeal in accordance with the above observations. Costs to follow the result.

Case remanded.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

BROJO GOBIND SHAHA (DEFENDANT) *v.* GOLUCK CHUNDER SHAHA, *alias* GOLUCK SHAHA (PLAINTIFF).*

1882
June 20.

Stamp Act (I of 1879)—Stamp-Duty—Hathchitta—Evidence—Acknowledgment.

An account in a *hathchitta*, showing advances of money made to, and part-payment made by, the defendant, the whole amount being in the handwriting and signed by the defendant, is admissible in evidence without being stamped.

Bijender Coomar v. *Bromomoye Chowdhrani* (4) followed.

* Appeal from Appellate Decree, No. 1820 of 1880, against the decree of W. F. Meres, Esq., Officiating Judge of Tippera, dated the 25th August 1880, affirming the decree of Baboo Kali Dass Dutt, Second Subordinate Judge of that district, dated the 6th August 1879.

(1) 12 Moore's I. A., 337.
(2) 4 App. Cas., 51.
(3) 10 Ch. D., 31, 36.
(4) I. L. R., 4 Calc., 885; 3 C. L. R., 520

1882

BROJO GOBIND SHAHA v. GOLUCK CHUNDER SHAHA.

THIS was a suit to recover the sum of Rs. 1,430, being the balance of a sum of money lent and advanced by the plaintiff to the defendant on the 6th of Bysack 1283 (17th of April 1876). The plaint stated that the defendant, "as evidence of that transaction, opened a hisab (or account) in a khata-book in favour of the plaintiff." This hisab is thus described by the Subordinate Judge:—"The hisab is written in one of the pages of the khata-book. The words used there are exactly these—'Account (of money) due to Goluck Shaha by Brojo Gobind Shaha,' and below this is written the word 'Cr.' on the left side, and the word 'Dr.' on the right side, in the usual way. Beneath the word 'Dr.' are inserted the following words:—'The 6th Bysack. Cash received in person (1,250) twelve hundred and fifty, due by me, payable with interest at the rate of 1 rupee and 12 annas.' On the left side, under the word 'Cr.' is entered a sum of Rs. 400, paid on two dates, and at the top is signed the name of Brojo Gobind Shaha, the defendant. But there is no time specified for the repayment of the money, nor are the names of witnesses therein." It was proved that the defendant had received the money, and that the hisab was throughout in his handwriting.

Previously to the institution of the suit, the hisab had been presented to the Collector for the purpose of being stamped on payment of a penalty; and this officer held, according to the decision in *Ferrier* v. *Ramkalpa Ghose* (1), that the hisab, or account in question was one falling within the meaning of cl. ii, sched. ii, Act XVIII of 1869; that the omission to put on a stamp at first was not a material one; and that the document should be stamped with an 8-anna stamp. It was contended before the Subordinate Judge that the hisab was a promissory note; that, as such, it should have been stamped with a 1-anna stamp, that the action of the Collector was illegal under s. 20, Act XVIII of 1869; and that, therefore, the document must not be admitted in evidence, citing *Prosunnonath Lahiree* v. *Tripoora Soonduree Debia* (2), *Ankur Chunder Roy Chowdhry* v. *Madhub Chunder Ghose* (3), *Grindra Coomar Dutt*

(1) 23 W. R., 403. (2) 24 W. R., 88.
(3) 21 W. R., 1.

Chowdhry v. *Mohessur Bhuttacharjee* (1), and the Circular Order of the High Court, dated the 12th of May 1876, passed in accordance with para. 69 of the Circular Order of the Sudder Board, dated the 23rd of March of the same year. The Subordinate Judge overruled the contention, and gave the plaintiff a decree. On appeal, the Officiating Judge considered the document was a promissory note, but feeling bound by the decision in *Ferrier* v. *Ramkalpa Ghose* (2), which he considered to be in point, he affirmed the decree of the Court below with costs. The defendant appealed to the High Court.

Mr. *Montriou* and Baboo *Sreenath Doss* for the appellant.

Baboo *Kali Mohun Dass* for the respondent.

The judgment of the Court (PRINSEP and O'KINEALY, JJ.) was delivered by

PRINSEP, J.—It is contended before us in appeal that the document upon which the plaintiff sues is a "promissory note," and that being so, it should have been stamped, and that the Collector, at a subsequent period, was unable to order it to be stamped on payment of a penalty. It appears to us, however, that the document before us cannot be so regarded. It is exactly of the same nature as the document which forms the subject of the suit in the case of *Brojender Coomar* v. *Bromomoye Chowdhrani* (3). In that case White, J., in delivering the judgment of the Court, expressed himself in the following terms: "Now, if any one of the entries in the hathchitta had stood alone, and had been intended by the parties to form an isolated entry in the book, it might have been contended with considerable force that it fell within the description of document mentioned in the 5th article as requiring a stamp. We think, however, that the entries cannot be detached from the account of which they form a part. That account has two sides to it, the one headed 'amount advanced,' and the other 'amount received.' The amount due varies from time to time,

(1) 19 W. R., 246. (2) 23 W. R., 408.
(3) I. L. R., 4 Calc., 885; 3 C. L. R., 520.

1882

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and depends upon the relation of the amount advanced to the amount received. In the present case no sum is entered under the head of 'amount received,' but that is an accident and makes no difference in considering the question as to what is the nature of the document which is offered in evidence." The only difference between that case and the one now before us is, that, in the heading of the 'amount received,' there are two payments on the part of the debtor, amounting in all to Rs. 400. Being accordingly of opinion that the document in this case is not a "promissory note," we think that the judgment of the lower Appellate Court is correct, and dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Tottenham and Mr. Justice O'Kinealy.

1882
June 14.

ERTAZA HOSSEIN AND ANOTHER (DEFENDANTS) *v.* BANY MISTRY (PLAINTIFF).*

Suit for Possession—Previous Dispossession—Limitation—Adverse Possession—Onus.

Where, in a suit for the recovery of land, based on title, the plaintiff alleges that he has been in possession of the land and was dispossessed therefrom by the defendant within twelve years prior to the institution of the suit, more proof of such possession will not be sufficient to entitle the plaintiff to a decree.

Wise v. *Ameerunnissa Khatoon* (1) followed. *Kawa Manji* v. *Khowaz Nussio* (2) disapproved.

IN this case the plaintiff alleged that, from a long time, he had a dwelling-house on six katas of land in Mauza Allygunge, the property of Juggunnath Sahoy and other proprietors; that the defendants dispossessed him of a portion in the month of November 1877; and he instituted the present suit on the 18th of March 1879, claiming an adjudication of his right to the land on the ground of long previous possession. The defence

* Appeal from Appellate Decree, No. 318 of 1881, against the decree of Moulvi Hafez Abdool Kareem, Subordinate Judge of Bhagalpore, dated the 20th December 1880, affirming the decree of Moulvi Ameer Ally, Sudder Munsif of that District, dated the 12th September 1879.

(1) L. R., 7 I. A., 73. (2) 5 C. L. R., 278.