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not having been paid on or before the day fixed, had become a decree in favor of the defendant. The contention on behalf of the respondent even went so far as to suggest that an appeal by a defendant in pre-emption had of itself the effect of extending the time fixed by the first Court for payment of the pre-emptive price. No doubt the defendant in pre-emption is entitled, within limitation and before the decree in pre-emption has become a decree in his favour dismissing the suit with costs, to appeal. But when his appeal would come on for hearing we fail to see what relief he could be entitled to, if the pre-emptive price had not been paid within the time fixed by the first Court, as in that event the only operative decree subsisting at the time of the hearing of the appeal would be a decree entirely in favor of the appellant.

Now on principle we hold that the full pre-emptive price not having been paid on or before the 1st of June 1892, the decree became operative as a decree dismissing the plaintiff's suit with costs, and the Court of first instance had no jurisdiction to pass an order allowing the plaintiff to pay the balance of the pre-emptive price into Court and to execute a decree which could only be executed against the plaintiff by the defendant. We allow this appeal with costs and set aside the order in execution with costs.

*Appeal decreed.*

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*February* 13.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkitt.*

SHEORATAN KUNWARI (PLAINTIFF) *v.* RAM PARGASH AND OTHERS (DEFENDANTS.)*

*Act No. XX of* 1863 (*Religious Endowments Act*) *section* 14—*Bengal Regulation No. XIX of* 1810—*Civil Procedure Code, section* 539—*Trust—Suit to remove trustees of Hindu religious endowments—Jurisdiction—Hindu law—Right of representative of founder of trust to nominate trustee.*

The Maharaja of B. in 1862 assigned certain lands situated in Bengal for the maintenance of a temple at Chauria in the Gorakhpur district, and appointed certain trustees of the endowment. Those trustees dealt with the property in a manner inconsistent with the trust by making alienations thereof as if it were their own private property. In 1893, the representative in title of the original settlor sued in the Court of the District Judge of Gorakhpur to have certain alienations made

* First Appeal No. 322 of 1893 from a decree of T. Benson, Esqr., District Judge of Gorakhpur, dated the 6th October 1893.

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by the said trustees set aside and the property restored to its original uses, and for the appointment of a new trustee or new trustees in place of the trustees defendants to the suit.

*Held* that such a suit was rightly brought under section 14 of Act No. XX of 1863, and that it was not essential for the application of that Act that the endowment should ever have been taken under the control of the Board of Revenue. *Ganes Sing* v. *Ramgopal Sing* (1) and *Dhurrum Singh* v. *Kissen Singh* (2) approved. *Raghubar Dial* v. *Kesho Ramanuj Das* (3), *quoad hoc*, overruled.

*Held* also that section 539 of the Code of Civil Procedure was not applicable to the above suit. *Lakshmandas Parash Ram* v. *Ganpatrat Krishna* (4) and *Jawahra* v. *Akbar Husain* (5) referred to.

*Held* also that there being no special provision in the endowment for the appointment of trustees the right of nomination remained vested in the founder of the endowment and that the right to nominate continued to his heirs. *Gossamee Sree Greedharreejee* v. *Rumanlolljee Gossamee* (6) referred to.

This was a suit brought by the Rája of Bettiah under following circumstances. The plaintiff alleged that certain land in the village of Barwa in the district of Champaran, which was ancestral property of the plaintiff, had been placed under the management of the ancestor of some of the defendants that he might apply the profits thereof to the keeping up of the Thakur temple of Chauria in the district of Gorakhpur; that subsequently the defendants ceased to apply the profits of the land to the purposes of the temple, and by an award of the 19th of September 1886 had divided the land amongst them and had alienated some of it and generally dealt with it is if it were their own private property. The plaintiff accordingly prayed that the award above referred to and certain alienations made by the defendants might be set aside; that the defendants might be ejected, and the lands the subject of the trust made over to the plaintiff for the appointment of a new trustee.

The suit was defended not by the persons alleged to be the trustees whose ejectment was sought by the plaintiff, but by one Sheobaran Rai, who had profited most by the alienations made by the trustee defendants. Sheobaran Rai pleaded a title adverse to

(1) 5 B. L. R., App. 55.
(2) I. L. R., 7 Calc. 607.
(3) I. L. R., 4 All. 18.
(4) I. L. R., 8 Bom. 365.
(5) I. L. R., 7 All. 178.
(6) L. R., 16 I. A. 137; s. c. I. L. R., 17 Calc. 3.

that of the plaintiff and denied that the lands were ever the plaintiff's ancestral property. He also pleaded that under Act XX of 1863, the Court of the District Judge of Gorakhpur had no jurisdiction to try the case.

