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and setting aside the decrees of both the Courts below, dismiss the suit with costs in all the Courts.

I would order accordingly.

EDGE, C.J.—I concur.

STRAIGHT, J.—So do I.

Appeal allowed.

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November 12.

Before Mr Justice Mahmood.

AJAIB NATH AND OTHERS (DEFENDANTS) *v.* MATHURA PRASAD (PLAINTIFF).*

Pre-emption—Mortgage by conditional sale—Foreclosure—Regulation XVII of 1806—Suit by mortgagee for possession—Compromise and decree thereon—Mortgagee accepting part of the property in suit—Suit for pre-emption—Pre-emptor not asserting or proving validity of foreclosure proceedings—Pre-emptor's title referred to date of compromise and decree—Purchase-money—Acquiescence of pre-emptor in transfer.

The mortgagee under a deed of conditional sale executed in 1878 took foreclosure proceedings under Regulation XVII of 1806, and, the year of grace having expired, a foreclosure proceeding was recorded on the 18th September, 1882, declaring the mortgage to have been foreclosed. In August, 1885, the mortgagee instituted a suit for possession of the mortgaged property. On the 19th September, 1885, the suit was compromised, the mortgagee accepting a part of the mortgaged property, and relinquishing the remainder. A decree was passed in the terms of the compromise. Subsequently, a suit for pre-emption was brought against the mortgagor and mortgagee to enforce pre-emption in respect of the alienation. The plaintiff claimed to pre-empt the whole of the property to which the deed of 1878 related, including the portion relinquished by the conditional vendee under the compromise and decree of the 19th September, 1885.

Held that although, upon the expiration of the year of grace, the ownership of mortgaged property vested in a conditional vendee even though he might not have obtained a decree establishing or declaring his right, and the right of pre-emption accrued on the date when the conditional sale thus became absolute, yet foreclosure proceedings under the Regulation, being of a purely ministerial character, were not conclusive or even *primâ facie* evidence in a subsequent litigation against the conditional vendor that a valid foreclosure had been duly effected; that strict observance of the requirements of the Regulation were conditions precedent to the right of foreclosure; and that, in the present case, as the plaintiff had not asserted or attempted to prove that all those requirements had been fulfilled so as to result in an actual

* Second Appeal No. 1288 of 1887 from a decree of C. Mellor, Esq., District Judge of Gorakhpur, dated the 25th June, 1887, modifying a decree of Maulvi Shah Ahmad-ullah Khan, Subordinate Judge of Gorakhpur, dated the 23rd March, 1887.

foreclosure and consequent accrual of pre-emption at the end of the year of grace, no foreclosure was shown to have taken place prior to the compromise of the 19th September, 1885, and the plaintiff's right of pre-emption accrued on and must be referred to that date, and consequently extended only to the property to which the compromise related, and the price payable by the plaintiff was the amount specified in the compromise. *Bhadu Mahomed* v. *Radha Churn Bolia* (1), *Sheodeen* v. *Sookit* (2), and *Tawakkul Rai* v. *Lachman Rai* (3) distinguished. *Norender Narain Singh* v. *Dwarka Lal Mundur* (4), *Madho Prashad* v. *Gajadhar* (5), *Sitla Bakhsh* v. *Lalta Prasad* (6) and *Jagat Singh* v. *Ram Bakhsh* (7) referred to.

Acquiescence in a mortgage by conditional sale does not involve relinquishment of the right of pre-emption upon the conditional sale eventually becoming absolute.

THE facts of this case are fully stated in the judgment of the Court.

The Hon. *T. Conlan* and Munshi *Ram Prasad*, for the appellants.

Mr. *C. Dillon* and Munshi *Sukh Ram*, for the respondent.

MAHMOOD, J.—All these appeals are connected together and have arisen out of the same set of facts and litigation.

In each of the villages Simra and Mahadewa three persons owned an eight pies share, and they executed three separate *bai-bil-wafa* mortgages in respect of their respective shares in both of the villages in favour of Sheodin Misr, on the 15th June, 1878.

The first mortgagor was Sital (now represented by Bodil, Ramcharit and Bhagmani), the second was Binda Prasad, and the third was Janki (now represented by Badri).

On the 22nd September, 1880, the mortgagee Sheodin took foreclosure proceedings under s. 8 of Regulation XVII of 1806 in respect of every one of the three mortgages, and the year of grace required by that Regulation having expired, a foreclosure proceeding was recorded on the 18th September, 1882, declaring the mortgages by conditional sale to have been foreclosed.

