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TO  
VOL. I., PARTS I.-XII.,  
OF THE  
ALLAHABAD SERIES.

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**ACQUIESCENCE**—*Equitable Estoppel—Laches—Limitation.*] The plea of acquiescence is applicable to suits for which a fixed term of limitation is prescribed by law, but mere delay in enforcing a right does not constitute acquiescence.

The defendants took possession of, and erected buildings on, land which they knew belonged to the plaintiff and they had no claim to, without applying to the plaintiff for consent. The plaintiff abstained from suing to eject them for one or two years, knowing that the defendants were building on the land. *Held*, under the circumstances, that the delay in the institution of the suit was not sufficient to deprive the plaintiff of her right to relief. *UDA BEGAM v. IMAM-UD-DIN* ... .. 82

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tained a money-decree against *K* in the Court of the Principal Sudder Amin on the 12th December, 1864. This decree was reversed by the District Judge, but on the 5th March, 1866, the Sudder Court set aside the Judge's decree and ordered a new trial. On the 5th May, 1866, the District Judge affirmed the decree of the Court of first instance. On the 3rd December, 1866, the High Court again set aside the Judge's decree and ordered a new trial. On the 14th January, 1867, the District Judge again affirmed the decree of the Court of first instance, and no appeal being preferred, the decree became final. The decree-holders had in the meantime taken proceedings to execute the decree dated the 5th May, 1866, and from time to time, and finally on the 7th November, 1870, they renewed these proceedings, in each instance referring to the decree dated the 5th May, 1866, even after it was set aside and the decree dated the 14th January, 1867, passed. On the last application a sale of certain immoveable property belonging to *K* was ordered, and took place on the 15th February, 1871. *K* objected to the confirmation of the sale on the ground of the irregularity in the application, but his objections were disallowed and the sale was confirmed. He brought a suit to recover possession of the property from the auction-purchaser on the ground that the sale was a nullity. *Held, per* STUART, C.J., and PEARSON, TURNER, and SPANKIE, JJ., that the sale ought not to be set aside, as the irregularity in applying for execution of the decree dated the 5th May, 1866, was an irregularity which did not prejudice the judgment-debtor. *Per* OLDFIELD, J.—That, with reference to s. 257, Act VIII of 1859, the suit was not maintainable. *GHÁZI v. KADIR BAKSH* ... .. 212

— s. 260—*Execution of Decree—Certified Purchaser.*] *A* sued for a declaration that *P*, the certified auction-purchaser of certain immoveable property, was merely a trustee for *R*, *A*'s judgment-debtor, that the purchase in *P*'s name was made with the intent of defeating or delaying him in the execution of his decree, and that he was at liberty to apply for execution against the property of his judgment-debtor. *Held*, following *Sohn Lall v. Gya Parshad*, that s. 260, Act VIII of 1859, was in no way a bar to the suit. *PURAN MAL v. ALI KHAN*, 235



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plications for the admission of appeals, under a rule of the Court made in pursuance of 24 and 25 Vic., c. 104, s. 13, and the Letters Patent of the Court, s. 27, was liable to be impugned and set aside at the hearing by the Division Court before which it was brought for hearing, on the ground that the reasons assigned for admitting it were erroneous or inadequate. *DUBEY SAHAI v. GANESHI LAL* ... 34  
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ordinarily adopted. (*Bijee Koerv. Rai Damodur Dass* impugned.) The defendant and *J. W. C.*, Clerk of the Small Cause Court at Allahabad, entered into a bond to the Judge of the Small Cause Court, as well as to his successors in office, in a certain sum as security for the true and faithful performance by *J. W. C.* of his duties as Clerk of the said Court, and for his well and truly accounting for all moneys entrusted to his keeping as such Clerk of the Court. Held, in a suit against the defendant as surety, that he was liable for misappropriation by *J. W. C.* of moneys arising from sales of moveable property held in execution of decrees passed by the Judge of the Small Cause Court in the exercise of his powers as Subordinate Judge, and that, had the Small Cause Court Judge not been invested, at the time of the execution of the bond, with the powers of a Subordinate Judge, the defendant's liability in respect of such moneys would not have been thereby affected. *CROSTHWAITHE v. HAMILTON* ... 87

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REDEMPTION OF—*Limitation—Acknowledgment of title of mortgagor or of his right to redeem—Act IX of 1871, sch. ii, 148.* Where the defendants attested as correct the record-of-rights prepared at a settlement with them of an estate in which they were described as mortgagees of the estate, but which did not mention the name of the mortgagor, held (SPANKIE, J., dissenting) that there was an acknowledgment of the mortgagor's right to redeem within the meaning of article 148, sch. ii, Act IX of 1871. *Per* PEARSON, J.—That there was also an acknowledgment of the mortgagor's title. *Per* SPANKIE, J., *contra*. DAIA CHAND v. SARFRAZ ... 117

