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of Civil Procedure; and, as we have already mentioned, an appeal in a case of this sort would not lie under the Code. We are satisfied that the preliminary objection is sound and must prevail. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Lindsay.

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June, 1.

KHIALI RAM (DEFENDANT) v. TAIK RAM AND OTHERS (PLAINTIFFS) AND PARSOTAM AND ANOTHER (DEFENDANTS) *

—Redemption—Burden of proof—One mortgagor redeeming the entire mortgage—Acknowledgement—Dakhalnama—Act IX of 1908 *(Indian Limitation Act), section* 19, *schedule* I, *article* 148.

In a suit by the representatives of some of the co-mortgagors for the redemption of their shares in certain property against the representatives of a co-mortgagor, who had redeemed the mortgage, the plaintiffs alleged that the mortgage had been made by one Sukhjit in favour of one Muhammad Husain in the year 1913 Sambat. The plaintiffs also relied on certain acknowledgements made by the defendant's predecessor in title. One of these was a *dakhalnama* executed by Ram Lal in 1890 which contained a description of the property and was signed by Ram Lal. The defendant contended that there was no mortgage; that he was absolute owner; that the acknowledgements had not been proved, and that the suit was time-barred. It was held by the lower appellate court that the date of the mortgage had not been proved, but the acknowledgements were in respect of some mortgage and that the plaintiffs were entitled to redeem.

Held that the rule of limitation governing a suit of this kind was that laid down in *Ashfaq Ahmad* v. *Wazir Ali*, (1) viz. that article 148 of Schedule I to the Limitation Act applied, that is, the limitation extended for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money became due, and the burden was upon the plaintiffs of proving the mortgage that they had set up, and that it was for them to prove that the acknowledgement relied upon by them as contained in the *dakhalnama* had been made at a date within the period of limitation.

Held further, that the acknowledgement contained in the *dakhalnama* amounted to nothing more than a description of the property purchased and was not an acknowledgement of liability within the meaning of section 19 of the Limitation Act. *Dharma Vithal* v. *Govind Sadvalkar* (2) referred to.

THE plaintiffs alleged that their ancestor Sukhjit had executed a usufructuary mortage for Rs. 200 in Sambat 1913, corresponding to 1856 A. D.; that Manik, one of the five sons of Sukjit, redeemed the whole mortgage in 1871 or thereabouts, becoming

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* First Appeal No. 12 of 1916, from an order of Abdul Ali, Subordinate Judge of Agra, dated the 10th of December, 1915.

(1) (1889) I. L. R., 11 All., 423. (2) (1883) I. L. R., 8 Bom., 99.

thereby the owner of $\frac{1}{5}$th of the property and mortgagee of $\frac{4}{5}$ths, that Manik's rights passed to one Ram Lal in 1890 by purchase at the auction sale held in execution of a decree; that the defendants were the heirs of Ram Lal and thus owned and possessed the mortgagee rights over $\frac{4}{5}$ths of the property. The plaintiffs sought redemption of the $\frac{4}{5}$ths share on payment of Rs. 160. In their plaint the plaintiffs set out full details of the mortgage of Sambat 1913 which they sought to redeem; they also set forth various acknowledgements of the existence of the mortgage, said to have been mode from time to time by the original mortgagees or their successor in interest, including a *dakhalnama* executed by Ram Lal after his auction purchase in 1890. The defendants denied the existence of the mortgage, pleaded that they were in possession as owners, and also pleaded that the plaintiffs' right of redemption, supposing there had been a mortgage, was barred by limitation. The court of first intance held that the plaintiffs had failed to prove the specific mortgage set up by them; that a mortgage must have been executed sometime prior to Sambat 1913; but that the suit was barred by limitation, as the plaintiffs had failed to prove that any of the acknowledgements relied upon by them had been made within time. The lower appellate court also found that the mortgage of Sambat 1913 was not proved; but it held that, having regard to the numerous acknowledgements, and entries in the village papers, it lay upon the defendants to show that these were made beyond time and that the plaintiffs had no subsisting title. The suit was remanded for trial of the remaining issues. The defendants appealed against the order of remand.

The Hon'ble Munshi *Narayan Prasad Ashthana*, for the appellants:—

The plaintiffs having failed to prove the specific mortgage upon which they came to court, the suit should be dismissed; *Sheo Prasad* v. *Lalit Kuar* (1). The plaintiffs relied upon the entries and alleged admissions, not as saving limitation but as proving the mortgage; for, according to them, the suit was within time independently of any acknowledgement. But entries in revenue papers or admissions made at some previous

(1) (1896) I. L. R., 18 All., 403.

