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unnecessary for me to say anything definite as to whether I concur in, or dissent from, the ruling, because Birdwood, J., who laid down the rule, distinguished it from cases such as the present, where the decree has not been split up or made the subject of more than one appeal.

The ruling, therefore, is not on all fours with the present case, and I need say nothing more about it here.

For these reasons I concur in the answers proposed by the learned Chief Justice to both the questions before the Full Bench.

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April 22.

APPELLATE CIVIL.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

GANGADHAR AND ANOTHER (PLAINTIFFS) *v.* ZAHURRIYA AND ANOTHER (DEFENDANTS). *

Landholder and tenant—Suit for the removal of trees—Act XV of 1877 *(Limitation Act), sch.* ii, *No.* 32—*Jurisdiction—Civil and Revenue Courts—Act XII of* 1881 *(N.-W.P. Rent Act), s.* 93 *(b).*

Held that a suit by a landholder for the removal of certain trees planted by the defendants upon land held by them as the plaintiff's occupancy-tenants was cognizable by the Civil and not by the Revenue Court. *Deodat Tiwari* v. *Gopi Misr* (1) referred to.

Held also that No. 32, sch ii of the Limitation Act (XV of 1877), applied to the suit. *Raj Bahadur* v. *Birmha Singh* (2), *Amrit Lal* v. *Balbir* (3), and *Kedarnath Nag* v. *Khetturpaul Sritirutno* (4), referred to.

THE plaintiffs in this case sued the defendants for the removal of certain trees planted by the latter on land held by them as occupancy-tenants, the plaintiffs being the landholders. The suit was instituted in the Court of the Munsif of Shamli, zila Saháranpur. The defendants set up among other defences the defence that the suit was not cognizable in the Civil Courts, under the provisions of s. 93 *(b)* of the N.-W. P. Rent Act (XII of 1881). The Court of first instance allowed this defence, relying on *Deodat Tiwari* v. *Gopi Misr* (1). It found also that that the trees, the removal of which was sought, had been planted some eight years

* Second Appeal No. 1313 of 1885, from a decree of C. W. P. Watts, Esq., District Judge of Saháranpur, dated the 3rd July, 1885, confirming a decree of Maulvi Muhammad Tajammul Husain, Munsif of Shamli, dated the 15th January, 1885.

(1) Weekly Notes, 1882, p. 102.
(2) I. L. R., 3 All. 85.
(3) I. L. R., 6 All 68.
(4) I. L. R., 6 Calc 34.

before the suit was brought; and that the plaintiffs had acquiesced in the planting of the trees when it became known to them. On appeal by the plaintiffs the lower appellate Court (District Judge of Saháranpur) expressed no opinion on the question of jurisdiction, having regard to the provisions of s. 207 of Act XII of 1881, but held that the suit was barred by limitation, applying No. 32, sch. ii of the Limitation Act (XV of 1877). It found that the trees had been planted more than two years before the suit, but did not find when the planting first became known to the plaintiffs.

The plaintiffs preferred a second appeal on the ground that the suit was not governed by No. 32, sch. ii of the Limitation Act.

For the defendants it was objected that the suit was not cognizable in the Civil Courts.

Pandit *Sundar Lal*, for the appellants.

Babu *Ratan Chand*, for the respondents.

TYRRELL, J.—This was a very simple suit brought by the plaintiffs-appellants, who are admittedly zamindars of the land in suit, against the defendants, who are occupancy-tenants of the land, seeking to restrain the defendants from converting arable land into a grove or wood. The Courts below have concurred in holding that the suit is barred by limitation. They have applied art. 32, sch. ii of Act XV of 1877, and in my opinion the article has been rightly applied. They have held broadly that some of the trees were planted some seven years ago, and some were planted within a year from the date of the suit. These findings alone are not sufficient for the disposal of the case. The lower Courts have not determined the *terminus a quo* of the period from which the limitation begins to run. Under that clause the limitation begins to run from the date "when the perversion first becomes known to the person injured thereby." It is therefore necessary to have this point determined. And I would therefore remit the following issue for determination by the Court below:—

When did the plaintiff first become aware of the perversion of the land?

The finding when made will be returned to this Court, and ten days will be allowed for objections from a date to be fixed by the Registrar.