MUHAMMADAN LAW—*Inheritance—Minor.*] Two of the widows of a deceased Muhammadan sold a portion of his real estate to satisfy decrees obtained by creditors of the deceased against them as his representatives. The sale-deed was executed by them on behalf of the plaintiff, a daughter of the deceased, she being a minor, in the assumed character of her guardians. *Held*, if the plaintiff was in possession, and was not a party to, or properly represented in, the suits in which the creditors obtained decrees, she could not be bound by the decrees nor by the sale subsequently effected, and she was entitled to recover her share, but subject to the payment by her of her share of the debts for the satisfaction of which the sale was effected. HAMIR SINGH v. ZAKIA ... 57

NEGLIGENCE—*Carrier—Duty of persons sending goods of a dangerous nature—Notice—Act XVIII of 1854, s. 15—Act XIII of 1855—Action for compensation for destruction of life.*] *Held* (PEARSON, J., dissenting) that a person who sends an article of a dangerous and explosive nature to a railway company to be carried by such company, without notifying to the servants of the company the dangerous nature of the article, is liable for the consequences of an explosion, whether it occurs in a manner which he could not have foreseen as probable, or not. *Held*, also (PEARSON, J., dissenting), that such a person is liable for the consequences of an explosion occurring in a manner which he could not have foreseen, if he omits to take reasonable precautions to preclude the risk of explosion. *Mode of estimating damages under Act XIII of 1855 discussed.* LYELL v. GANGA DAI ... 60  
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 See NEGLIGENCE.

OBJECTION ... 165  
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OBSTRUCTION ... 249  
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 PARTITION ... 159  
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 See JURISDICTION.  
 PAUPER SUIT ... 230  
 See SUIT, INSTITUTION OF.

PRE-EMPTION—*Conditional Decree—“Final” Judgment and Decree.*] The Court granting a decree to the plaintiff in a pre-emption suit is competent to grant the decree subject to the payment of the purchase-money within a fixed period, and if the decree-holder fails to comply with the condition imposed on him by the decree, he loses the benefit of the decree. *Sheo Parshad Lall v. Thakoor Rai* approved. When a direction contained in a decree referred to the time at which such decree should become final, held (the case being one in which a special appeal lay) that such decree does not become final on being affirmed by the lower appellate Court, but on the expiry of the period of special appeal, or where such an appeal was instituted, when the decision of the lower appellate Court was affirmed by the High Court. SHAIKH EWAZ v. MOKUNA BIBI ... 132

Minor—*Legal Disability—Limitation—Act IX of 1871, s. 7, and sch. ii, 10.*] The provisions of s. 7, Act IX of 1871, are applicable in computing the period of limitation in suits to enforce a right of pre-emption. Where a condition for pre-emption contained in a record-of-rights was intended to take effect at the time of a sale and its language implied that the co-sharers in whose favour it was made were to be persons who were competent at that time to make a binding contract to accept or refuse an offer, no right of pre-emption accrued under the condition to a co-sharer who was a minor at the time of sale and unrepresented by any person competent to conclude a binding contract on his behalf, whether it was assumed that the condition arose out of special contract or general usage. *Nanoo v. Tirkha* observed upon. Remarks on the right of pre-emption existing in villages in the North-Western Provinces.