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date, of the existence of an indefinite mortgage cannot prove the specific mortgage sued on; nor do they prove that any mortgage is subsisting now. It is for the plaintiff in a suit for redemption to prove a subsisting title and an entry in a Revenue paper or an admission, showing no more than that at some by gone time there existed some mortgage between the parties or their predecessors, does not shift the burden on to the defendants of proving that no mortgage subsists at the present moment; *Frank Hay* v. *Rafiuddin* (1), *Ram Lal* v. *Sri Thakurji Kishori Ramanji Maharaj* (2). The case of *Dip Singh* v. *Girand Singh* (3) is distinguishable and does not apply to the circumstances of the present case. With the exception of the *dakhalnama* of 1890, papers relied upon by the plaintiffs do not bear the signatures of the defendants or of any of their predecessors in interest; these latter, therefore, cannot operate as acknowledgements under section 19 of the Limitation Act. The specification, given in the *dakhalnama*, of the property sold and setting forth that $\frac{4}{5}$ths share was in possession of Manik as mortgagee of his brothers is merely descriptive and not a distinct acknowledgement of an existing liability. It does not amount to an admission in writing of an existing jural relation: for that purpose the consciousness and intention of the person making the admission must be clear. It cannot serve as an acknowledgement under section 19 of the Limitation Act; *Dharma Vithal* v. *Govind Sadvalkar* (4). Supposing the *dakhalnama* be held to be a valid acknowledgement, the plaintiffs have failed to prove that it was made within 60 years of the date of the mortgage.

Pandit *Kailash Nath Katju*, (for Pandit *Shiam Krishna Dar*), for the respondents:—

The plaintiffs did not tie themselves down to a mortgage of date Sambat 1913: they would be entitled to a decree if it were shown that the land was still held by the defendants as mortgagees and that the plaintiffs had a subsisting title to redeem. *Bala* v. *Shiva* (5) *Lalla Daibee Pershad* v. *Beharee Lall* (6).

(1) (1914) 12 A. L. J., 769.
(2) (1913) 12 A. L. J., 102.
(3) (1903) I. L. R., 26 All., 313.
(4) (1883) I. L. R., 8 Bom., 99.
(5) (1902) I. L. R., 27 Bom., 271.
(6) N-W. P., H. C. Rep., 1868, 33.

Admittedly, at one time, there was a mortgage between the predecessors in interest of the parties. The finding is that the mortgage was executed sometime prior to 1856; neither party has proved the exact date. There are a number of admissions by the predecessors in interest of the defendants showing the existence of a mortgage, and consisting of entries in revenue papers and in the *dakhalnama* of 1890. Having regard to this series of admissions showing that ever since 1862 the property has been mentioned and described as mortgaged property and sold as such, the *onus* was upon the defendants of proving that the mortgage had ceased to subsist. No doubt, ordinarily it is for the plaintiff in a redemption suit to prove a subsisting title; but under the circumstances of the case the *onus* was shifted on to the defendants of satisfying the court that the mortgage was executed more than 60 years prior to the dates of the admissions. The acknowledgements must be treated as admissions of a subsisting mortgage; and it would be for the dafendants to explain them away if they could. To be effective under section 19 of the Limitation Act the acknowledgements need not contain the details or particulars of the mortgage; *Dip Singh* v. *Girand Singh* (1), *Ram Singh* v. *Baldeo Singh* (2), *Daia Chand* v. *Sarfraz* (3), *Uppi Haji* v. *Mammavan* (4). It is objected that the entries in the revenue papers cannot operate as acknowledgements, as it has not been proved that those papers were signed by the original mortgagees or their successors. As to the wajib-ul-arz of 1862 it must be presumed that it was signed by all the co-sharers. At all events the *dakhalnama* is signed by Ram Lal. It is not merely descriptive, but it must be taken as showing that Ram Lal knew that he was purchasing only the mortgagee rights in respect of $\frac{4}{5}$ths of the property. It is therefore a conscious admission of the existence of the mortgage, and of the legal result flowing therefrom, namely, his liability to be redeemed. *Maniram Seth* v. *Seth Rupchand* (5), *Bala* v. *Shiva* (6).

(1) (1903) I. L. R., 26 All., 313.
(2) Weekly Notes, 1885, p. 300.
(3) (1875) I. L. R., 1 All., 117.
(4) (1893) I. L. R., 16 Mad., 366.
(5) (1906) I. L. R., 33 Calc., 1047.
(6) (1902) I. L. R., 27 Bom., 271.

