

The Penal Code applies to British India, *i. e.*, the territories defined in the 1st section of the Code, and had the prisoner been accused at Agra of an offence against the Indian Penal Code he would have been delivered over to the nearest Magistrate to be proceeded with according to law, and the effect of s. 9 of Act XI of 1872 will be to permit his being dealt with for the offence committed in Cyprus as if it had been committed within British India and the proceedings which have been taken are therefore quite according to law. There is nothing in Article 171 inconsistent with effect being given to Article 170.

The crime of murder is clearly proved against the prisoner, and in my opinion the sentence of death must be confirmed.

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 EMPEROR
 INDIA
 SARMUK
 SINGH

APPELLATE CIVIL.

1879
 March 31

Before Mr. Justice Pearson and Mr. Justice Spankie.

GULAB SINGH (PLAINTIFF) *v.* AMAR SINGH AND ANOTHER (DEFENDANTS).*

Pre-emption—Limitation—Act XV of 1877 (Limitation Act), sch. ii, art. 10.

On the 19th December, 1876, *A* gave *T* a mortgage of his share in a certain village. The terms of the mortgage were that *A* should remain in possession of his share, and pay the interest on the mortgage-money annually to the mortgagee, who, in the event of default in payment of the interest, was empowered to sue for actual possession of the share. On the 19th May, 1877, *T*'s name was substituted for that of *A* in the proprietary registers in respect of the share. On the 8th February, 1878, *G* sued *T* and *A* to enforce his right of pre-emption in respect of the share, alleging that his cause of action arose on the 19th May, 1877, and that *A*, notwithstanding the mutation of names, was still in possession. *T* alleged that he had been in possession since the execution and registration of the deed of mortgage. *Held* that whether *T* had been in plenary possession of the share since the date of the deed, or whether he had had only such constructive or partial possession of it as was involved in the receipt of interest on the mortgage-money, the plaintiff was equally bound to have sued within a year from the date of the deed, and was not entitled to reckon the year from the date on which the possession by the mortgagee of the share was recognised by the revenue department, and the suit was therefore barred by art. 10, sch. ii of Act XV of 1877.

THE facts of this case are sufficiently stated, for the purposes of this report, in the judgment of the High Court, to which the plain-

* Second Appeal, No 1076 of 1878, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 8th August, 1878, affirming a decree of Munshi Mahabir Prasad, Munsif of Etah, dated the 8th March, 1878.

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tiff appealed from the decree of the lower appellate Court. That decree affirmed the decree of the Court of first instance, which dismissed the plaintiff's suit as barred by limitation.

The plaintiff contended in second appeal that limitation ran from the date that mutation of names took place, and the suit was consequently brought within time.

Babu *Oprokash Chandar*, for the appellant.

Munshi *Hanuman Prasad*, for the respondents.

The judgment of the High Court was delivered by

PEARSON, J.—On the 19th December, 1876, Amar Singh borrowed money from Tota Ram, and mortgaged his zamindari share as security for the repayment of the amount. The agreement was that the mortgagor should remain in possession of his share and pay the interest on the loan annually to the mortgagee, who, in the event of default in payment of the interest, was empowered to sue for actual possession of the share. By the terms of the *wajib-ul-arz* the plaintiff contends that he was entitled to have had an offer of the share made to him before it was mortgaged to Tota Ram, and he now claims proprietary possession of it. The suit was instituted on the 8th February, 1878, and the cause of action is said to have arisen on the 19th of May, 1877, when Tota Ram's name was substituted for that of Amar Singh in the proprietary registers in pursuance of the transaction. The plaintiff, however, alleges that Amar Singh, notwithstanding the mutation of registry, is still in possession of the share. On the other hand Tota Ram alleges that he has been in possession of it since the execution and registration of the deed of mortgage. Whether the mutation of registry was merely a precaution to secure the mortgagee's interests, whether he has been only hitherto receiving the interest due to him annually for the mortgagor still in possession of the share, or whether in consequence of default in payment of the interest the share has passed into the actual possession of the mortgagee, these are questions which find no answer in the judgments of the lower Courts. But it seems to us that whether, as Tota Ram avers, he has been in plenary possession since the date of the deed, or

whether, in accordance with the tenor of the deed he has only had such constructive or partial possession of it as is involved in the receipt of interest on the loan secured by the mortgage, the plaintiff was equally bound to have brought his suit within a year from the date of the deed, and is not entitled to reckon the year from the date on which the possession of the mortgagee of the share was rightly or wrongly recognised by the revenue department. Concurring therefore in the opinion of the lower Courts that the suit is barred by art 10, sch. ii of Act XV of 1877, we disallow the pleas in appeal, and dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

MANGAL KHAN (DEFENDANT) v. MUMTAZ ALI AND OTHERS (PLAINTIFFS).*

Land in a mahal held by the lambardar as "khud-kash" at a nominal rental—Liability of lambardar to co-sharer for profits—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 3, 31, 209.

The land in a certain mahal was recorded as held by *M*, the lambardar, as "khud-kash" at a certain nominal rental. For two years in succession *M* sub-let such land in part or in whole for a less amount than such nominal rental; the third year such land lay fallow. Certain persons sued as co-sharers in the mahal to recover from *M* their share of the profits on account of such years. *M* set up as a defence to the suit that there were no profits, on the contrary, a small loss. The lower Courts held *M* answerable for the rental recorded,

Held that it was doubtful whether the provisions of s. 209 of Act XVIII of 1873 were applicable in the present case, and that, even if such provisions were applicable, the lower Courts having neither found that more was realised from the land than had been accounted for by *M*, nor that the failure to realise more was owing to gross negligence or misconduct on his part, the decree of the lower Courts could not be sustained.

THIS was a suit by three co-sharers for their share of the profits of a mahal for the years 1282, 1283, and 1284 fasli. The defendant in the suit was the lambardar of the mahal, and held all the land in the mahal at a certain rent. He set up as a defence to the suit that he had not cultivated the land. The Court of first instance held that the defendant was liable for the recorded rent of the land

* Second Appeal, No. 1068 of 1878, from a decree of R. F. Saunders, Esq., Judge of Farukhabad, dated the 30th July, 1878, modifying a decree of J. L. Denniston, Esq., Assistant Collector, dated the 8th June, 1878.

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