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but he prays the Court to declare his preferential right as against defendant to recover the sale-proceeds; to nullify the Judge's order which led to his being compelled to refund the money into the Munsif's Court, and to have a decree given to him for the money against the defendant. I think with reference to the circumstances of this case that cl. 60 does not apply, and as I do not find any period of limitation provided for a suit of the nature of the one now before us, it falls within the terms of cl. 118 of the schedule and six years would be the limitation from the time when the right to sue accrued.

STUART, C. J.—I am of the same opinion as that which Mr. Justice Spankie has given, although not without hesitation. I am clear that articles 15, 26, and 60 do not apply, and there being apparently no other provision of the Limitation Act expressly applicable, the general law provided by article 118 appears to afford the only solution of the question referred to us.

Appeal allowed.

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January 11.

FULL BENCH.

(*Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

ABDUL AZIZ AND ANOTHER (PLAINTIFFS) APPELLANTS *v.* WALI KHAN (DEFENDANT) RESPONDENT.*

Lease of Zemindari Rights—Wrongful Dispossession of Lessee by Lessor—Suit for Compensation—Civil Court—Revenue Court—Jurisdiction—Act XVIII of 1873 (*N.-W. P. Rent Act*) *s. 95, cl. (m)*

A granted *B* a lease of his zemindari rights in certain villages for a term of years at a fixed annual rent. Two years before the term expired, in breach of the conditions of the lease, he dispossessed *B*, and thereafter made collections of rent from the agricultural tenants himself. *B* sued him in the Civil Court to recover the moneys so collected by him in those two years. *Held* (by a majority of the Full Bench) that the Courts of Revenue were open to *B*, and that, as he could obtain in such a Court the relief he sought in the suit by an application for compensation for wrongful dispossession, the Civil Courts could not, under cl. (*m*) s. 95 of Act XVIII of 1873, take cognizance of the suit.

Per STUART, C. J. and SPANKIE, J.—That as the matter was not one on which *B* could make an application to a Revenue Court of the nature mentioned in cl. (*m*), s. 95 of Act XVIII of 1873, the suit was properly instituted in the Civil Court.

* Special Appeal, No. 311 of 1876, from a decree of G. P. Money, Esq., Judge of Bareilly, dated the 25th November, 1875, affirming a decree of Rai Bakhtawar Singh, Subordinate Judge, dated the 17th March, 1875.

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The plaint in this suit stated that the plaintiffs claimed to recover from the defendant certain moneys, which were illegally collected by the defendant in 1280 and 1281 Fasli, from certain villages leased to the plaintiffs by the defendant, after the lease (*katkina*) was in operation, and contrary to the conditions of the same, and which moneys the defendant had appropriated; and that the cause of action in respect of the money collected in 1280 Fasli arose on the 1st Asadh 1281 Fasli (1st June, 1874), and in respect of that collected in 1281 Fasli on the 1st Asadh 1282 Fasli (20th June, 1875). Under the lease, which was dated the 8th June, 1869, the defendant granted the plaintiffs for a term of five years his zemindari rights in the villages at a fixed annual rent. Two years before the expiry of this lease the defendant dispossessed the plaintiffs of the villages, and made collections of rent from the tenants himself.

The Court of first instance and the lower Court of appeal agreed in holding that the suit was one for compensation for wrongful dispossession, as described in cl. (*m*), s. 95 of Act XVIII of 1873, and was therefore under that section cognizable only by a Court of Revenue.

On special appeal by the plaintiffs to the High Court it was contended by them that the suit was virtually one for money received by the defendant for the use of the plaintiffs, and was therefore cognizable by the Civil Courts.

The Court (Pearson and Spankie, JJ.) referred the case to a Full Bench, the order of reference being as follows:—

We refer to the Full Bench the question whether, as ruled by the lower Courts, they are precluded from taking cognizance of this suit by the provisions of s. 95, Act XVIII of 1873, with reference to cl. (*m*); or whether, as contended by the appellants, the suit being not one for compensation for wrongful dispossession, but for the recovery of money improperly received and wrongfully detained by the defendant (respondent), and in the eye of the law had and received by him for their use, is cognizable by the Civil Courts.

Mr. *Leach*, for the appellants.

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Pandit *Bishambar Nath* and Mir *Zahur Husain*, for the respondent.

STUART, C. J.—I am clear that both the lower Courts are wrong, and that the suit is not one of the kind described in cl. (*m*) of s. 95 of Act XVIII of 1873. The lease given by the defendant to the plaintiff was not merely an agricultural one, and did not simply establish the relation of landlord and tenant, but within its limits constituted an independent and indefeasible title and right which the defendant invaded. The defendant is therefore answerable to the plaintiffs in damages, the measure of which materially is the money improperly received and wrongfully detained by him, the defendant, and such a claim is alone cognizable by the Civil Courts.