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Apart from these acknowledgements there is another ground upon which the suit is within limitation When Manik redeemed the whole mortgage in 1871 he acquired a charge, under the provisions of section 95 of the Transfer of Property Act, in respect of the share of his co-mortgagors. The original mortgage vanished and in its place the charge in favour of Manik came into existence. This view is supported by the cases of *Bhagwan Das* v. *Har Dei* (1) and *Sagar Mal* v. *Janki Das* (2). The limitation applicable to a suit like the present, namely, for redemption of the charge in the hands of the redeeming co-mortgagor or his transferee, is that prescribed by article 144, namely, 12 years from the date when the possession of the defendant becomes adverse; and it is for the defendant to prove that his posession became adverse from such a date; *Vithal Moreshwar Desai* v. *Dinkarrao Ramchandrarao* (3), *Moidin* v. *Oothumanganni* (4), *Jai Kishun Joshi* v. *Budhanand Joshi* (5). In the present case it is admitted that Ram Lal purchased mortgagee rights. He never set up an adverse title. The view taken in the case of *Ashfaq Ahmad* v. *Wazir Ali* (6) was that the limitation for a suit like the present was 60 years, under article 148, from the date of the original mortgage. It was based on the view that the redeeming co-mortgagor steps into the shoes of the mortgagee and he can exercise all the rights and is subject to all the liabilities of the original mortgagee. But this view has not been accepted in later cases, already cited; for it has been held that article 132 applies to a suit by him to enforce his rights, whereas according to I. L. R., 11 All., 423, his suit should come under article 148. When, therefore, one branch of the law laid down in the above case does not hold good, the other branch, too, must go with it.

The Hon'ble Munshi *Narayan Prasad Ashthana*, was not called upon to reply.

PIGGOTT and LINDSAY, JJ.:—This is a defendant's appeal against an order passed by the Subordinate Judge of Agra in the exercise of his appellate powers. He has directed that

(1) (1903) I. L. R., 26 All., 227.

(2) (1904) 1 A. L. J., 276.

(3) (1901) 3 Bom. L. R., 685.

(4) (1888) I. L. R., 11 Mad., 416.

(5) (1916) I. L. R., 38 All., 138.

(6) (1889) I. L. R., 11 All., 423.

a suit which had been pending in the court of the Munsif of Agra, and in which an appeal had been preferred to his court, should be sent back to the court of first instance for determination of the remaining issues. The suit which was before the Munsif was a suit for redemption brought by Taik Ram and others, who alleged themselves to be the descendants of one Sukhjit. In the third paragraph of the plaint the plaintiffs gave particulars of the mortgage under which they claimed to have a right of redemption. It is stated in that paragraph of the plaint that the mortgage had been made in the Sambat year 1913; that the name of the mortgagor was Sukhjit; that the mortgage had been executed in favour of Muhammad Husain Khan; that the total amount of the mortgage-debt was Rs. 200, and that the mortgage was with possession, the agreement being that profits should be taken by the mortgagee in lieu of interest. In addition to these particulars the plaintiffs gave details of the mortgaged property consisting of various plots of land, the total area being 10 bighas, 9 biswas. It was further alleged in the plaint that after the death of the mortgagor Sukhjit, *i. e.*, in or about the year 1871, this mortgage was redeemed by one Manik who was one of the five sons of Sukhjit, the mortgagor. The defendants in the present case, it is said, are the mortgagees in possession of the property described in the plaint. They have acquired title through one Ram Lal, who, it is said, in the year 1890, in execution of a decree obtained against Daya Ram, one of the brothers of Manik, the man just mentioned, purchased this property. The case for the plaintiffs, therefore, was that these defendants were in possession as mortgagees and that they were liable to submit to redemption. In the fifth paragraph of the plaint there was a statement made to the effect that at various times the mortgagees had admitted the existence of the mortgage executed in favour of Muhammad Husain, and in particular, a reference was made to an admission or acknowledgement contained in a document described as a *dakhalnama* which was written in the year 1890. This document was referred to by the plaintiffs with the object of showing that their suit was within limitation. The defendants traversed the various pleas set out in the plaint and in the first paragraph of the additional pleas contained in the written

