misconduct of the lambardar?" We direct the court below to order the lambardar (within a time to be specified in the order) to file an account showing the names of the tenants, the amounts that have been realized from each of the tenants, and the amounts left unrealized. In the case of rents unrealized the lambardar will give in a column of the account his reasons why these rents were not realized. When this account has been filed the plaintiffs will have a right to see the same, and they will then be entitled to go into evidence to show that in respect of the moneys not realized, the lambardar was guilty of negligence or misconduct. The lambardar will of course have a right to rebut the evidence, if any, produced by the plaintiffs. The usual ten days will be allowed to file objections on return of the finding.

1915

SHIVA CHANDAR SINGH v. RAM CHANDAR SINGH.

Issue remitted.

Before Mr. Justice Chamier and Mr. Justice Piggott.

JIA BIBI (APPLICANT) v. ILAHI BAKHSH AND OTHERS (OPPOSITE PARTIES) * *Act No. IX of* 1908 (*Indian Limitation Act*), *article* 164—*Application to set aside an* ex parte *decree passed when Act No. XV of* 1877 *was in force*—*Limitation.*

1915 *June*, 5.

The plaintiff obtained an *ex parte* decree on the 29th of November, 1904, which was made absolute on the 24th of August, 1907. The proclamation of sale was brought to the village on the 19th of December, 1912. The defendant on the 9th of January, 1913, applied to have the *ex parte* decree set aside. The plaintiff contended that the defendant had knowledge of the decree prior to 1910, and, therefore, her application was barred by article 164 of the Indian Limitation Act of 1908. The defendant contended that article 164 of the Limitation Act of 1877, applied to her case. *Held* that the defendant's application was barred by article 164 of Act IX of 1908. *Hope Mills Limited* v. *Vithaldas Pranjivandas* (1) referred to.

THE facts of the case were as follows:—

A decree under section 88 of the Transfer of Property Act, was passed *ex parte* as against a certain defendant on the 29th of November, 1904. A decree absolute under section 89 was passed *ex parte* as against the same defendant on the 24th of August, 1907. Proclamation of sale was brought to the village on the 19th of December, 1912. On the 9th of January, 1913, the

* First Appeal No. 72 of 1915, from an order of Suraj Narain Majju, Subordinate Judge of Azamgarh, dated the 27th of January, 1915.

(1) (1910) 12 Bom. L. R., 780.

1915

JIA BIBI v. ILAHI BAKHSH.

defendant applied under order IX, rule 13, of the Code of Civil Procedure to have the *ex parte* decree set aside, on the allegation that she had no knowledge of the suit and the decree until the 19th of December, 1912. The court came to the conclusion that she had knowledge so far back as 1907, or at any rate 1910, and the application was dismissed as being barred by limitation. She appealed to High Court.

Babu *Piari Lal Banerji*, for the appellant.

The application is governed not by the present Limitation Act but by the Limitation Act of 1877, which was in force at the date of the *ex parte* decree. As soon as the *ex parte* decree was passed a right accrued to the defendant to apply to have it set aside within 30 days of issue of process as prescribed by article 164 of the Act of 1877, then in force. That right has not been taken away by anything contained in the new Act which has no retrospective effect in this matter. That is a right acquired within the contemplation of section 6, clause (*c*), of the General Clauses Act. A similar question arises in connection with a right of appeal where the tribunal of appeal is changed by a new enactment, and it has been held that the law applicable at the date of the suit is the law regulating all subsequent proceedings; *The Colonial Sugar Refining Co.* v. *Irving* (1), *In re Joseph Suche and Co.*, (2).

He then submitted on the facts that it was not proved that the appellant had knowledge before the 19th of December, 1912, and hence the application was within time even under the new Act.

Dr. *S. M. Sulaiman*, for the respondents.

This case is exactly covered by the ruling in *The Hope Mills, Limited* v. *Vithaldas Pranjivandas* (3). The Limitation Act does not confer a right of action, it merely prescribes the time within which the action must be brought. A right to apply to have an *ex parte* decree set aside is not acquired by virtue of any Act of Limitation, new or old. No question of a vested right arises in this case. The law of limitation is a law relating to mere procedure. *Her Highness Ruckmaboye* v. *Lullcobhoy Mottichund* (4).

