

opportunity of contesting the point which that suit decided, a circumstance which is proved by their being joined as respondents in the appeal. In these circumstances, the plaintiffs are, in our opinion, debarred under s. 13 from now again contesting the same point with the parties to the former suit. The appeal is dismissed with costs.

1882
 BISSORUP
 GOSSAMY
 v.
 GORACHAND
 GOSSAMY.

Appeal dismissed.

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

BHOOTNATH CHATTERJEE (DEFENDANT) v. KEDARNATH
 BANERJEE AND OTHERS (PLAINTIFFS).*

1882
 June 19.

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

In every suit for the recovery of land, on the allegation of previous dispossession by the defendant, the plaintiff must start his case by showing that, at some time within twelve years previous to the institution of the suit, he has been in possession of the land sued for.

Rajah Sahib Perhlal Sein v. Maharajah Rajender Kishore Singh (1), *Dawkins v. Lord Penrhyn* (2), and *Noyes v. Crawley* (3) cited.

THIS was a suit for the recovery of possession of four katas of land, on adjudication of rights thereto. The plaint alleged that the land in dispute (together with certain land adjoining, which is now the property of the defendant) formerly belonged to the plaintiffs' father; that the defendant purchased from the plaintiffs' father the land adjoining the land in dispute; and that he had, by falsely alleging that he had subsequently obtained the disputed land as a gift from the plaintiffs' father, got himself registered as the owner thereof under the provisions of Beng. Act VIII of 1876. The defence was, that the suit was barred by limitation, and that the plaintiffs' father had made a gift of the disputed land to the defendant. The Mun-

* Appeal from Appellate Decree, No. 594 of 1881, against the decree of J. F. Browne, Esq., Officiating Judge of the 24-Parganas, dated the 13th January 1881, reversing the decree of Baboo Prosunno Coomar Bose, Additional Munsif of Baroypore, dated the 24th March 1880.

(1) 12 Moore's I. A., 337.

(2) 4 App. Cas., 51.

(3) 10 Ch. D., 31, 36.

1882 sif found that the suit was barred by limitation, and he dismissed
 BHOOTNATH the plaintiffs' suit, though he found the story of the gift not
 CHATTERJEE proved. On appeal, the District Judge reversed this decision,
 v. on the ground that the land having admittedly belonged to the
 KEDARNATH plaintiffs' father, and the defendant's allegation of gift having
 BANERJEE. failed, the plaintiffs were entitled to a decree.

The defendant appealed to the High Court, on the ground that the District Judge should have determined the question whether the plaintiffs had been in possession at any time within twelve years previous to suit, and that he ought not to have thrown the onus as to adverse possession, in the first instance, on the defendant.

Baboo Opendar Chunder Bose for the appellant.

Baboo Gopinath Mookerjee for the respondents.

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

PRINSEP, J.—This is one of the many cases that have recently been before the Courts arising out of the Land Registration Act. The defendant succeeded, as against the plaintiffs, in getting his name registered as in possession of four katas of land.

The plaintiffs have brought the present suit to obtain possession by proof of title, alleging that the registration-proceedings were their cause of action,—that is to say, as we understand it, that they were in possession up to the date on which those proceedings were taken. The defendant says, that he has been in possession for the last twenty-five years under a verbal gift made in his favour by one who is said to have been the plaintiffs' ancestor.

Now the first point which the District Judge had to decide was whether, under such circumstances, the plaintiffs have proved that they were in possession of the land in dispute within twelve years from the institution of the suit. The possession set up by the plaintiffs is, that they excavated this land for the purpose of obtaining bricks, which were buried there. The Munsif found that this was false. The District Judge comes to no

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 is to say, to show that either on the particular date on which he stated the dis-possession 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 Perhad 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.

1882
BHOOTNATH
CHATTERJEE
v.
KEDARNATH
BANERJEE.

Case remanded.

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

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

1882
June 20.

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

An account in a *hathokitta*, 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.

Bnjender Coomar v. Bromomoye Chowdhurani (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.

(3) 10 Ch. D., 31, 36.

(2) 4 App. Cas., 51.

(4) I. L. R., 4 Cal., 385; 3 O. L. R., 520