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statement it was asserted that the mortgage upon which the plaintiffs relied had never existed. The defendants claimed that they were in adverse and proprietary possession of the property in suit. Various other pleas were taken, including one of limitation; and on the pleadings put forward by the parties six issues were raised in the court of first intance. The Munsif came to the conclusion that the plaintiffs had failed to prove the specific mortgage which they set out in the plaint, and, being of opinion that they had not succeeded in making out any subsisting title, he dismissed the suit. With reference to the various admissions or acknowledgements referred to in paragraph 5 of the plaint, the Munsif held that the plaintiffs had failed to show that any acknowledgement made by the mortgagee had been made while limitation was still running. The case came up in appeal before the Subordinate Judge, and he begins his judgement by saying that the only question before him for determination was one of limitation. The learned Subordinate Judge agreed with the first court that the oral evidence which had been adduced by the plaintiffs in order to prove the execution of the mortgage in the year 1913 Sambat was altogether worthless. As regards the acknowledgements, however, he took a different view from the court of first instance. He refers to the various statements which were relied upon by the plaintiffs as acknowledgements and held that in the circumstances it lay upon the defendants to show that these acknowledgements had been made at a time beyond the period of limitation fixed for a suit for redemption. Being of opinion therefore that the plaintiffs had still a subsisting title on the strength of which they were justified in asking for a decree for redemption, he sent the case back to the court of first instance to dispose of the other issues in the case. The defendants now come in appeal in this Court, and five grounds are taken in the memorandum of appeal. The first of these is that the lower appellate court, having found that the plaintiffs had failed to prove the particular mortgage set up by them, ought to have dismissed the suit. The second ground relates to the acknowledgements. It is contended that mere acknowledgements do not by themselves prove the specific mortgage that was set up in the plaint, or that the particular mortgage upon which the plaintiffs

relied was still subsisting. In the third ground it is complained that the lower appellate court wrongly threw upon the defendants the burden of proving that the suit was time-barred. In the fourth ground exception was taken to the manner in which the lower appellate court dealt with one particular acknowledgement, viz., that which is contained in the *dakhalnama* of the year 1890. The last ground is that the plaintiffs ought to have proved that there was a subsisting mortgage and that any of the acknowledgements upon which they relied was made within 60 years of the date of the original mortgage. The suit being one for recovery of possession of land by redemption there can be no doubt that it lay upon the plaintiffs to show that at the time the suit was brought they had in themselves a title on the strength of which they could ask the court to give them a decree for possession, and the question which we have to decide is whether or not the plaintiffs have discharged their burden. In this connection the first point to be considered is the question of limitation. What is the rule of limitation governing a suit of the present description? It will be remembered that the suit as framed is really a suit brought by the representatives of some co-morgagors against the legal representatives of a co-mortgagor who redeemed the entire mortgage. So far as the law of limitation is concerned we must take it that it is settled for a case of this kind by the Full Bench ruling which is reported in *Ashfaq Ahmad* v. *Wazir Ali* (1). It is true that this judgement has in subsequent decisions of this Court been criticized with reference to the view there taken regarding the status of one of several co-mortgagors who redeems the entire mortgage; but, as far as we are aware, the rule of limitation which is laid down in this judgement has never been decided to be erroneous, and we must take it therefore that the article which applies to this suit is article 148 of the first schedule of the Limitation Act, *i.e.*, that limitation extends for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money becomes due. It must be taken on the findings of the court below that the plaintiffs have failed to prove that a mortgage was made by Sukhjit in favour of Muhammad Husain Khan

(1) (1889) I.L.R., 11 All., 423.

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in the year 1913 Sambat. No document was produced before the court of first instance and the plaintiffs put forward secondary evidence which has been discredited by both courts. [Some evidence was here referred to.] We have no doubt therefore that the Munsif was quite right when he said that the mortgage which had been executed in favour of Muhammad Husain must have been executed sometime previous to the year 1913 Sambat We have it settled then that the plaintiffs were unable to establish the execution of the mortgage which was set out in all its details in paragraph 3 of the plaint.