PEARSON, TURNER, and OLDFIELD, JJ., concurred in the following opinion :—

The appellants took a lease of several villages from the respondents, and they allege that, after the lease had been acted upon, the respondent in breach of the conditions of the lease collected the rents and profits which in virtue of the lease appertained to the appellants, and they have instituted the present suit to recover the sums actually collected. The respondent pleaded that the claim was virtually one for damages for wrongful dispossession, and therefore could only form the subject of an application in the Revenue Court. To this the appellants have replied, that the Rent Act does not apply to persons who in these Provinces are known as thikadars or katkinadars, and in the old Regulations and Acts are denominated under-tenants, persons who take from the zemindars leases of their zemindari rights in lands.

Although no express mention of this class under any of the particular designations by which they are ordinarily known may be found in the Rent Act, when their position in relation to the lessors is regarded they are unquestionably tenants, and they are not deprived of this character because in relation to the actual cultivators of the whole or some parts of the property leased they may be described as landlords. They hold an intermediate estate in the property leased which the proprietors have as it were carved out of

their own estate; they hold the property leased under the proprietors; the payments they make to the proprietors are rent, and fall within the definition of that term in the Rent Act; and therefore, although all the sections of the Rent Act may not apply to such lessees, but some are restricted in their operation to particular classes of tenants, the persons whose position we are considering are not the less subject to those provisions of the Act which apply to tenants of all classes. Before the last Rent Act was passed it was not doubted that the class of thikadars was competent to sue and liable to suit in the Revenue Courts; and inasmuch as the intention of the framers of the Rent Act was to extend rather than curtail the jurisdiction of the Revenue Courts, the presumption favours the construction that the general provisions of the Rent Act apply to this equally with all other classes of tenants, save those who by the proviso to the first section are excluded from the operation of the Act.

There remains then the question raised by the respondent's plea that the Civil Courts are not competent to entertain the suit by reason of the provisions of s. 95 of the Rent Act. Although the suit is brought not to obtain damages for illegal dispossession, but to recover moneys which the appellants allege were payable to them under their lease, and which have been wrongfully collected by the respondent in breach of the provisions of the lease, it is clear that on an application for compensation for wrongful dispossesion it would be incumbent on the Revenue Court to award compensation for wrongful collections actually made, as well as for the other profits which the lessees might have enjoyed had their possession not been disturbed; and it is also clear that by making collections in breach of the lease, the respondent disturbed the possession of the lessees. The 95th section of the Act prohibits Courts other than the Revenue Courts from taking cognizance of any dispute or matter on which an application of the nature mentioned in that section might be made. One of the applications mentioned in that section is an application for compensation for wrongful dispossession, and inasmuch as under such an application the appellants could obtain what they now claim, it must be held that the jurisdiction of the Civil Courts is ousted, and that the appellants can obtain relief only in the Revenue Court.

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SPANKIE, J.—I cannot think that the provisions of cl. (*m*), s. 95 of Act XVIII of 1873, are applicable to the case referred to us. I regard the clause as applying to the ordinary tenant or agricultural ryot paying rent for the use or occupation of land, and not to the lessee of an entire estate for a fixed term of years, as the plaintiff is, or rather was, in the case before us. The application for compensation on account of wrongful dispossession referred to in cl. (*m*) must be brought within six months from the date of the wrongful dispossession, and the compensation applied for must refer to some loss or injury already suffered by the applicant, and not to the loss of profits in future years.

The plaintiffs were the lessees of several villages and aver that two years before their lease expired they were dispossessed by the lessor, who appropriated the collections of those two years. But for the wrongful ejectment, the lessees would have made the collections on account of those two years. They waive any claim, if they had one, for compensation under cl. (*m*), s. 95 of Act XVIII of 1873, and sue to recover in a Civil Court the sums actually collected by the defendant in breach of the terms of the contract between them. In such a suit the Collector could not give to the plaintiffs all the relief prayed for, for the compensation claimable under cl. (*m*) is for an injury that has already accrued in consequence of the wrongful dispossession, loss of seed sown, or of crop, or otherwise, on account of the harvest immediately following the wrongful dispossession. The ordinary tenant has no claim for compensation on account of future years; for under cl. (*n*), s. 95 of the Act, he can at once claim recovery of occupancy of the land from which he has been wrongfully dispossessed. So that the claim for compensation for the loss already sustained and for recovery of the land can proceed *pari passu*.