On the 20th August, 1885, the mortgagee Sheodin instituted three distinct suits for possession of the mortgaged properties, each

(1) 4 B. L. R., A. C., 219.
(2) S. D. A., N.-W. P., 1864, vol. p. 624.
(3) I. L. R., 6 All., 344.
(4) L. R., 5 I. A., 18.
(5) L. R., 11 I. A., 186.
(6) I. L. R., 8 All., 388.
(7) Weekly Notes, 1887, p. 234.

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suit relating to each of the three *bai-bil-wafa* mortgages above-mentioned respectively. The suits were, however, compromised on the 19th September, 1885, and the learned Judge of the lower appellate Court has found that "at the time of the compromise the amount of the debt due on the first bond (the original consideration of which was Rs. 782-4-0) had amounted to Rs. 1,051-8-0; similarly the debt due on the second bond (original consideration Rs. 595), amounted to Rs. 1,062, and that of the third bond (original consideration Rs. 461-7-0), amounted to the sum of Rs. 824-11-0. The compromise was to the effect that the vendee had accepted *in each case*. 8 pies in mauza Simra and 4 pies in Mahadewa in full payment, and had agreed to released 4 pies of Mahadewa *in each case*. Decree was given in terms of the compromise."

The transactions above-mentioned have resulted in this litigation, initiated by two sets of pre-emptors in respect of each of the three *bai-bil-wafa* mortgages above-mentioned.

The first set of pre-emptors are (1) Ajaib Nath, (2) Kunjbehari, (3) Brijmohan, who jointly instituted three separate suits in respect of each of the three alienations. These three suits were instituted on the 8th September, 1886, against the heirs of the conditional vendors and Sheodin, the vendee.

Similarly on the 2nd November, 1886, Mathura Prasad instituted three rival suits for enforcement of pre-emption in respect of the same alienation.

There were thus two rival pre-emptive suits in respect of each alienation, and the rival pre-emptors were alternately impleaded as defendants to each other's suits—a procedure which is in conformity with the principles upon which the rulings of this Court in *Kashi Nath* v. *Mukhta Prasad* (1) and *Hulasi* v. *Sheo Prasad* (2) proceed.

The Court of first instance in dealing with the contentions of the parties, held that the right of pre-emption as claimed could not accrue till foreclosure of the mortgage by conditional sale; that

(2) I. L. R., 6 All., 370. (1) I. L. R., 6 All., 455.

"the foreclosure proceedings were in a state of suspense" till the mortgagee Sheodin obtained a decree for foreclosure on the compromise of 19th September, 1885; that since under that compromise foreclosure took place in respect of 8 pies share in Simra and only 4 pies share in mauza Mahadewa to the exclusion of the remaining 4 pies share in the latter village which had been reserved by the compromise from foreclosure, such reserved 4 pies share was not subject to pre-emption. That Court therefore decreed the pre-emptive suit only in respect of 8 pies share in Simra and 4 pies share in Mahadewa, allotting three shares to the three plaintiffs, Ajaib Nath, &c., and one share to their rival pre-emptor Mathura Prasad—a procedure in conformity with the ruling of this Court in *Jai Ram* v. *Mahabir Rai* (1) where it was held that where there are rival suits for pre-emption the rights of the rival pre-emptors are to be taken as equal *per capita* with reference to the number of the pre-emptors and not with reference to the extent of their shares in the village.

As to the price payable by the pre-emptors, the first Court held that the full amounts due on the three mortgages at the time of the compromise of 19th September, 1885, furnished the proper standard of calculation.

In accordance with these findings the first Court decreed all the six suits, and, taking each couple of rival suits, framed decrees upon the principles explained by this Court in *Kashi Nath* v. *Mukhta Prasad* (2), enabling each set of rival pre-emptors to obtain a proportionate share of the pre-empted property, and in default of either set of pre-emptors, to pre-empt the whole property.

From the first Court's decrees no appeal appears to have been preferred to the lower appellate Court by the rival pre-emptor Mathura or by Sheodin, vendee, or by any of the vendors, and these parties must, therefore, be taken to have accepted the first Court's decree.

The pre-emptors Ajaib Nath, Kunjbehari and Brijmohan, however, appealed to the lower appellate Court, contending that the

(1) I. L. R., 7 All., 720. (2) I. L. R., 6 All., 370.