We now have to consider the acknowledgements or the admissions on which the plaintiffs relied in this case. The position is somewhat curious, because obviously the plaintiffs were not relying upon these acknowledgements or admissions in order to show that the suit was within time. Clearly they were unable to show that the mortgage had in fact been executed in favour of Muhammad Husain in the year 1913 Sambat, and it would have been superfluous for them to rely upon any acknowledgement for a suit based upon the mortgage of 1913 Sambat, it being within limitation on the date on which the present suit was filed. However, we proceed to consider the so-called acknowledgements upon which the plaintiffs rely for the purpose of showing that they have still a subsisting right to redeem. [Four documents, namely (1) Wajib-ul-arz of 1862, (2) Khewat of 1862, (3) Certified copy of the fly-sheet of the record of a mutation case and (4) Khewat of 1876-77 were here referred to and it was pointed out that none of them was signed by the parties against whom the property was claimed or by any one from whom they derived title]. We come now to the last document upon which the plaintiffs relied, and in fact it is the only document upon which they could rely for the purpose of proving an acknowledgement under section 19 of the Limitation Act. It is proved that in the year 1890 Ram Lal, who is the father of the first defendant in the case, obtained a decree against Daya Ram, and in execution of that decree purchased certain immovable property which was in Daya Ram's possession. Having purchased it he got formal possession delivered to him by an officer of the court, and the *dakhalnama*, dated the 28th of September, 1890, is the receipt given by Ram Lal to the court's

officer on the date upon which he delivered possession of the land. There seems to be no doubt that this document was signed by Ram Lal. At the bottom of this document there is a description of the property which Ram Lal had acquired at the auction sale. It is described in the following words :—" 10 bighas and 9 biswas belonged to Manik absolutely while four shares were in possession of Manik as mortgagee of his brothers, Daya Ram, Bhim Sen, Pirthi and Nawal Kishore." It has been argued by the learned vakil who appears to support the appeal that the learned Subordinate Judge was wrong in treating this document as an acknowledgement for the purpose of section 12 of the Limitation Act. Before proceeding to discuss the point, we may observe that the court must be taken to have fallen into error in taking notice of the other documents in which it is said certain acknowledgements were contained. The learned Subordinate Judge failed to notice that it was necessary for the plaintiffs to show that any document purporting to contain an acknowledgement must bear the signature of all the persons against whom the claim is being made. To return to the *dakhalnama*. We have carefully examined this document and we have come to the conclusion that it should not be treated as an acknowledgement for the purpose of section 19 of the Limitation Act. In this connection we refer to the decision of the Bombay High Court reported in *Dharma Vithal* v. *Govind Sadvalkar* (1). The facts of that case are in many respects similar to the facts of the case now before us. It appears from the report that the plaintiff's ancestor mortgaged some land to the defendant's ancestor in 1797 and placed him in possession. A few years after this mortgage was executed both the mortgagor and mortgagee went out of the country. The mortgagor returned first and resumed possession of the land. When the mortgagee came back he found it necessary to file a suit against the mortgagor for the purpose of recovery of possession. The suit was brought in the year 1826. In execution of the decree possession of the property was delivered to the mortgagee and a formal receipt was given by him to the court officer acknowledging that possession had been received. In the year 1880 the representative of the original

(1) (1883) I. L. R., 8 Bom., 99.

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mortgagor brought a suit for redemption, and, for the purpose of showing that the claim was within time, he relied upon the receipt which was given in the year 1827 by the mortgagee after he had obtained possession. The lower appellate court had held that because this formal receipt contained a reference to the decree in execution of which possession of the land was delivered it was evidence of the acknowledgement by the mortgagee that there was a mortgage subsisting in the year 1827. Accordingly it was of opinion that any suit for redemption filed before 1887 would be within time. The learned Judges of the Bombay High Court held that the interpretation which the lower appellate court had put upon this document was erroneous. Referring to the language of section 19 of Act XV of 1877, they pointed out that the section intends a distinct acknowledgement of an existing liability to serve as a re-creation of it at the time of such acknowledgement, but that there cannot really be an acknowledgement without knowledge that the party is admitting something. They went on to observe that all that the receipt admitted by implication was that certain land had been awarded to the mortgagee and had passed into his possession. In the latter part of the judgement they proceeded as follows, (see page 102 of the report) :—"The intention of the law is manifestly to make an admission in writing of an existing jural relation of the kind specified equivalent for the purposes of limitation to a new contract: but for this purpose the consciousness and intention must be as clear as they would be in a contract itself, and no one would pretend that a contract to buy land awarded by a particular decree was an admission of the particulars of the judgement. The reference would be merely a means of defining the thing bargained for, and here the reference was merely a means of defining the thing delivered." Applying this principle to the case now before us, we think that what is relied upon by the plaintiffs as an acknowledgement contained in the *dakhalnama* amounts to nothing more than a description of the property of which Ram Lal had got possession after he had purchased it at an auction sale. We are clearly of opinion that this document cannot be relied upon as an acknowledgement of liability within the meaning of section 19 of the Limitation Act. Even if we are to assume that the document could be regarded in this

