such evidence as has been brought to our notice.

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The other point taken is that the heirs of Sakina Bibi are in some way or other estopped from denying, either the validity of the transfer in Zohra Bibi's favour, or the fact of her possession. The plea is based in substance upon certain words used in the judgment of the lower appellate court which are quoted in the first paragraph of the memorandum of appeal before us. Undoubtedly the expression so quoted, taken by itself, lends some colour to the appellants' contention, although it may be noted that the expression used, namely, that the "family" had allowed the sons of Zohra Bibi to hold the property in suit as exclusive owners, is a dangerously vague one. Apart from this, however, the judgment of the learned District Judge requires to be fairly considered as a whole. When so considered, it seems clear enough that the lower appellate court intended to find, what it has found in express words in a later paragraph of the judgment, namely, that possession never passed to Zohra Bibi and that the evidence for the plaintiffs failed to prove anything more than that in the year 1913 the sons of Zohra Bibi had somehow come to be in effective possession of the house to this extent that they executed a fresh lease in favour of another tenant and managed to put their tenant into possession. This finding is not sufficient to support either the general plea of estoppel in the form in which it is taken in the memorandum of appeal, or any more explicit plea based upon the wording of section 41 of the Transfer of Property Act, No. IV of 1882.

For these reasons we dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Ryves and Mr. Justice Stuart.

BISHESHAR NATH (PLAINTIFF) v. KUNDAN AND OTHERS (DEFENDANTS).*

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Act No. IX of 1908 (Indian Limitation Act), schedule I, article 139—Landlord and tenant—Tenant holding over after expiration of lease—Suit for ejectment—Limitation.

On the expiration of his lease a tenant for a term of years remained in possession of the demised premises but ceased to pay rent to the landlord. More than twelve years after the expiry of the lease the landlord brought a suit to eject his former tenant.

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* Second Appeal No. 1096 of 1920, from a decree of Murari Lal, Additional Judge of Moradabad, dated the 7th of June, 1920, reversing a decree of Mohsin Ali Khan, Munsif of Nagina, dated the 22nd of January, 1920.

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Held that the suit was governed by article 139 of the first schedule to the Indian Limitation Act, 1908, and was barred by limitation. *Chandri* v. *Daji Bhau* (1) followed. *Bilas Kunwar* v. *Desraj Ranjit Singh* (2) distinguished.

THE facts of this case sufficiently appear from the judgment of RYVES, J.

Dr. *Surendra Nath Sen*, for the appellant.

The Hon'ble *Syed Raza Ali*, for the respondents.

RYVES, J.—This appeal came on originally for hearing before a single Judge of this Court. He was of opinion that in view of the decision of their Lordships of the Privy Council in *Bilas Kunwar* v. *Desraj Ranjit Singh* (2) and of the decision in *Pusa Mal* v. *Makdum Bakhsh* (3), it was advisable that this case should be heard by a Bench of two Judges. It has consequently come before us for hearing.

After full argument it seems to me that the question referred to this Divisional Bench is really irrelevant, and I think the appeal can be disposed of on a short point.

The facts of the case are as follows :—The plaintiff was the lessor. He, by a lease dated the 19th of July, 1892, leased some premises to the father or predecessor of the defendants for a term of three years. At the expiry of the term, the lessees (or their representatives) remained on in possession until the date of suit which was brought on the 18th of June, 1919. The plaintiff asserted that the rent fixed by the lease had been regularly paid by the defendants until within three years of the date of suit.

The main defence to the suit was that the defendants had been in adverse possession for more than twelve years, that they never paid rent and that the suit was barred by limitation.

The first court decreed the suit.

On appeal, however, the learned District Judge of Moradabad has dismissed the suit. He has found that since the expiry of the lease no rent whatever has been paid by the defendants. He has also found that no new tenancy was created otherwise than by the lease, and he, therefore, dismissed the suit as barred by limitation. On appeal before us it has been argued very strenuously that having regard to the decision of their Lordships of the Privy Council in *Bilas Kunwar* v. *Desraj Ranjit Singh* (2), it must be held that the

(1) (1900) I. L. R., 24 Bom., 504.