RAJA RAM v. BANSI ... 207  
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 See SUIT, INSTITUTION OF.  
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See ACT VIII OF 1859, s. 354.		
—ACT X OF 1872, ss. 468, 469, &c.		
PROFITS— <i>Lambardar—Co-sharer—Revenue—Set-off.</i> ]	<i>Held</i> (SPANKIE, J., dissenting) that a lambardar, who had paid an arrear of Government revenue out of the collections of subsequent years without reference to the co-sharers, was entitled, in a suit against him by a co-sharer for his share of the profits for such subsequent years, to claim in the suit a deduction on account of such payment. <i>UDAI SINGH v. JAGAN NATH</i> ...	135
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PUBLIC THOROUGHFARE— <i>Obstruction—Jurisdiction—Act X of 1872, s. 521.</i> ]	No suit for obstructing a public thoroughfare can be maintained in a Civil Court without proof of special injury. <i>KARIM BAKSH v. BUDHA</i> ...	249
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See TRANSPORTATION.		
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See ACT VIII OF 1859, s. 354.		
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See JURISDICTION.		
RES JUDICATA— <i>Act VIII of 1859, s. 2.</i> ]	When a plaintiff claims an estate, and the defendant, being in possession, and knowing that he has two grounds of defence raises only one, he shall not, in the event of the plaintiff obtaining a decree, be permitted to sue on the other ground to recover possession from the plaintiff. Where, therefore, the defendants purchased an estate in the plaintiff's possession, and sued him to recover possession of it, and the plaintiff resisted the suit merely on the ground that he was the auction purchaser of it, and the defendants obtained a decree, and the plaintiff then sued claiming a right of pre-emption in respect of the property, a claim which he might have asserted in reply to the former suit, <i>held</i> that he was debarred from suing to enforce such claim. <i>BALDEO SAHAI v. BATESHAR SINGH</i> ...	75
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SALE IN EXECUTION— <i>Act XX of 1866, s. 53—Bond—Mortgage—Money-decree.</i> ]	The obligee of a simple mortgage-bond was only entitled, under s. 53, Act XX of 1866, to a money-decree. Nothing passes to the auction-purchaser at a sale in execution of a money-decree but the right, title, and interest of the judgment-debtor at the time of the sale. Where, there-	

fore, a decree given under s. 53, Act XX of 1866, declared the right of the obligee of a simple mortgage-bond to bring to sale the hypothecated property, and such property was sold in execution of the decree, the auction-purchaser could not claim in virtue of the lien created by the bond to defeat a second mortgage. *AKHE RAM v. NAND KISHORE*. ... 236

*Bond—Mortgage—Money-decree—Condition against Alienation* ] Nothing passes to the auction-purchaser at a sale in execution of a money-decree but the right, title, and interest of the judgment-debtor at the time of the sale. Where, therefore, the holder of a simple mortgage-bond obtained only a money-decree on the bond, in execution of which the property hypothecated in the bond was brought to sale and was purchased by him, he could not resist a claim to foreclose a second mortgage of the property created prior to its attachment and sale in execution of his decree. The view of the Full Bench of the Calcutta High Court in *Momtazooddeen Mahomed v. Rajcoomar Dass* and the decision in *Ramu Naikan v. Subbaraya Mudali* dissented from. *Held* further that the holder of the money-decree in this case could not avail himself of a condition against alienation contained in his bond to resist the foreclosure. *Raja Ram v. Bainse Madho* impugned. *KHEP CHAND v. KALIAN DAS* ...

See APPEAL.

—ACT VIII OF 1859, s. 257.

SANCTION TO PROSECUTE—*Act X of 1872, ss. 468, 469—Jurisdiction* ] *Held* that the sanction referred to in ss. 468 and 469 of Act X of 1872, when given by any of the Courts empowered under the Act, cannot be disturbed by a superior Court. *Per TURNER*, Offg. C. J., and *PEARSON* and *OLDFIELD, J.J.*—When sanction is refused by any one of the Courts, the refusal does not deprive the other Courts of the discretion given to them. *Per SPANKIE, J.*—When sanction is refused by one of the Courts, the refusal does not deprive the superior Courts of the discretion given to them. *BARKAT-UL-LAH KHAN v. RENNIE* ...

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SUFFICIENT CAUSE ... 250

See ACT IX OF 1871, s. 5, b.

SUIT, INSTITUTION OF—*Act VIII of 1859, s. 308—Pauper Suit—Presentation of Plaintiff—Limitation.* ] Where an application for permission to sue *in forma pauperis* is numbered and



registered, and deemed to be the plaint in the suit, not in consequence of proof of the plaintiff's pauperism, but in consequence of his abandoning his claim to sue as a pauper and paying for the stamps required for the institution of the suit, the date of such payment, and not the date of the ... taken, in computing the ... to be the date of the presentation of the plaint and the institution of the suit. *SKINNER v. ORDE* ... .. 230

-----*Act IX. of 1871,*  
*s. 5, a—Limitation.] Held,* that where the period of limitation prescribed for a suit expired when the Court was closed for a vacation, and the Court, instead of re-opening after the vacation on the day that it should have re-opened, re-opened on a later day, and the suit was instituted when it did re-open, it was insti-

tuted within time. *BISHAN CHAND v. AHMAD KHAN* ... .. 263

**SUIT FOR PROFITS** ... .. 261

*See INTEREST.*

**TRANSFER** ... .. 180

*See Act VIII of 1859, s. 6*

**TRANSPORTATION—Act XLV of 1860, ss. 59, 377—Punishment].** When an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term ... *QUEEN v. NAIADA* ... 43

... *See HINDU LAW.* ... 46

**UNDIVIDED HINDU FAMILY** ... 77, 105, 159

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