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The lower Court has held that the claim in respect of that item is governed by article 120. The contention before us is that, when the amount of the mortgage debt was realised by the widow of Mansab Ali, it became money received by her to the use of the plaintiff, and therefore the claim in respect of such money was governed by article 62 of the second schedule to Act No. XV of 1877. In support of his contention Mr. *Ghulam Mujtaba* cited the case of *Kundun Lal v. Bansidhar* (1). That case is entirely in favour of his contention, and we should have followed it had it not been for the ruling of the Privy Council in the case of *Mahomed Riasat Ali v. Hasin Baru* above referred to. In that case the plaintiff, as the widow of the deceased owner, claimed among other properties certain cash and deposit money received and appropriated by her husband's brother, but their Lordships held that for a suit of this description there was no article in the schedule which was clearly applicable, and therefore article 120 governed the case. We are unable to distinguish that case from the present, and, following the ruling in that case, we disallow the objection under section 561. We allow the appeal to the extent indicated above, that is to say, we decree the claim in respect of the shops No. 4, 7, and 8 in list B attached to the plaint. *Quoad ultra* the appeal is dismissed. The parties will pay and receive costs in proportion to their failure and success.

Decree modified.

Before Mr. Justice Burditt.

RAM SARAN SINGH AND OTHERS (DEPENDANTS) v. BIRJU SINGH
(PLAINTIFF).*

*Zamindar—Rights of zamindar in respect of waste lands—Wajib-ul-arz—
Provisions of wajib-ul-arz as to rights of pasturage.*

Held that a general provision contained in a *wajib-ul-arz* that village cattle might graze on the waste lands of the village could not be construed, in the absence of any definite covenant to that effect, as depriving the zamindar of his right to reclaim such waste lands.

* Second Appeal, No. 538 of 1895, from a decree of Rai Sanwal Singh, Subordinate Judge of Azamgarh, dated the 7th March 1896, modifying a decree of Babu Chajju Mal, Munsif of Azamgarh, dated the 10th September 1894.

(1) I. L. R., 3 All., 170.

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THE plaintiff in this case held a lease, dated the 19th of September 1893, from the Raja of Jaunpur of a certain plot of waste land, appertaining to a village. On his attempting to bring under cultivation the land so leased, he was resisted by certain of the villagers, defendants to the suit, who alleged that they had a right of pasturage over the land, that the image of the tutelary deity of the village was placed thereon, and that the Holi fire also used to be burned upon it. The plaintiff sued for possession of the land leased to him, for the removal of the image of the village deity, and for damages.

The Court of first instance (Munsif of Azamgarh) found that, under the *wajib-ul-arz* of the village, the defendants had a right to graze their cattle on the waste land in suit, and accordingly dismissed the plaintiff's suit on that ground. The plaintiff appealed.

The lower appellate Court (Subordinate Judge of Azamgarh) found that, according to the *wajib-ul-arz*, it was provided that the residents of that village would continue to graze their cattle on uncultivated land; but held that this only gave them that right so long as the land remained waste land and did not preclude the zamindar from reclaiming the waste lands belonging to the village. It found also that the image of the village deity had only been recently placed upon the particular plot in question, and that the Holi fire had been burned thereon simply for the purposes of that suit. The Court accordingly decreed the claim of the plaintiff for an injunction restraining the defendants from interference with the plaintiff's rights in respect of the land in suit. The defendants appealed to the High Court.

Mr. G. E. Foy, for the appellants.

Pandit Sundar Lal, for the respondent.

BURKITT, J.—This is defendants' appeal. The facts briefly appear to be that the Raja of Jaunpur, who is zamindar of the lands which form the subject matter of this appeal, recently gave a lease of them to the plaintiff. The plaintiff proceeded to reclaim those lands and bring them into cultivation, when he was obstructed

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by some of the residents, tenants and others, in the village, who claim a right of pasture over the said lands. The first Court dismissed the claim, the second gave plaintiff a decree for possession, but without damages. In appeal it is urged that, under the terms of the *wajib-ul-arz*, the defendants had acquired a permanent and perpetual title to pasture their cattle on the lands in dispute. The lower appellate Court has come to the conclusion that the *wajib-ul-arz* did not grant any such right. The words in the *wajib-ul-arz* go no further than to provide that the village cattle may graze on waste land in the same manner as they were in the habit of grazing at the time of the preparation of the *wajib-ul-arz*. But that document contains no undertaking or covenant by the zamindar owner of the village not to reclaim or bring under cultivation any land which then was waste land. That, however, is what the defendants appellants ask by this appeal. They practically say that the owner of the village has no power to bring under cultivation any land which was waste land when the *wajib-ul-arz* was prepared. I can find no support for that contention in the *wajib-ul-arz*. It does no more than give effect to the almost universal custom of these Provinces, which permits village cattle to graze on waste land; but to go further, and to hold that that permission takes away from the zamindar the power to reclaim waste land is a serious inroad on the proprietary rights of the zamindar for which I know of no authority. I dismiss this appeal with costs.

Appeal dismissed.

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Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

AMOLAK RAM AND ANOTHER (JUDGMENT-DEBTORS) v. LACHMI NARAIN
AND OTHERS (DECREE-HOLDEES).*

Act No. IV of 1882 (Transfer of Property Act) sections 86, 88, 89—Execution of decree—Decree for sale on a mortgage—Interest after date fixed for payment—Civil Procedure Code, sections 209, 222.

In a suit upon a mortgage for the sale of the property mortgaged, the Court has no power to allow in the account under section 86 of the Transfer of Property

* First Appeal, No. 84 of 1895 from an order of Babu Bepin Bahari Mukerji, Officiating Subordinate Judge of Aligarh, dated the 2nd May 1895.