light we should be unable to follow the reasoning of the lower court with regard to the shifting of the burden of proof. We have already mentioned that the learned Judge held that the *dakhalnama* had been made beyond the period of limitation. He referred to the case of *Dip Singh* v. *Girand Singh* (1), and on the authority of that case he held that it lay upon the defendants here to explain away this acknowledgement. The question of the burden of proof must be decided in every case according to its own facts, and it is not for us to say that the decision relied upon by the lower appellate court was in any way erroneous. We have to confine our attention to the facts which we have now before us and to ask ourselves in this particular case, should the burden of proof be laid upon the defendants ? The principle is of course that the party who has special means of knowledge of a fact is under the obligation to take up the burden of proving that fact. But as the defendants in the present case are sons and grandsons of one Ram Lal, who, in the year 1890, acquired the property at an auction sale, it would, we think, be difficult for them to have any special knowledge or means of knowledge which is not equally within the power of the plaintiffs in the present case. The plaintiffs themselves had, by the frame of their plaint taken up the position that they had accurate knowledge of particulars of the mortgage under which they claimed to have right of redemption; otherwise it would have been impossible for them to set out such details of fact as are mentioned in paragraph 3 of the plaint. We think, as regards the admission contained, or said to be contained, in the *dakhalnama*, it was for them to show that this acknowledgement had been made at some date within the period of limitation which would govern a suit for redemption based upon the mortgage upon which they relied. We have come to the conclusion, therefore, that the order of the lower appellate court cannot stand. For the reasons we have given we find that the plaintiffs came to court with a specific case, which they had failed to prove, and that they were unable to show that on the date the suit was brought they had any subsisting right to redeem. Their suit was, therefore, liable to dismissal. We allow the appeal, set aside the order of the

(1) (1903) I. L. R., 26 All., 313.

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court below and restore the decree of the court of first instance. The appellants will have their costs both here and in the lower appellate court.

PRIVY COUNCIL.

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une 5, 6, 7, July, 21.

MURTAZA HUSAIN KHAN (PLAINTIFF) v. MUHAMMAD YASIN ALI KHAN (DEFENDANT).

[On appeal from the Court of tho Judicial Commissioner of Oudh, at Lucknow.]

Act No. I of 1869 (Oudh Estates Act), sections 8,10—Sanad granted by Government and death of grantee before Act passed into law—Status and rights of grantee—Name of grantee entered in lists 1 and 2 after his death—Descent by primogeniture—Custom of descent of non-taluqdari property acquired by taluqdar, a Muhammadan—Burden of proof—Presumption of pre-existing custom—Wajibularzes, value of.

On the 17th of October, 1861, *J*, a Muhammadan and the ancestor of the parties to this appeal, received from the British Government a sanad conferring on him the full proprietary right, title and possession of the taluqa of Deogaon, with a condition that in the event "of you or any of your successors dying intestate, the estate shall descend to the nearest male heir, i.e., sons, nephews, etc., according to the rule of primogeniture." He died in 1865, but his name was entered in lists 1 and 2 of those prepared under section 8 of the Oudh Estates Act (I of 1869).

Held that *J* had acquired, as declared by section 3 of the Act, a "permanent, heritable and transferable right" in his estate, and was unquestionably a "taluqdar" within the meaning of the Act. His death before the Act was passed into law made no difference in his status or in his rights.

The provision in section 8, that the lists should be prepared "within six months after the passing of the Act," was clearly meant as a limit for their completion, and not for their initiation.

Descent by primogeniture was not confined to cases coming under list 3. The provision in section 10 that "the courts shall take judicial notice of the said lists and shall regard them as conclusive evidence that the persons named therein are taluqdars" does not mean that they shall be conclusive merely as to the fact that the persons entered therein are taluqdars as defined in section 2, but also that the courts shall regard the insertion of the names in those lists as "conclusive evidence" of the fact on which is based the status assigned to the persons named in the different lists. *Achal Ram* v. *Udai Partab Addiya Dat Singh* (1) and *Thakur Ishri Singh* v. *Thakur Baldeo Singh* (2) discussed and explained. *J's* name could therefore only have been included in list 2

*Present :—Lord ATKINSON, Lord PARKER of WADDINGTON, Sir JOHN EDGE, and Mr. AMEER ALI.

(1) (1883) I. L. R., 10 Calc., 511 ; L. R., 11 I.A., 1.

(2) (1884) I. L. R., 10 Calc., 792 ; L.R., 11 I.A., 135.