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MAHMOOD, J.— I concur in the order proposed by my brother Tyrrell, but I wish to add a few words. The learned pleader for the respondent has contended that the suit was one cognizable by the Revenue Courts, and has relied upon the case of *Deodat Tiwari* v. *Gopi Misr* (1). The judgment of the Court in that case was delivered by my brother Brodhurst, and I concurred in that judgment. Now, s. 93 (*h*) of Act XII of 1881 provides that "suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let" lie in the Revenue Court. It was under this section that my brother Brodhurst and myself held in that case that that suit was cognizable by the Revenue Court. I have carefully examined the remnants of the record that remain in this Court, namely, the judgments of the two Courts in that case, but in the absence of the plaint it is impossible to say how far that ruling applies to this case.

Now, the plaint in this case is not for the ejectment of the tenant, but virtually seeks an injunction, directing the tenant to remove the trees in question. This relief cannot be granted by the Revenue Courts, and the suit is therefore cognizable by the Civil Court. The learned pleader for the appellant has drawn my attention to two rulings of this Court in *Raj Bahadur* v *Birmha Singh* (2) and *Amrit Lal* v. *Balbir* (3). The first of these cases is a Full Bench ruling, and I agree with the learned pleader in thinking that the principle of the rulings in those cases applies to this case. I agree with my brother Tyrrell in holding that art. 32, sch. ii of Act XV of 1877, applies to this case, and that the limitation runs from the date "when the perversion first becomes known to the party injured thereby."

The learned pleader for the appellant has also called my attention to a ruling of the Calcutta High Court in the case of *Kedarnath Nag* v. *Khetturpaul Sritirutno* (4). I have carefully considered the judgment in that case. The portion which deals with the point now raised occurs at the end and is as follows:—"As to the limitation, we think with the lower appellate Court that art. 32 does not apply to this case. It seems to us to fall under art.

(1) Weekly Notes, 1882, p. 102.
(2) I. L. R., 3 All. 85.
(3) I. L. R., 6 All. 68.
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120, which gives a period of six years." No doubt the learned Judges in that case had very good reasons for coming to that conclusion, but I have not had the advantage of considering them, as the report gives no reasons upon this point. Under the circumstances I agree with my brother Tyrrell in remanding the case as proposed by him.

Issue remitted.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

1886
May 5.

JAWAHAR SINGH (PLAINTIFF) *v.* MUL RAJ (DEFENDANT). *

Arbitration—Powers of arbitrators—Payment by instalments—Appeal—Civil Procedure Code, ss. 518, 522.

The arbitrators to whom the matters in difference in two suits for money were referred to arbitration made an award for payment to the plaintiff of certain sums by the defendant, and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award in so far as it directed payment by instalments, and the Court, holding that the arbitrators had no power to make such a direction, modified the award to that extent, under s. 518 of the Civil Procedure Code. On appeal, the District Judge, while allowing the power of the arbitrators to direct payment by instalments, reduced the number of instalments which had been fixed.

Held that the decree of the first Court not being in accordance with the award, an appeal lay to the Judge, with reference to s. 522 of the Code.

Held also that as it was clear that the reference to arbitration gave the arbitrators full powers not only as to the amount to be paid, but also as to the manner of payment, the lower appellate Court was wrong in reducing the number of instalments which had been fixed.

Per MAHMOOD, J.—The word "award" used in the last sentence of s. 522 of the Code must be understood to mean an award as given by the arbitrators, and not as amended by the Court under s. 518. The words "in excess of, or not in accordance with, the award," used in s. 522 were intended to enable the Court of appeal to check the improper use of the power conferred by s. 518.

THE appellant in these cases, Jawahar Singh, brought two suits against the respondent, Mul Raj, one being to recover Rs. 1,316 due for profits and Government revenue and the other for Rs. 2,687-14 due on a bond. The parties referred the matters in dispute in these suits to arbitration. The majority of the arbitrators,

* Second Appeals Nos. 1483 and 1484 of 1885, from decrees of C. W. P. Watts, Esq., District Judge of Saháranpur, dated the 29th May, 1885, modifying decrees of Maulvi Muhammad Maksud Ali Khan, Subordinate Judge of Saháranpur, dated the 27th February, 1885.