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first Court had wrongly excluded the 4 pies of Mahadewa which had been reserved from foreclosure under the compromise of 19th September, 1885, from their pre-emptive claim; that the rival pre-emptor Mathura had by acquiescence lost his right of pre-emption; that the price found by the first Court was excessive, since the vendee Sheodin was entitled only to such as was due on the three *bai-bil-wafa* mortgages at the expiry of the year of grace, and not to any sum as interest for the subsequent period. On the other hand, Mathura, the rival pre-emptor, who was impleaded as respondent in all the six appeals, filed objections under s. 561 of the Civil Procedure Code claiming a preferental right of pre-emption, and contending that the first Court should have allotted shares to the pre-emptors not *per capita*, but with reference to the extent of the shares of each pre-emptor in the village.

The lower appellate Court disallowed all these contentions with the exception of that relating to the 4 pies share of Mahadewa in respect of which the first Court had dismissed all the pre-emptive suits. The lower appellate Court held that "as the conditional vendors failed to redeem within the year of the grace, the sales on the expiration of that year became absolute. From that moment the vendee could have claimed to be put in possession of the whole of the property entered in the conditional deed. The pre-emptor was entitled to claim whatever the vendee could claim, and it was out of the power of the vendor and vendee to make any change in the conditions of the contract which could affect the rights of the pre-emptor."

For this opinion the learned Judge relied on a ruling of the Calcutta High Court in *Bhadu Mahomed* v. *Radha Churn Bolia* (1) and an old ruling of the Agra Sadr Court in *Sheodeen* v. *Sookit* (2) which go to show that when pre-emption has once accrued, no subsequent dissolution of the sale can affect the pre-emptor's right of pre-emption. Following these rulings, the learned Judge decreed the three appeals of Ajaib and others (Nos. 32, 33 and 34) as far as they related to the reserved 4 pies of Mahadewa, and accordingly

(1) 4 B. L. R., A. C., 219. (2) N.-W. P. S. D. A. Rep., 1864, Vol. I., p. 624.

modified the first Court's decrees in those three cases by declaring that Ajaib and others were entitled to get possession of three-fourths of 8 pies in Mahadewa and not of 4 pies only as decreed by the first Court.

The three appeals of Ajaib, &c., (Nos. 29, 30 and 31) which had arisen from the suits in which their rival pre-emptor Mathura was plaintiff, were dismissed by the learned Judge with the exception of a small modification as to costs.

In this Court three sets of appeals have been preferred, each set consisting of three appeals.

Appeals Nos. 1288, 1290 and 1291 have been preferred by Ajaib and others, &c., and relate to the decrees in the three pre-emptive suits in which their rival pre-emptor Mathura was plaintiff. The second set of appeals, namely, Nos. 1286, 1287, 1289, have also been presented by them and relate to the decrees in the suits in which their rival pre-emptor Mathura was a defendant and they themselves were plaintiffs.

The third set of appeals, Nos. 1342, 1343 and 1344, have been preferred by the vendors and are restricted to complaining of so much of the lower appellate Court's decree as allowed pre-emption in respect of the 4 pies share of Mahadewa which had been expressly reserved for them by the compromise of the 19th September, 1885.

Such then being the nature of the entire litigation which these nine connected appeals present to me, and having heard them all, I think it will be convenient to dispose of the six appeals of Ajaib and others together, as they have been preferred upon the same grounds of appeal and raise the same points for decision. They are further connected together because in all of them the rival pre-emptor Mathura, being respondent, has preferred objections under s. 561 of the Civil Procedure Code, contending that his right of pre-emption is preferential to that of Ajaib and others, and the suits of the latter should therefore have been dismissed by the lower Courts.

The first and the most important question in the case, however, has been raised by the three appeals of the vendors, namely, appeals

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Nos. 1342, 1343 and 1344. The question is whether the lower appellate Court was right in holding that under the circumstances of this case the right of pre-emption could be claimed by either set of rival pre-emptors in respect of the 4 pies share in Mahadewa which had been released from the foreclosure by the mortgagee Sheodin under the terms of the compromise of the 19th September, 1885.

