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judgment-debtor-appellant it was argued that although section 42 gave jurisdiction to the Court to which a decree was transferred for purposes of execution that jurisdiction does not include the particular jurisdiction given by section 50(1) exclusively to the Court which passed the decree. Now if that were so a very remarkable result would follow, because section 47(3) states that a Court executing a decree shall determine all questions which arise as to whether any person is or is not representative of a party."

In my view the defect in procedure which has occurred has not affected the merits of the decision and should not be interfered with. The appellants admittedly reside in Ranchi and, prima facie, therefore, it was more convenient for them to have the matter decided at Ranchi than at Calcutta. It has not been made a matter of grievance that they have been inconvenienced in placing their case before the Ranchi Court or that they were not representatives of the deceased judgment-debtor.

I would, therefore, dismiss this appeal with costs.

ROWLAND, J.—I agree.

S.A.K.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Harries, C. J. and Agarwala, J.*

GAYA PRASAD SINGH.

v.

JAGDISH CHANDRA DEO DHABAL DEB.\*

*Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), sections 230 and 233—Limitation Act, 1908 (Act IX of 1908), section 23, whether governs the provisions of the*

\*Appeal from Appellate Decree no. 220 of 1936, from a decision of Rai Bahadur Saudagar Singh, Judicial Commissioner of Singhbhum, dated the 2nd September, 1935, reversing a decision of A. H. Kemp, Esq., I.C.S., Subdivisional Officer of Dhalbhum, dated the 27th July, 1934.

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*Tenancy Act*—"date of misuse or breach complained of", occurring in section 233, meaning of—construction of hut on occupancy holding more than two years before suit—suit, whether barred—section 233—'continuing wrong', meaning of—limitation—terminus a quo.

By reason of section 230 of the Chota Nagpur Tenancy Act, 1908, the provisions of the Limitation Act, 1908, in so far as they are not inconsistent with the provisions of the Chota Nagpur Tenancy Act, are applicable to the latter Act.

Therefore, section 23 of the Limitation Act, which defines the period of time within which suits must be brought where the wrong complained of is a continuing one, governs the provisions of section 233 of the Chota Nagpur Tenancy Act, 1908.

Section 233 provides :

"Suits for the ejectment of an occupancy-riayat or a non-occupancy riyat on any of the grounds mentioned in section 22 or in clauses (b) and (c) of section 41 shall be instituted within two years from the date of the misuse or breach complained of."

*Held*, that the phrase "date of misuse or breach complained of" does not mean the actual commencement of the misuse; the period of two years runs from any day during which the misuse or breach complained of continues.

*Rajrup Koer v. Abul Hossein*(1), relied on.

Where, in a suit by a landlord to eject an occupancy riyat on the ground that the tenant had constructed huts on the occupancy holding and had, therefore, used the land in a manner not authorized by section 21, Chota Nagpur Tenancy Act, 1908, it was found that the huts had been erected more than two years prior to the institution of the suit, held, that inasmuch as the erection and maintenance of the huts was a continuing misuse or a continuing breach of the conditions upon which the tenant held the holding, the suit was not barred by limitation under section 233 of the Chota Nagpur Tenancy Act, 1908.

*Per Agarwala, J.*—Where the wrong is one which is capable of being corrected and is not corrected, it is a wrong which continues; and, where the misuse is a continuing wrong, there is a fresh terminus a quo from every moment that the wrong continues.

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Appeal by the defendant.

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The facts of the case material to this report are set out in the judgment of Agarwala, J.

*P. R. Das* (with him *A. K. Roy* and *S. S. Rakshit*), for the appellant.

*Dr. D. N. Mitter* and *G. C. Mukharji*, for the respondent.

AGARWALA, J.—This appeal arises out of a suit by a landlord to eject an occupancy raiyat on the ground that the tenant has used the land comprised in his agricultural holding in a manner not authorized by section 21, Chota Nagpur Tenancy Act. The manner in which the tenant is found to have offended is by the erection of huts on agricultural land.

The facts were that the land was settled with the defendants in 1924. In April, 1932, the plaintiff came to know that the defendants had begun to construct huts in two of the plots, namely, 63 and 64. A notice to quit was served upon them on the 30th of April of that year, and on the 3rd of July, 1933, the present suit was instituted. The litigation has had a chequered career, having been up to this Court once before when it was necessary to remit an issue as to whether the defendants had constructed any huts on the land in 1932 according to the averment made in the plaint.