(2) (1915) I. L. R., 37 All., 557.

(3) (1909) I. L. R., 31 All., 514.

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defendants continued to be tenants of the plaintiff after the expiry of the lease until notice was served on them by the lessor under section 106 of the Transfer of Property Act. It seems to me that the decision of their Lordships of the Privy Council does not apply at all to the question of limitation and has no application to article 139 of the first schedule to the Limitation Act, which, in my opinion, governs this case. That article runs as follows :—" A suit by a landlord to recover possession from a tenant......twelve years.........when the tenancy is determined." It seems to me on the facts of this case that the tenancy was determined on the 19th of July, 1895. It has not been proved that any new tenancy was created. By holding over without paying rent, it seems to me that the defendants became what is known as tenants by sufferance. Their position in English law has been summed up in Addison's Law of Contract, 10th edition, page 618 in the following words :—" The difference, therefore, between a tenancy-at-will and what is called a tenancy by sufferance is that in the one case the tenant holds by right and has an estate or term in the land, precarious though it may be, and the relationship of lessor and lessee subsists between the parties; in the other, the tenant holds wrongfully and against the will and permission of the lord and has no estate at all in the occupied premises. When the tenancy at sufferance has existed for twenty (now twelve) years, the landlord's right of entry is barred by statute, and the tenant becomes the absolute and complete owner of the property." So far as the question of limitation is concerned, the law in India is not different, in my opinion, although it may not be good law to hold that a tenant holding over is in adverse possession to his landlord. In my opinion this view is supported by *Chandri* v. *Daji Bhau* (1), where the facts were similar, and which case was followed in *Farman Bibi* v. *Tasha Haddal Hossein* (2). In my opinion the suit was clearly barred under article 139 of the Limitation Act. I would, therefore, dismiss this appeal with costs.

STUART, J.—I would like to add a few words to the decision of my learned brother. It was I who referred this case to a Bench and I did so in view mainly of the position created by the decision of their Lordships of the Privy

(1) (1900) I. L. R., 24 Bom., 504.

(2) (1908) 7 C. L. J., 648.

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Council in *Bilas Kunwar* v. *Desraj Ranjit Singh* (1). The law governing this case appears to have been laid down in *Chandri* v. *Daji Bhau* (2). There, as here, it appears that there was a tenancy by instrument, which had expired more than twelve years before the date of the suit. There, as here, after the expiration of the tenancy, a tenancy at sufferance had come into existence. There had been no payment of rent. The same was the case here. There had been no explicit recognition of the authority of the landlord. The same was the case here. It would be difficult to find two cases in which the facts were so similar as in the present case and in the Bombay case. It was held by JENKINS, C. J., that article 139 must govern the case and that the period from which the period of limitation began to run was the period from which the tenancy by instrument had expired. In the absence of any other authority, I should consider the Bombay decision conclusive in the matter, and it only remains to be seen whether there is anything in the Privy Council decision to which I have already referred which can be invoked to overrule the decision of JENKINS, C. J. Their Lordships of the Privy Council say: "A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord." That clearly is the law, but does it in any way affect the present case? I think it does not. The defendants cannot be permitted to deny the plaintiff's title. They have foolishly denied it but they cannot be permitted to do so. The plaintiff is undoubtedly the land-holder and the defendants are tenants by sufferance, but once having recognized that the tenants are so estopped, the fact still remains that the suit has been instituted beyond the period of limitation allowed by the law. In these circumstances I accept the view of my learned brother and would dismiss this appeal.

BY THE COURT:—The order of the Court is that the appeal is dismissed with costs.

Appeal dismissed.

(1) (1915) I. L. R., 37 All., 557.
(2) (1900) I. L. R., Bom., 504.