Mr. *Jogindro Nath Chaudhri* who has appeared on behalf of the appellants-vendors has argued that the original *bai-bil-wafa* mortgages of the 15th June, 1878, having been executed whilst Regulation XVII of 1806 was in force, those mortgages could not be foreclosed without due performance of the preliminary steps required by s. 8 of that Regulation, and a decree of Court rendering such sale absolute, that the foreclosure proceedings were therefore ineffective till the compromise of 19th September, 1885, and the decree passed thereon, and that the compromise being thus conclusive and binding upon the mortgagors and the mortgagee, it also concludes the pre-emptors, and precludes them from claiming pre-emption in respect of the 4 pies share of Mahadewa which that compromise released from foreclosure and reserved for the mortgagors.

On the other hand, Mr. *Ram Prasad* who has ably argued these cases on behalf of his clients Ajaib and others, has contended that a foreclosure decree is not a condition precedent to rendering a *bai-bil-wafa* mortgage absolute under Regulation XVII of 1806, and that such conditional sales became absolute *ipso facto* by the mere lapse of the year of grace after proceedings have been taken under s. 8 of the Regulation. Upon this contention the learned pleader argues that the foreclosure proceedings taken by the mortgagee Sheodin by his applications of the 22nd September, 1880, and which terminated in the foreclosure *rubkari* of 18th September, 1882, were sufficient to make the sales absolute at the expiry of the year of grace, that at that time the right of pre-emption accrued to the pre-emptors in respect of the *whole* of the properties, and such right of pre-emption could not be defeated or restricted by any subsequent act of the mortgagor and mortgagee such as the compromise of 19th Septem-

ber, 1885, and that therefore the vendors-appellants are precluded from questioning the propriety of the foreclosure proceedings of 18th September, 1882.

I am of opinion that both these contentions go much too far in the direction at which they aim. In the case of *Tawakkul Rai* v. *Lachman Rai* (1) I stated my reasons and authorities for holding that on the expiration of the year of grace allowed by Regulation XVII of 1806, the ownership of the mortgaged property vests absolutely in the mortgagee, even though he might not have obtained a decree establishing or declaring his right, and that for purposes of pre-emption the date at which the conditional sale thus becomes absolute is the period of the accrual of pre-emption and cannot be effected by any foreclosure proceedings which may subsequent to such accrual be taken by the mortgagee. I still adhere to the same views, and while they, on the one hand, answer Mr. *Chaudhri's* contention as to the necessity of a foreclosure decree, they on the other hand, preclude Mr. *Ram Prasad's* contention that foreclosure proceedings such as the *rubkar* of 18th September, 1882, are conclusive or binding in any sense upon the vendors when the question is litigated whether or not a valid foreclosure has taken place. Such proceedings are of a purely ministerial character, and far from being conclusive are not even *primâ facie* evidence of foreclosure having been duly effected. This matter is settled by the ruling of the Privy Council in *Norender Narain Singh* v. *Dwarka Lall Mundur* (2). Again, their Lordships in *Madho Prasad* v. *Gajadhar* (3) have laid down that the provisions of s. 8 of Regulation XVII of 1806, are not merely *directory* but imperative as conditions precedent to the right of foreclosure itself. How strict an observance of those requirements is necessary has been well stated by my brother Straight in *Sitla Bakhsh* v. *Lalta Prasad* (4) in observations with which I so entirely concur that they leave nothing for me to add.

Now such being the law, no attempt has been made by Mr. *Ram Prasad's* clients, Ajaib and others pre-emptors, either to assert or

(1) I. L. R., 6 All., 344.
(2) L. R., 5 I. A., 18.
(3) L. R., 11 I. A., 186.
(4) I. L. R., 8 All., 388.

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prove that in the foreclosure proceedings which ended in the *rubkar* of 18th September, 1882, all the requirements of the Regulation were satisfied, so as to result in an actual foreclosure at the expiry of the year of grace. The Court of first instance disregarded those proceedings, holding them to be "in a state of suspense," which phrase I understand to mean that actual foreclosure had not taken place. I cannot help feeling that the learned Judge of the lower appellate Court in dissenting from the first Court's views upon this point had not present to his mind the exact and stringent requirements of the law of foreclosure under the Regulation, and that he took it for granted that because the foreclosure proceedings of the 18th September, 1882, had been recorded, therefore foreclosure necessarily took place and gave birth to the plaintiff's right of pre-emption in respect of the alienations. He assumes that the sale became absolute by the mere expiry of the year of grace.