"Tenant" has not been defined in the Rent or Revenue Acts, though "landholder" has been defined to be the person to whom a tenant is liable to pay rent, and rent is whatever is to be paid, delivered, or rendered by a tenant on account of his holding, use, or occupation of land. In Act XVIII of 1871, an Act for the levy of rates on land in the North-Western Provinces, tenant is describ-

as any person using or occupying land and liable to pay rent thereof, and land means land used for agricultural purposes, or waste land which is culturable. Again, in the Rent Act there is no distinction made between a tenant holding on a pattah, which is the ordinary term for a ryot's lease and a thikadar, katkinadar, or other lessee holding for a term of years a portion of an estate, or the whole of it. Any one to whom the entire estate is leased is, for the term of his lease, placed in the position of the owner as regards the ordinary agricultural tenants of that estate. A lessee of this character does not fall within the provisions of s. 24, 25, 26, or 27 of Act XVIII of 1873, for all other tenants mentioned in s. 27 must be those tenants who do not pay at fixed rates, and who are not proprietary and occupancy tenants, *i.e.*, they must be tenants without a right of occupancy; for the only classes of tenants recognized by s. 10 are—*first*, tenants at fixed rates; *secondly*, ex-proprietary tenants; *thirdly*, occupancy tenants; *fourthly*, tenants without a right of occupancy. Having regard to the definitions referred to above, and the classification of tenants in the Act, I find it difficult to bring in the lessee for a term of years of an entire mahal as a tenant without rights of occupancy, and to include him in class 4. It seems to me that the section includes only agricultural tenants, and classifies them in their relation to the landlord or other person entitled to receive rent from them; but it does not include persons like the plaintiffs in the case before us, who for a certain fixed annual payment occupy the same position towards the four classes of tenants mentioned in the Act as the absolute owner of the estate would do, had he not for a term of years withdrawn himself from that position by assigning the management of his estate and the collection of rents from the ryots to another. I do not deny that a farmer or lessee could sue or be sued in certain suits under the old Rent Act which has been repealed. But the lessee could not have brought a suit of the nature of the one referred to us in a Revenue Court. He must have gone into a Civil Court. In the present Rent Act, whether designedly or by some accidental omission, an intermediate lessee between the owner of the property and his tenants appears to have been overlooked. Such a lessee might perhaps, as the person entitled to receive the rents from the agricultural tenants, sue for arrears due to him. But I think it doubtful

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whether he could make an application to a Revenue Court under cl. (*n*) (application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed), s. 95. Cl. (*n*) seems the complement of cl. (*m*), application by a tenant for compensation for wrongful dispossession, which applies to the tenants of the four classes specified in s. 10, and to them only.

With this view of the case, I would say that the suit was not barred, as the claim was not of the nature of an application that could be made to a Revenue Court under cl. (*m*), s. 95, Act XVIII of 1873, and that it was properly instituted in the Civil Court.

APPELLATE CIVIL.

1877
January 15.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

RAJA BARDA KANT RAI (PLAINTIFF) *v.* BHAGWAN DAS AND OTHERS (DEFENDANTS.)*

Interest under Regulations XV of 1793 *and XVII of* 1806—*Conditional decree for redemption.*

Under section 6, Regulation XV of 1793, interest claimable under a bond must not exceed the amount of principal. S. 3, Regulation XVII of 1806, is not inconsistent with the application of Regulation XV of 1793, inasmuch as the Regulation of 1806 refers to *rates* of interest, and the Regulation of 1793 to *accumulations* of interest irrespective of rate.

A conditional decree fixing a period for payment of money found to be due on mortgage bonds entitling the mortgagor to redemption, though not claimable as of right by the mortgagor, who ordinarily should be ready at once with his money, is a proper and judicious order passed by an Appellate Court, where the Court of first instance determined the amount payable under the mortgage, but failed to fix any time in its decree for the payment of such amount.

THE plaintiff in this suit sued, tendering payment of Rs. 700, amount due on two bonds, one for Rs. 500, bearing no interest, and the other for Rs. 200, bearing interest at fifteen per cent. per annum, to redeem and recover possession of three pucca houses with land appurtenant thereto, mortgaged by Krishna Ram, the agent of the plaintiff's ancestor, under a deed, dated Magh Badi, 11th Sambat 1851, or 16th January, 1795, to Mussammat Pema, to whom pos-

* Special appeal No. 1076 of 1876, against a decree of W. R. Benson, Esq., Officiating Judge of Benares, dated the 31st May, 1876, modifying a decree of Syad Ahmad Khan, C. S. I., Subordinate Judge of Benares, dated the 31st August, 1876, decreeing the plaintiff's claim.