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matter of discretion it would have been better not to have sanctioned any prosecution.

The statement made by the applicant was made for the sole purpose of getting the transfer of his case.

However, the matter of discretion is not the question before me. The important question before me is whether or not the statement made by the applicant who was at the time an accused person ought to be made the subject-matter of a prosecution under section 193. In my opinion the principle has already been decided by this Court in *In the matter of the petition of Barkat* (1). In that case an affidavit had been made by the petitioner grounding an application in revision to get rid of a conviction standing against him. Mr. Justice Blair there decided that inasmuch as he was an accused person, he could not be prosecuted in respect of false statements contained in the affidavit. The only distinction between that case and the present case is the practice which I have referred to.

I am unable to see that this makes any difference in principle. I accordingly set aside the order of the Sessions Judge, and also the order of the District Magistrate, ordering the prosecution of the applicant, and all proceedings subsequent. The bail bond will be vacated.

APPELLATE CIVIL.

1906
January 9.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

MUHAMMAD AKBAR HUSAIN KHAN (PLAINTIFF) *v.* IZZAT-UN-NISSA AND OTHERS (DEFENDANTS).*

Act No. XIV of 1859 *(Limitation Act), sections* 1(15) *and XVIII—Mortgage —Suit for redemption—Limitation.*

The plaintiff instituted, on the 7th of June, 1899, a suit for redemption of an alleged usufructuary mortgage executed on the 14th of August, 1781, for a term of 70 years. *Held* that the suit was barred by limitation under section 1(15) and section XVIII of Act No. XIV of 1859. *Luchmee Buksh Roy* v. *Runjeet Ram Panday* (2) and *Fatimatulnissa Begum* v. *Sounder Das* (3) referred to.

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* First Appeal No. 310 of 1900 from a decree of Babu Madho Das, Subordinate Judge of Bareilly, dated the 20th of November, 1900.

(1) (1897) I. L. R., 19 All., 200. (2) (1873) 13 B. L. R., 177.
(3) (1900) L. R., 27 I. A., 103.

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MUHAMMAD AKBAR HUSAIN KHAN v. IZZAT-UN-NISSA.

THE facts of this case, so far as they are material for the purposes of this report, are as follows:—The plaintiff alleged that one Muhammad Bisharat Khan, on the 22nd Shaban 1195 Hijri (corresponding to the 14th of August, 1781), had mortgaged four villages, namely, Bisharatganj, Kachhana, Navadia and Nagaria, by way of usufructuary mortgage, to Jalal Khan and others, for the sum of Rs. 1,500. The mortgage was stated to be for a term of 70 years, after which it was redeemable without payment of principal, and the mortgagees were thereafter liable to account for profits. The plaintiff claimed to be the successor in interest of the mortgagor, Bisharat Khan, and prayed for possession of the mortgaged property by redemption of the mortgage of 1781 and for a large amount of mesne profits, estimated at Rs. 7,000.

Various defences were raised by the defendants, who were very numerous, and some ten issues were framed by the Court of first instance (Subordinate Judge of Bareilly). Of these, however, only the second issue is now material, namely, "Is the plaintiff's claim barred by limitation?"

On this issue the first Court held that, even supposing the mortgagor's claim to have subsisted till 1871, inasmuch as the Limitation Act of 1859 contained no provision for extinction of a right after the prescribed period of limitation, at any rate Act No. IX of 1871 had the effect of determining the plaintiff's right on the 1st of April 1874. For this, as well as other reasons, the Court dismissed the plaintiff's suit. The plaintiff thereupon appealed to the High Court.

Hon'ble Pandit *Sundar Lal*, Pandit *Moti Lal* and Maulvi *Ghulam Mujtaba*, for the appellant.

Messrs. *C. Dillon*, *Abdul Majid* and Maulvi *Muhammad Zahur*, for the respondents.

STANLEY, C.J. and BURKITT, J.—If the lower Court was right in holding that the suit was barred by limitation, this appeal must fail. The suit is one for the redemption of an alleged usufructuary mortgage executed on the 14th of August, 1781, that is, 125 years ago, for a term of 70 years to secure a principal sum of Rs. 1,500. The defendants do not admit the execution or the terms of the alleged mortgage, but they contend