Not only is this assumption unwarranted by the circumstances of the case, but the fact that notwithstanding the expiry of the year of grace the mortgagee, Sheodin, neither acquired possession nor sued for foreclosure till the 20th August, 1885, points to quite the opposite conclusion. It was on that day that he instituted his regular suits for possession against the vendors, and it was in that litigation that the compromise of the 19th September, 1885, was entered into declaring 8 pies of mauza Simra and 4 pies of Mahadewa to have passed to the mortgagee in full proprietorship, to the exclusion of the remaining 4 pies of Mahadewa which was released by the mortgagee and reserved by the mortgagors.

It has, indeed, been asserted in this litigation that these proceedings were all fraudulent and collusive with the object of defeating the plaintiffs' right of pre-emption. But no circumstances have been proved which would in law even amount to the *indicia* of fraud or collusion. The plaintiffs' right of pre-emption, if their theory of foreclosure proceedings of 1880 were correct, would have been asserted before, at least, the suit of the 20th August, 1885; but, far from such being the case, it is not shown that any such assertion of pre-emption was made till after the compromise of 19th

September, 1885. Indeed, even after that compromise the plaintiffs waited more than a year before claiming pre-emption.

I am, therefore, of opinion that till the compromise of 19th September, 1885, no foreclosure of the *bai-bil-wafa* mortgages is shown to have taken place, that the compromise is not shown to be other than a *bonâ fide* transaction, that the plaintiff's right of pre-emption must be referred to that date, that since by that compromise foreclosure took place only in respect of 8 pies of Simra and 4 pies of Mahadewa to the exclusion of the remaining 4 pies of the latter village, no right of pre-emption accrued to the plaintiffs in respect of such reserved 4 pies share of Mahadewa. And it follows that the lower appellate Court acted erroneously in interfering with the first Court's decree in this respect, also that the two rulings *Bhadu Mahomed* v. *Radha Charan Bolia* (1), *Sheodin* v. *Sookit* (2) on which the lower appellate Court has relied have no application to the facts of this case. In those cases the sales were absolute, the right of pre-emption had been asserted, and the question was whether subsequent dissolution of the sale could affect the pre-emptor's right. The result of these views will be that I shall decree the three appeals of the vendors-appellants, namely, appeals Nos. 1342, 1343, 1344.

These findings simplify the disposal of the grounds urged in the six appeals of Ajaib Nath, Kunjbehari and Brijmohan, who throughout this litigation have shown themselves unwilling to take a reasonable view of their right, of pre-emption. They have been endeavouring not only to prevent their rival pre-emptor Mathura from having his share of the pre-emptive right but also to oust the original proprietors from the 4 pies share in Mahadewa which even the mortgagee Sheodin saved from foreclosure by the compromise of 19th September, 1885.

The first ground urged in support of their appeals is that inasmuch as their rival pre-emptor Mathura (who is respondent in all the six appeals) was content with the first Court's decree and did not appeal in respect of the 4 pies share of Mahadewa, therefore the

(1) 4 B. L. R., A. C., p. 219. (2) S. D. A., N.-W. P. Rep., 1864, Vol. I, p. 624.

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entire 4 pies share should have been allotted to them in virtue of their right of pre-emption. After what I have said in respect of the appeals by the vendors in whose favour that 4 pies shares was reserved, it is wholly unnecessary for me to discuss the matter any further, beyond saying that since I have held that share to have been rightly excluded by the first Court from these pre-emptive claims, neither Ajaib and others nor Mathura can take any portion of that reserved share. For the same reasons it is unnecessary to discuss the question raised in the second ground common to all these six appeals, where it is contended that Mathura respondent having taken no exception to the amount of the sale consideration adjudicated upon by the first Court, is not entitled to the benefit of any reduction therein upon the appellants' case.

The third ground of appeal, which is also common to all the six appeals, is that the respondent Mathura "having acquiesced in the transfer of the shares sued for cannot pre-empt in respect of the same." This ground of appeal was, indeed, abandoned by Mr. *Ram Prasad*, but I will dispose of it by simply saying that the plea of acquiescence is based entirely upon the circumstance that Mathura was a witness to two out of the three *bai-bil-wafa* mortgages of the 15th June, 1878, and that the lower appellate Court was right in holding that acquiescence in a mortagage by conditional sale does not either imply or involve the foregoing of the right to pre-empt should the conditional sale *eventually* become absolute.