(1) (1905) A. C., 369.
(2) (1875) 1 Ch., 48.
(3) 1910) 12 Bom. L. R., 730.
(4) (1852) 5 Moo. I. A., 234, 265.

He then supported on the evidence the finding of the lower court as to the time when appellant had knowledge.

Babu *Piari Lal Banerji*, in reply.—

The question in issue in the two cases was as to the tribunal, in which a certain appeal would lie and as to the mode in which a debt was to be proved against a firm in liquidation. If the question involved in the present case be deemed one of mere procedure, then the questions involved in those two cases were equally matters of procedure and yet it was held that the new enactment would not have retrospective effect.

CHAMIER and PIGGOTT, JJ.:—This is an appeal against an order of the Subordinate Judge of Azamgarh, rejecting an application for setting aside a decree passed *ex parte* against the appellant in 1904. Her case was and is that she did not come to know of the decree in question until a proclamation of sale was brought to the village in December, 1912, that is, less than thirty days before she presented her application. The evidence shows that the plaintiffs in the suit made repeated efforts to serve her personally with notice of the suit and of subsequent proceedings. Substituted service was effected and declared to be sufficient by the court. She has herself sworn that she did not come to know of the decree against her until a few days before she made her application. Evidence has been produced on behalf of the respondents which has been accepted by the court below, that she was aware of the suit at the time when it was pending and was anxious to enter into a compromise. It is almost inconceivable that she would have remained ignorant of this suit, as she says, for eight or nine years. She says that she has been quarrelling with her son-in-law for the last twenty years. She must have other relatives who must have come to know of the suit, and we think there can be little doubt that she knew of the suit while it was pending. We accept the evidence which has been produced by the respondents to prove that she was aware of the suit. It is contended that the application should be governed in the matter of limitation not by article 164 of the Limitation Act which was in force at the time when the appellant made her application, but by article 164 of the Limitation Act of 1877, which provided that an application to set aside a judgement

1915

JIA BIBI v. ILAHI BAKHSH

ex parte might be made within thirty days from the date of executing any process for enforcing the judgement. It is conceded that no such process was executed before the passing of the new Limitation Act. It has been repeatedly held that in a case of this kind the law of limitation to be applied is the the law existing at the time when the application is made. It is sufficient to refer to the decision of the Bombay High Court in *The Hope Mills Limited* v. *Vithaldas Pranjivandas* (1). There can be no doubt that the application is governed by the present Limitation Act and is barred thereby and was rightly dismissed both on the merits and also on the ground of limitation. This appeal fails and is dismissed with costs.

Appeal dismissed.

1915
June, 23.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Rafiq.

JAHANGIR AND ANOTHER (DEFENDANTS) *v.* SHEORAJ SINGH (PLAINTIFF) *

Act No. I of 1872 (*Indian Evidence Act*), *section* 32, *clause* (6)—*Pedigree.*

A document ancient and genuine, purporting to be a family pedigree was produced in evidence in a mutation case by one Jiraj. The record was brought before the civil court in a suit in which the plaintiff's relationship to one Hulas, the last male owner of certain property, was in question. Jiraj stated that he had received the pedigree from his grandfather. It was not proved who had prepared the pedigree. *Held* that it was not necessary to show who had made the statements mentioned in the pedigree and that it was admissible in evidence under section 32, clause (6), of the Evidence Act.

THE facts of this case were as follows :—

One Hulas was the last holder of certain property. His widow made a deed of gift of that property in favour of the defendant. The plaintiff brought this suit for a declaration that the deed should be declared to be inoperative after her death. The defendant pleaded that the plaintiff did not belong to the family. In support of his claim the plaintiff produced a pedigree which had once been produced in the Revenue Court. The pedigree was produced by a witness who alleged that he was a member of the family, and that it had been given to him by his

* Second Appeal No. 670 of 1914, from a decree of C. E. Guiterman, District Judge of Moradabad, dated the 5th of February, 1914, reversing a decree of Kunwar Sen, Additional Subordinate Judge of Moradabad, dated the 28th of August, 1913.

(1) (1910) 12 Bom. L. R., 780.