The Court of first instance found that the endowment in question did come within the provisions of Act No. XX of 1863; but that under that Act the Court had only a very limited jurisdiction to grant relief to the plaintiff. Practically the Court held that it could only grant relief against the trustees by setting aside certain alienations made by them, which it did and dismissed the rest of the plaintiff's claim.

From this decree the plaintiff appealed to the High Court.

Pandit *Sundar Lal*, for the appellant.

Munshi *Gobind Prasad*, for the respondents.

EDGE, C.J.—This was a suit brought by the plaintiff under section 14 of Act No. XX of 1863, in the Court of the District Judge of Gorakhpur. The object of the suit was to remove certain persons from the office of trustees of a temple, to have certain assignments and incumbrances created by the trustees for the time being and affecting lands the subject of the endowment of the temple set aside and declared invalid as against the temple and the trusts, and to obtain the appointment of a new trustee or trustees. There was also a prayer to have an award declared as inoperative and not binding on the trust property. The plaintiff is the successor in title of the Maharaja of Bettia who had endowed the temple at Chauria within the Gorakhpur district with certain lands, which were situated beyond the ordinary jurisdiction of the District Court of Gorakhpur and are in fact in lower Bengal.

The allegations upon which the suit was brought were, if substantiated, allegations of misfeasance. The persons acting as trustees for the time being had dealt with the endowed property as if it were their own private property unaffected by any trust: they had dealt with it regardless of the trusts which affected the lands the subject of the endowment. The Maharaja who created the endowment had, prior to the creation of the endowment, supported the

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temple at Chauria, and the assignment of the lands for the purposes of the endowment was made as a more convenient method of providing an endowment for the shrine. What was done by the persons for the time being holding the lands in trust for the shrine is fully stated in the judgment of the District Judge. I find as a fact that the assignments, incumbrances, leases and award were the result of breaches of trust on the part of the persons for the time being bound to administer the endowment for the purposes of the temple.

The suit was not defended by those who were charged as trustees. It was defended by Sheo Baran Rai, who was the person who had principally benefitted by the breaches of trust complained of. The District Judge granted to some extent some of the reliefs prayed for, but refused the other reliefs, being apparently of opinion that the granting of those reliefs was in this case beyond his jurisdiction.

It was contended on behalf of the respondents that the District Judge had no jurisdiction at all in the matter. That contention was based on the argument that Act No. XX of 1863 did not apply, as it was not shown that the endowment in question was one to which the Board of Revenue had appointed a trustee, and that the nomination of a trustee was not shown to have been vested in the Board of Revenue under Regulation No. XIX of 1810. The jurisdiction of the District Judge was also questioned on another ground, *viz.*, that the shrine in which the Thakurji was had disappeared and the image had been removed to private premises.

As to the latter point, to take it first, I find that, although the temple has disappeared, possibly owing to the breaches of trust of those whose duty it was to administer the endowment for the benefit of the Thakurji, yet as a fact the Thakurji still exists and is worshipped, and I hold that the mere fact that the walls of the original building in which the shrine was have disappeared does not take the case out of the provisions of Act No. XX of 1863. In these cases of endowment it is not the walls which are endowed; it is the

Thakurji. I am speaking of course of the case of Hindu endowments.

In the course of the argument we were referred to a number of decisions. Some of them I shall deal with in my judgment. The others, as to which I do not consider it necessary to express an opinion are the following :—*Ashgar Ali* v. *Delroos Banoo Begum* (1); *Rajendro Nath Dutt* v. *Shaikh Mahomed Lal* (2) ; *Protap Chandra Misser* v. *Brojo Nath Misser* (3) and *Muthu* v *Gangathara* (4).

It appears to me that section 14 of Act No. XX of 1863 is not confined to those endowments the nomination to which has been exercised by or had vested in the Board of Revenue under Regulation No. XIX of 1810. In my opinion the decision of Norman, J., in *Ganes Sing* v. *Ramgopal Sing* (5), that in order to bring a suit under Act No. XX of 1863, it is not necessary show that the temple was one which was formerly under the control of the Board of Revenue, is correct. That question was further considered by Mitter and Maclean, JJ., in *Dhurrum Singh* v. *Kissen Singh* (6) and, so far as that decision affects the application of section 14 of Act No. XX of 1863, I agree with it. It is true that in the case of *Raghubar Dial* v. *Kesho Ramanuj Das* (7) I expressed a different opinion as to the application of section 14 of Act No. XX of 1863. In that case, although it was not necessary to consider the point, I expressed an opinion that Act No. XX of 1863 could not apply to any endowed temple which had come into existence after the passing of that Act. The two cases to which I have just referred have satisfied me that in that view I was wrong. In my opinion section 14 of Act No. XX of 1863, does apply in this case, and that whether or not the Board of Revenue had under Regulation No. XIX of of 1810 exercised or had vested in it the right to nominate to the trusteeship or the managership of the temple. Consequently, the Court of the District Judge of Gorakhpur, which was the principal Court of original civil jurisdiction within the

