

is that in March 1878 an account was drawn up, and upon that account it appeared that Raj Kristo was liable to account, and had not accounted, for certain sums, which very nearly covered the amount of the deposit; and that in accordance with the terms of the security contract he was entitled to deduct, and had deducted, these sums from the amount of the deposit.

1885
 UFENDRA
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 OF RAJ-
 SHAHYE.

Upon this allegation we think that the cause of action arose in March 1878, when the account was prepared. And we think that the period of limitation applicable to the case is certainly not less than six years, according to the provisions of Art. 120, Sch. II of the Limitation Act. It may be—and authority is not wanting for this view—that the amount was a deposit, which comes under Art. 145, and that the plaintiff had thirty years from the date of the deposit. But we think it unnecessary in this case to decide this question in the affirmative, because we are satisfied that no specific rule is applicable which would reduce the period of limitation to less than six years as provided for by Art. 120.

Under the circumstances we are of opinion that the Court below was wrong in dismissing the suit against the Collector on the ground of limitation. We set aside the order of dismissal, and remand the case for trial on the merits.

Costs to abide result.

O'KINEALY, J.—I also am of opinion that the suit is not barred.

Appeal allowed and case remanded.

Before Mr. Justice Field and Mr. Justice O'Kinealy.

HEM CHUNDR A CHOWDHARI (ONE OF THE DEFENDANTS) v. OHAND
 AKUND (PLAINTIFF).*

1885
 June 18.

*Right of Occupancy—Bengal Act VIII of 1869, s. 6—Suit to recover land—
 Non-payment of rent.*

Where a ryot had been in possession of land, but had been dispossessed, and for some years previous to suit had failed to pay rent, held that at the time of the institution of a suit for recovery of possession, he had no subsisting title, and consequently his suit must fail.

* Appeal from Appellate Decree No. 1269 of 1884, against the decree of Baboo Parbati Kumar Mitter, First Subordinate Judge of Mymensingh, dated the 3rd of May 1884, reversing the decree of Baboo Krishnadhun Chowdhuri, Rai Bahadur, Munsiff of Jamalpur, dated the 30th of April 1883.

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THIS was a suit to recover possession of land. The plaintiff had a right of occupancy in the land in question, till some time in the year 1284 (1877-78), when he appears to have been sent to jail for some reason, and he alleges that, while he was in jail, his family were driven away by the defendants who took possession themselves, since which time it appeared that he had not paid rent. Defendants, *inter alia*, pleaded that the suit was barred by limitation, inasmuch as it had not been brought within one year from the date of dispossession. On this point the Munsiff found in favour of plaintiff, and on the merits gave him a decree for a portion only of his claim, dismissing the suit as to the rest with costs.

On appeal the Subordinate Judge found that plaintiff had been in possession of all the land in question for more than twelve years previous to dispossession, and the defendants had only been in possession for five years, and decreed plaintiff's suit with costs. Defendants appealed to the High Court, on the grounds that the suit was barred by one year's limitation, and that by ceasing to pay rent for some years he had lost his right to be restored to possession.

Baboo *Jogesh Chundra Rai* for the appellant.

Baboo *Mokund Nath Rai* for the respondent.

The judgment of the Court (FIELD and O'KINEALY, JJ.) was, delivered by

FIELD, J.—The facts of this case are stated in the judgment of the Court below. This must be treated as a suit to recover possession of land on proof of title, otherwise it would be barred by the law of one year's limitation. In order to succeed, the plaintiff must prove his title. It has been found as a fact that, when he was sent to jail, he had a right of occupancy, but it has also been found as a fact that he has neglected or omitted to pay his rent for five or six years. Section 6 of Beng. Act VIII of 1869 provides as follows: "Every ryot who shall have cultivated or held land for a period of twelve years, shall have a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same." Inasmuch as the plaintiff has omitted

to pay rent for five years, it is impossible to say that he had on the day he instituted this suit a title therein subsisting, that is, a right of occupancy then existing in himself. Under the circumstances we set aside the decree of the lower Court and restore the decree of the first Court with costs in this Court and the lower Appellate Court.

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Appeal allowed.

PRIVY COUNCIL.

TULSHI PERSHAD SINGH AND OTHERS (DEFENDANTS) v. RAM-
NARAIN SINGH (PLAINTIFF).^o

P. C. *
1885
March 13,
17 18.
June 18

[On appeal from the High Court at Fort William in Bengal.]

Pottah, Construction of—Meaning of the words “istemrari mokurari,” in connection with grant of lands—Intention of Parties.

The words “istemrari mokurari” in a pottah granting land do not, of themselves, denote that the estate granted is an estate of inheritance. Not that such an estate cannot be so granted unless, in addition to the above words, such expressions as “ba farzandan,” or “naslan bad naslan,” or similar terms are used. Without the latter, the other terms of the instrument, the circumstances under which it has been made, or the conduct of the parties, may show the intention with sufficient certainty to enable the Courts to pronounce the grant to be perpetual; the above words not being inconsistent therewith, though not themselves imparting it.

Held, accordingly that where the words “mokurari istomrari” were used in connection with a grant in a pottah, [as it was also held in another case where the instrument was termed “mokurari ijara pottah” (1),] that the question was whether the intention of the parties that the grant should be perpetual had, or had not, been shown with sufficient certainty in any other way, *e.g.*, by the other terms, by the objects, or circumstances, of the grant, or by the acts of the parties. And held that in the present case the intention was not so shown.

APPEAL from a decree (31st July 1882) of the High Court, affirming a decree (4th January 1881) of the Subordinate Judge of Bhagalpur.

The question involved in this appeal was, whether an *istemrari mokurari* pottah, granted by Raja Nirbhai Singh, grandfather of

^o *Present*: LORD BLACKBURN, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

(1) I. L. R., 8 Calc., 664; L. B., 9 Ind. Ap., 33.