

not only that a cause of action should arise in favour of the pre-emptor at the time of the sale on which the suit is based, but that such cause of action should subsist at the time when the suit is brought." The other case is the converse of the case just mentioned. Its head note runs as follows:—"Where a plaintiff who had filed a suit for pre-emption based on the provisions of a *wajib-ul-arz* lost during the pendency of the suit the right to pre-empt by reason of the mahal in which both properties were originally comprised having become the subject of a perfect partition, it was held that the suit for pre-emption should be dismissed." It seems to us that the principle of these rulings is perfectly sound and has a direct bearing on the present case. We think it immaterial that the defendants should have had no share in the mahal at the date when the mortgage was executed. Beyond doubt, by the dismissal of the previous suit they had acquired a good right in the mahal on the date of the institution of the present suit. It appears to us that the lower appellate Court was wrong and the Court of first instance was right. We decree this appeal, and, setting aside the order of the Court below, restore the decree of the Court of first instance with costs in all the Courts.

Appeal decreed.

Before Mr. Justice Blair and Mr. Justice Banerji.

WAZIRAN AND ANOTHER (DEFENDANTS) v. BABU LAL (PLAINTIFF).
 Act No XV of 1877 (*Indian Limitation Act*), schedule II, article 120—*Limitation—Injunction—Suit for injunction to restrain interference with plaintiff's rights under a covenant in a lease given by him.*

The plaintiff lessor sued for an injunction restraining the defendants lessees from interfering with the plaintiff's right, reserved by the lease, to enter upon the land demised and cut and take away certain trees.

Held that such a suit was governed as to limitation by article 120 of the second schedule to the *Indian Limitation Act, 1877. Kanakasabai v. Muttu* (1) followed.

THE facts of this case are as follows:—

The predecessor in title of the plaintiff leased a certain plot of land to the predecessor in title of the defendant, the lease

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* First Appeal No. 18 of 1903, from an order of Maulvi Maula Bakhsh, Additional Subordinate Judge of Aligarh, dated the 14th January 1903.

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being a perpetual one. On the plot a few trees grew, in respect of which the lease provided that the lessor would remain owner thereof and might, when he chose, enter upon the land and cut them down, provided that if the lessee so desired, he might pay the value of the trees to the lessor, which value would be appraised by two persons, and then keep the trees. Nine and a half years ago the plaintiff desired to cut down the trees or be paid their value by the lessee; but the lessee resisted the lessor's attempt to cut down the trees and refused to pay their value. On a subsequent occasion also, stated by the plaintiff to be the 15th of March, 1902, the lessees denied the plaintiff's right to cut down the trees in question. The plaintiff accordingly, on the 10th of April 1903, filed a suit against the lessees in which he asked for an injunction against the lessees defendants restraining them from obstructing him in cutting down the trees. The Court of first instance (Munsif of Koil) dismissed the suit as barred by limitation either under article 113 or under article 120 of the second schedule to the Limitation Act. On appeal by the plaintiff the Additional Subordinate Judge of Aligarh held that either article 142 or article 144 applied and that the suit was not time-barred. He therefore allowed the appeal and remanded the case to the Court of first instance under section 562 of the Code of Civil Procedure. Against this order of remand the defendants appealed to the High Court.

Babu *Parbati Charan Chatterji*, for the appellants.

Mr. *M. L. Agarwala*, for the respondent.

BLAIR and BANERJI, JJ.—In this case the plaintiff came into Court alleging that the defendants, who were lessees, had refused to allow him to exercise a right reserved in the lease under which the defendants were in possession of the plaintiff's land. The right reserved to the plaintiff was a right to enter upon the land at his discretion to cut and take away trees, and it was a right of which the defendants could have deprived him by paying instead compensation for the value of the trees. The plaintiff sued for an injunction to restrain the defendants from hindering him from exercising the right. The plaintiff came into Court alleging the refusal on the part of the

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defendants to have taken place in March 1902. It was found, however, that the defendants had refused to allow him to exercise his right and denied that he had any such right in 1893. The suit was brought on the 10th of April 1903. It is therefore eleven years since the right of the plaintiff was denied by the defendants. The Court of first instance applied article 113 of the second schedule to the Limitation Act to the case and dismissed the suit. The Court of first appeal reversed the decision of the Court of first instance and held that article 142 or 144 would apply. We have to consider each of the articles with reference to the relief claimed by the plaintiff. In his plaint we find the relief asked for to be an injunction against the defendants restraining them from interfering with his right. For such invasion of right there is no article in the second schedule of the Limitation Act. Therefore the article which we hold to apply is article 120, which gives the plaintiff a period of six years from the time the right to sue accrues. For this proposition we have the support of the Madras Court in the case of *Kanakasabai v. Muttu* (1). We therefore decree the appeal, set aside the order of the Court below, and restore the decree of the Court of first instance dismissing the plaintiff's case, with costs in all Courts.

Appeal decreed.

PRIVY COUNCIL.

P. C.
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April 22, 26.
May 14.

BALRAJ KUNWAR AND ANOTHER (DEFENDANTS) v. JAGATPAL SINGH
(PLAINTIFF).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Act No. I of 1869 (Oudh Estates Act), sections 13, 14, 15 and 22—Transfer to person not in line of succession—Effect of transfer in changing rules of succession—Brother—Half-brother—Marginal notes to sections of Act—Person acquiring taluqa by bequest taking effect before passing of Act No. I of 1869—"Legates" definition of.

The expression "would have succeeded" in section 14 of the Oudh Estates Act (I of 1869) must be confined to persons in the special line of succession that would have been applicable to the particular case if the transferor or testator had died intestate and the death had occurred at the date of the

Present :—Lord MACNAGHTEN, Lord LINDLEY and Sir ARTHUR WILSON.

(1) (1890) I. L. R., 13 Mad., 445.