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Nath Roy (1), which laid down that "if the person entitled to execution is under a disability at the time when any one of such periods commences" (that is to say, the period from which limitation begins to run), "the operation of the Act is suspended during the continuance of the disability by the operation of section 7".

We have no doubt therefore that the view taken by the lower court in this case was correct, and that the suit was within time. We accordingly dismiss the appeal with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Banerji.

SHANKAR LAL (PLAINTIFF) *v.* HASHMI BEGAM AND ANOTHER (DEFENDANTS).*

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June, 15.

Limitation Act (IX of 1908), section 19—Agra Pre-emption Act (Local Act XI of 1922), section 4(9)—Pre-emptor does not derive title from the vendee—Acknowledgment by vendee not effective against pre-emptor.

The right of pre-emption is not a right of re-purchase from the vendee, but it is a right of substitution entitling the pre-emptor by reason of a paramount title, as against the vendee, to purchase the property. A pre-emptor, therefore, although he is substituted in place of the vendee and steps into his shoes, is not a representative of the vendee, and cannot be said to derive title through the vendee, within the meaning of section 19 of the Limitation Act. An acknowledgment, of the existence of a mortgage on the property, by the vendee was therefore *held* not to be effective against the pre-emptor for the purpose of that section.

Messrs. *N. P. Asthana* and *B. Malik*, for the appellant.

Messrs. *S. K. Dar*, *Baleshwari Prasad* and *M. A. Aziz*, for the respondents.

SULAIMAN, C. J., and BANERJI, J.:—This is a plaintiff's appeal arising out of a suit for sale on the basis

*Second Appeal No. 1588 of 1930, from a decree of G. O Allen, District Judge of Agra, dated the 21st of May, 1930, confirming a decree of Muhammad Junaid, Subordinate Judge of Agra, dated the 6th of February, 1930.

(1) (1893) I.L.R., 20 Cal., 714.

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of a mortgage deed, dated the 15th of July, 1916, executed by Muhammad Abdus Salam in favour of the plaintiff, Shankar Lal. It appears that after that mortgage Abdus Salam sold the equity of redemption on 1st of September, 1919, to Narain Das. A suit for pre-emption was brought by Mst. Hashmi Begam on the 13th of July, 1919. In his written statement dated the 26th of October, 1920, Narain Das admitted the existence of this previous mortgage. The suit was decreed on the 2nd of December, 1920, under a compromise and Mst. Hashmi Begam deposited the pre-emption money and got the property. Subsequently on the 18th of February, 1924, she sold the property to Mst. Nizami Begam.

The present suit was instituted on the 13th of July, 1929, against Hashmi Begam, without originally impleading Nizami Begam. She was subsequently impleaded on the 19th of October, 1929, and the plaint was amended and an addition was made that time was extended as against her by virtue of the acknowledgment contained in the aforesaid written statement of Narain Das. It is obvious that if the acknowledgment does not help the plaintiff the suit against Nizami Begam would be barred by time; on the other hand, it would be in time if the plaintiff could take advantage of that acknowledgment. Both the courts below have held that the pre-emptor Hashmi Begam cannot be said to have derived title through the vendee Narain Das and that therefore the acknowledgment made by Narain Das was of no avail under section 19 of the Indian Limitation Act.

Section 19 provides that where before the expiration of the period of limitation an acknowledgment of liability has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time of the acknowledgment. The question is whether a pre-emptor can be said to be a person deriving title through the vendee against whom he sues and obtains his decree.

It was pointed out by MAHMOOD, J., in *Gobind Dayal* v. *Inayat Ullah* (1) that the right of pre-emption is not a right of "re-purchase" either from the vendor or from the vendee, involving any new contract of sale; but it is simply a right of "substitution" entitling the pre-emptor, by reason of a legal incident to which the sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale under which he has derived his title. The claim for pre-emption is based on the principle of an infringement of the pre-emptor's right when the vendor instead of offering the property to him sells it to the vendee. The pre-emptor obviously has a paramount title as against the vendee and sues to enforce his right by displacing the vendee and by getting himself substituted in his place. The result of a decree in the pre-emption suit is not a re-sale of the property by the vendee to the pre-emptor, involving any fresh contract or conveyance. When the decree is for pre-emption which places the pre-emptor in the shoes of the vendee, thereby becoming the representative of the original vendor, the court enforces the original obligation of the vendor to offer the property to the pre-emptor and substitutes the pre-emptor in place of the vendee because the transfer to the latter has taken place in violation of the pre-emptor's preferential right. It follows, in our opinion, that a pre-emptor, although he is substituted in place of the vendee and steps into his shoes, is not a representative of the vendee and, therefore, cannot be said to derive title through the vendee. As has been pointed out by the trial court in this case, there are various considerations which support this view. Section 4 of the Pre-emption Act defines the right of pre-emption as the right to be substituted in place of the transferee by reason of his right of pre-emption. The decree in a pre-emption suit under order XX, rule 14 directs the delivery of possession of the property to the pre-emptor, whose title, however, accrues from the date of the payment of

(1) (1885) I.L.R., 7 All., 775.

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the pre-emption money. It does not direct the execution of any sale deed by the vendee in favour of the pre-emptor. Moreover the old view as now incorporated in section 24 of the Pre-emption Act makes all transfers made by the vendee subsequent to his purchase voidable at the option of the decree-holder. If the latter were a representative of the vendee it would be difficult on principle to hold that he is not bound by the previous transfers. We therefore think that it is not possible to hold that a pre-emptor is a person deriving his title through the vendee within the meaning of section 19 of the Indian Limitation Act so as to make an acknowledgment of the vendee, made in his written statement filed after the claim for pre-emption has been brought, an acknowledgment of his predecessor in title binding upon the pre-emptor. It is to be noted that there was no acknowledgment of this mortgage made by the vendor Abdus Salam in his sale deed. The plaintiff relies exclusively on the acknowledgment made by the vendee Narain Das in his written statement. That in our opinion does not help him. The appeal is accordingly dismissed with costs.

Before Justice Sir Lal Gopal Mukerji and Mr. Justice Bennet.

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June, 16.

GRESHAM LIFE INSURANCE SOCIETY, LTD. (DEFENDANT) *v.* COLLECTOR OF ETAWAH (PLAINTIFF).*

Succession Act (XXXIX of 1925), sections 214, 233 and 370—Life insurance policy—Claim by heir—Production of probate or Letters of Administration or succession certificate necessary.

A Life Insurance Company can insist on the production, as proof of title of the person who claims the insurance money as the heir of the deceased person, of either a probate or Letters of Administration or a succession certificate; and a suit by the claimant against the company for recovery of the money cannot be decreed except on the production of one of these documents.

*First Appeal No. 26 of 1929, from a decree of Tufail Ahmad, Subordinate Judge of Etawah, dated the 17th of September, 1928.