(1) 15 B. L. R., 167 ; s. c. I. L. R., 3 Calc. 324.
(2) I. L. R., 8 Calc. 42.
(3) I. L. R., 19 Calc. 275.
(4) I. L. R., 17 Mad. 95.
(5) 5 B. L. R., App. 55.
(6) I. L. R., 7 Calc. 767.
(7) I. L. R., 11 All. at p. 26.

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limits of which the temple was situated within the meaning of section 2 of Act No. XX of 1863, had jurisdiction to do all the acts which a Civil Court is empowered to do under section 14 of that Act in this case, and further in my opinion, as ancillary to that jurisdiction, had jurisdiction to make such declarations and pass such orders as might be necessary for the effective application of section 14 of Act No. XX of 1863, although the lands, the subject of the endowment, were situated beyond the territorial limits of the ordinary jurisdiction of the Court of Gorakhpur.

It was suggested that section 539 of the Code of Civil Procedure applied in this case. In my opinion it did not. I think that point is answered by the decision in *Lakshman Das Parash Ram* v. *Ganpatsav Krishna* (1) and by what was said in *Jawahra* v. *Akbar Husain* (2). To the same effect is an unreported decision of this Court. Taking the view of the facts which I do, which is also held by my brother Burkitt, I am of opinion that the District Judge had, and we in appeal have, ample jurisdiction to set aside these assignments, leases and incumbrances affecting the property the subject of the endowment, and also to declare that the award does not affect in law the endowed property.

It is well accepted law that when a Hindu creates an endowment of a temple or a shrine, or more strictly speaking of a Thakurji, and does not provide by the endowment for the nomination of a trustee or trustees being made by any person other than himself or his heirs, or being made by election amongst the disciples of the Thakurji, the nomination remains vested in the founder of the endowment and the right to nominate continues to his heirs. That was the principle accepted by their Lordships of the Privy Council in *Gossamee Sree Greedharreejee* v. *Rumanlolljee Gossamee* (3).

We direct the removal of the defendants who are the existing trustees or managers of the temple; and acting on the petition of the plaintiff, who has nominated Rameshwar Misr, we appoint

(1) I. L. R., 8 Bom. 365. (2) I. L. R., 7 All. 178.
(3) L. R., 16 I. A. 137; s. c., I. L. R., 17 Calc. 3.

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him to be trustee of the endowed property for the purpose of carrying out the intention of the founder. We declare that the award, the leases, the assignments and the incumbrances referred to in the plaint do not affect the endowed property or any part of it, and are not and will not be binding on the trustee for the time being appointed. We give the plaintiff a decree for possession in order that Rameshwar Misr, who is not a party to this suit, may be placed in possession of the endowed property as trustee. The claim for *mesne* profits is abandoned. To the above extent we vary the decree below and decree this appeal with costs in this Court and in the Court below.

BURKITT, J.—I concur in the interpretation put by the learned Chief Justice on Act No. XX of 1863, and in the order proposed and in the reasons given therefor.

*Appeal decreed.*

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*Before Mr. Justice Knox and Mr. Justice Blair.*

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*December* 10.

NARAIN DAS (APPELLANT) *v.* HAZARI LAL AND ANOTHER (RESPONDENTS).*

*Civil Procedure Code, sections* 328, 331—*Execution of decree—Resistance or obstruction to execution—Complaint—Limitation—Renewal of resistance or obstruction—Fresh cause of action—Estoppel.*

The period of limitation provided for in section 328 of the Code of Civil Procedure is a limitation which governs a cause of action arising out of a particular resistance or obstruction. So far as that resistance or obstruction is concerned, the decree-holder, if he wishes to take proceedings under section 328, must do so within one month from the time of such resistance or obstruction. But the bar created by the limitation imposed by this section does not extend to and hold good so as to bar complaints against acts of resistance or obstruction made upon fresh proceedings taken by the decree-holder. *Ramasekara* v. *Dharmaraya* (1) followed. *Balvant Santaram* v. *Babaji* (2) and *Vinayak Rav Amrit* v. *Devrao Govind* (3) distinguished.

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

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* First Appeal No. 76 of 1895 from an order of J. J. McLean, Esq., District Judge of Cawnpore, dated the 22nd June 1895.

(1) I. L. R., 5 Mad., 113. (2) I. L. R., 8 Bom., 602.
(3) I. L. R., 11 Bom., 473.