There remains only one more ground of appeal, which is limited to the three appeals (Nos. 1286, 1287, 1289) to which the vendee Sheodin is respondent, and it is against him that the plea aims. In that ground of appeal it is urged that the appellants were entitled to pre-empt the property "on payment of the amount due up to the date when the year of grace expired and could not be charged with any sum accruing since that date." This plea proceeds of course entirely upon the assumption (which I have already refuted), namely, that the *bai-bil-wafa* mortgages became absolute by reason of the foreclosure proceedings of 1880 and 1882, and by making the conditional sales absolute gave birth to the plaintiffs'

right of pre-emption. The plea also assumes that the compromise of the 19th September, 1885, is of no consequence as determining either the point of time when pre-emption accrued or the amount of price which must be taken to be the consideration in lieu of which the conditional sales became absolute. But I have already said enough to show that there is nothing to vitiate the compromise, and both the Courts below have concurred in finding that the allegations of fraud as to the amount of consideration were not substantiated. Mr. *Ram Prasad* has relied upon my ruling in *Tawakkul Rai* v. *Lachman Rai* (1) where I held that a person claiming a right of pre-emption in cases of mortgage by conditional sale was bound to pay the entire amount due on such mortgages at the time when they became absolute, and that they became absolute at the expiration of the year of grace required by Regulation XVII of 1806. The ruling does not help the appellant's case, because there the due foreclosure of the mortgage according to the requirements of the Regulation was an admitted fact, and therefore naturally the period of the expiry of the year of grace and the amount due on the mortgage regulated both the foreclosure and the accrual of pre-emption, and indeed would also have regulated the amount of price payable by the pre-emptor, had it not been that the pre-emptors sued not upon the ground of that foreclosure but upon the ground of a subsequent transfer (*vide* p. 350 of the report). So far as the question of the amount of consideration is concerned, perhaps the case most similar to the present is that of *Jagat Singh* v. *Ram Bakhsh* (2) where pre-emption was claimed in respect of a mortgage by conditional sale, foreclosure proceedings had been taken, a suit for possession had been instituted by the mortgagee and had ended in a compromise whereby half the property was released by the mortgagee, and the other half was foreclosed, for a price mentioned in the compromise, and the pre-emptive suit related to such latter half. In that case I held, as I have held here, that the price payable by the pre-emptor was the amount mentioned in the compromise.

(1) I. L. R., 6 All., 344. (2) Weekly Notes, 1887, p. 233.

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For these reasons all the six appeals of Ajaib and others must stand dismissed. In every one of them Mathura the rival pre-emptor has filed objections under s. 561 of the Civil Procedure Code, claiming a preferential right of pre-emption. The objections were expressly abandoned by his learned counsel Mr. *Dillon*, and I need only say that even if they had been pressed they could not have succeeded, because they raise a question of fact, which has been decided against him by the Courts below, the lower appellate Court having clearly found that there was no evidence in support of the pretention of a right of pre-emption superior to that of Ajaib and others. The objections will therefore be dismissed.

This second appeal (No. 1288) is dismissed with costs, and also the objections which Mathura respondent has filed under s. 561 of the Code of Civil Procedure.

Appeals dismissed.

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February 14.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight and Mr. Justice Brodhurst.

HUSAINI BEGAM (PLAINTIFF), *v.* THE COLLECTOR OF MUZAFFARNAGAR AND OTHERS (DEFENDANTS).

Practice—Appeal—Difference of opinion on Division Bench regarding preliminary objection as to limitation—Act XV of 1877 *(Limitation Act), s.* 5*—Letters Patent, N.-W. P. s.* 27*—Civil Procedure Code, ss.* 575, 647*—Review of judgment—Civil Procedure Code, s.* 623*—Court-fee—Act VII of* 1870 *(Court-fees Act), sch. i, No.* 5*—Fee payable on application to review appellate decree under Letters Patent, s.* 10.

S. 27 of the Letters Patent for the High Court of the N.-W. Provinces has been superseded in those cases only to which s. 575 of the Civil Procedure Code properly and without straining language applies. There are many cases to which s. 575, even with the aid of s. 647, does not apply; and to these s. 27 of the Letters Patent is still applicable.

One of the cases to which s. 575 of the Code does not apply is where a preliminary objection being taken to the hearing of a first appeal before the High Court on the ground that the appeal is time-barred, the Judges of the Division Bench differ in opinion as to whether the appellant has shown sufficient cause, within the meaning of s. 5 of the Limitation Act (XV of 1877) for not presenting the appeal within the prescribed period. The decision of such a preliminary objection is not a "hearing" of the appeal, but precedes the hearing, or determines that there is no appeal which the Court can hear or decide. Where such a preliminary objection is allowed, it cannot