that, even if there was any such mortgage, the mortgagees or their transferees have been in possession of the mortgaged property since the date of the mortgage and the suit is therefore barred. We do not know of the existence of any rule of limitation under the Moghul Empire in 1781 applicable to the case. The first enactment of which we are aware dealing with limitation in the locality in which the lands, the subject-matter of this litigation, are situate is Act XIV of 1859. Section I, clause 15, of that Act prescribes a period of 60 years for the institution of suits against mortgagees, to commence, in the words of the enactment "from the time" of the mortgage. Section XVIII, however, suspended for two years the operation of the Act. It runs in the following terms:—"All suits that may be now pending or that shall be instituted within a period of two years from the date of the passing of this Act shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted after the expiration of the said period shall be governed by this Act and no other law of limitation, any Statute, Act or Regulation now in force notwithstanding." The 70 years' term said to have been limited in the mortgage-deed expired in 1851. Therefore, if the mortgagors were not in a position to redeem the property during that term, they were in a position to do so when the Act to which we have referred was passed. It has been held that this Act is applicable to usufructuary mortgages—*Luchmee Buksh Roy* v. *Runjeet Ram Panday* (1) and *Fatimatulnissa Begum* v. *Soonder Das* (2). But it is contended by the learned advocate for the appellant that in these cases there was no term mentioned in the mortgage-deed, and therefore the rule which was applied to the cases to which we have referred did not apply to the present case in which a term of 70 years was fixed by the mortgage. Mr. *Moti Lal* asks us to say that the rule laid down in Act XIV of 1859 should not be strictly applied; that the Legislature in passing the enactment could not have had in contemplation mortgages for terms exceeding 60 years, and that an equitable construction should be put upon the Statute and the case treated as one which

(1) (1873) 13 B. L. R., 177. (2) (1900) L. R., 27 I. A., 103.

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falls outside the purview of the Act. In the first case which we have cited, we find that their Lordships of the Privy Council dealt with the Statute in question and an argument very similar to the argument presented to us in this case. It was there contended that an equitable construction should be put upon the Statute and that the Statute should not be strictly construed. Their Lordships observe as follows:—"It has been said that this case ought to be decided upon an equitable construction and not upon the strict words of the Statute; but their Lordships think that Statutes of limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. Statutes of limitation are in their nature strict and inflexible enactments. The object of the Legislature in passing them is to quiet long possession and to extinguish stale demands. Such legislation has been advisedly adopted in India, as it has been in this country, and their Lordships think that in construing these Statutes the ordinary rules of interpretation must prevail." We find then in the Statute under consideration that it is prescribed that in suits against mortgagees the suit must be instituted within 60 years from the "time," that is, from the date of the mortgage. There is no ambiguity whatsoever in the language of the Statute. We further find that, to prevent any hardship which might result from the interference of the Legislature in limiting the right to sue, two years were given during which the Statute was to remain in abeyance, so that during that period any party who might be entitled to institute a suit in respect of a mortgage might do so. Of this right, as we have pointed out, the appellant and his predecessors in title failed to avail themselves within the two years allowed by the Statute; they, in fact, took no steps in regard to their mortgage until the 7th of June, 1899, more than a century after the date of the alleged mortgage. We may observe that later legislation in no way helps the appellant's case. Article 148 of Act IX of 1871 prescribes the same period of limitation for suits against mortgagees as did the earlier Act, using substantially the same language. A section in that Act, namely section 29, prescribes that at the determination of the period for the institution by

any person of a suit for possession of any land, the right of such person to the land should be extinguished. Before this the right to sue only was barred, the right to the land not being extinguished. Under this Act both the remedy and the right are barred. The next enactment, Act XV of 1877, introduced a material change in the law as regards limitation. According to it the right to institute a suit for redemption commenced to run from the time when the cause of action accrued, but at the time when this Act was passed the right of the appellant was already barred, and there is a provision in it that nothing therein contained shall be deemed to affect any title acquired or to revive any right to sue already barred (see section 2). Under these circumstances it appears to us clear that the decision of the learned Subordinate Judge, in so far as he held that the suit was barred by the provisions of the enactment to which we have referred, is correct. There is no other question before the Court. We therefore dismiss the appeal with costs.

Appeal dismissed.

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January 11.

Before Mr. Justice Banerji and Mr. Justice Richards.

GARUDHUJ PRASAD SINGH (DECREE-HOLDER) APPELLANT *v.* BAIJU MAL AND OTHERS (JUDGMENT-DEBTORS) RESPONDENTS.*

Civil Procedure Code, section 610—Execution of decree—Privy Council—Restoration of property alienated pending appeal to the Privy Council—Procedure.

Pending an appeal to His Majesty in Council, certain property forming part of the subject-matter of the suit in which such appeal had been preferred was sold by auction in execution of a money decree against the plaintiff who held the decree of the High Court under appeal. The defendant's appeal to the Privy Council was decreed. *Held* that the successful appellant was entitled to recover the property sold as above mentioned by means of an application under section 244 read with section 610 of the Code of Civil Procedure, and this right was not affected by the fact that the auction purchasers were not parties to the decree of the Privy Council. *Gulzari Lal* v. *Madho Ram* (1) followed. *Bhagwati Prasad* v. *Jamna Prasad* (2) and *Sadiq Husain* v. *Lalla Prasad* (3) distinguished.

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* First Appeal No. 33 of 1905, from a decree of Maulvi Muhammad Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 17th of September, 1904.

(1) (1904) I. L. R., 26 All., 447. (2) (1896) I. L. R., 19 All., 136.
(3) (1897) I. L. R., 20 All., 139.