It has now been found as a fact that the huts erected on plots 63 and 64 were constructed before 1930 but that in 1932 the defendants commenced the construction of other huts which were, however, pulled down when objection was raised by the municipality. The Court below has also found that the defendants have erected more huts while this litigation was pending. We are not concerned with the rights of the parties in respect of those huts.

The question of law which arises in the present appeal is whether the suit is barred by limitation.

On behalf of the defendant-appellant it is contended that as the finding now is that all the huts with which we are concerned in this appeal were erected more than two years prior to the institution of the suit, the suit is barred by the provisions of section 233, Chota Nagpur Tenancy Act. That section provides, for suits for the ejection of an occupancy raiyat for using his land in a manner not sanctioned by section 22, a period of two years from the date of the misuse of the land. On behalf of the respondent, on the other hand, it is contended that the misuse is a continuing wrong and that the suit is within time until within two years from the date when the misuse ceases. By section 230, Chota Nagpur Tenancy Act, the provisions of the Limitation Act of 1908, so far as they are not inconsistent with the provisions of the Tenancy Act, are made applicable to all suits under the Act. Section 3, Limitation Act, provides that subject to the provisions contained in sections 4 to 25 every suit instituted after the period of limitation prescribed therefor by the first schedule shall be dismissed. Section 3 thus brings into operation section 23 of that Act. The provisions of that section are as follows:—

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“ In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.”

There is little difficulty in holding that the misuse on the land complained of in the present case constitutes a continuing wrong to the landlord plaintiff. Whatever difficulty there may be in defining precisely the meaning of “ continuing wrong ” I think there can be little doubt that where the wrong is one which is capable of being corrected and is not corrected, it is a wrong which continues: as for instance, where an obstruction to a water-course is caused the wrong to the persons entitled to the use of the water

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continues until the obstruction is removed, whereas in the case of a single act of trespass, such as walking into another person's house or on his land, the wrong ceases when the trespasser leaves the premises, and the trespass in such a case does not constitute a continuing wrong. The difficulty in the case arises by reason of the language of section 233, Chota Nagpur Tenancy Act. It will be observed that the two years' period of limitation prescribed is to run from "the date of the misuse". It has been contended that the language in this section indicates that a particular date has to be found and that it negatives the idea that the legislature viewed misuse under that section as of a continuing nature. There is a good deal of difficulty in reconciling some of the articles of the First Schedule of the Limitation Act with the provisions of sections 3 and 23 of the Act, but so far as the present question is concerned, a decision of the Privy Council in *Rajrup Koer v. Abul Hossein*(<sup>1</sup>) is of assistance. That was a case of an obstruction to a waterway. Under the Limitation Act which was then in force, the appropriate article was 31 which is in the same terms as article 37 of the present Act, 1908, except that the period was then two years and is now three years. The period of limitation there prescribed commenced to run from the "date of the obstruction". In the case which went to the Privy Council the Calcutta High Court had held that "date of the obstruction" in article 31 of the old Act meant the date on which the obstruction became effective. The Privy Council overruled that conclusion, holding that as the obstruction was a continuing wrong there was a fresh terminus a quo from every moment that the wrong continued. There is no material difference in the language of section 233, Chota Nagpur Tenancy Act, and article 31 of the old Limitation Act and article 37 of the present Limitation Act so far as this point is concerned. We must,

(1) (1880) I. L. R. 6 Cal. 894, P. C.

therefore, hold that the present suit was instituted within the period of limitation prescribed by the Chota Nagpur Tenancy Act.

The next question is with regard to the appropriate order to be passed in these circumstances. Section 69, Chota Nagpur Tenancy Act, provides that a decree for the ejection of an occupancy raiyat on the ground that he has misused the land comprised in his holding shall declare the amount of compensation reasonably payable to the plaintiff for the misuse and also, where the misuse is, in the opinion of the Court, capable of remedy, shall fix a period during which it shall be open to the defendant to pay the amount of compensation fixed by the Court to the plaintiff and to remedy the wrong occasioned by the misuse. Dr. Mitter on behalf of the respondent does not press for the assessment of compensation in this case.

We fix six months from this date during which the defendant must remove the huts constructed on the holdings 63 and 64. If within that period the huts are not removed, then the defendant will be ejected in due course of law. The plaintiffs are entitled to their costs throughout.

HARRIES, C. J.—I agree. In this case the substantial defence to the claim was that the suit was barred by the period of limitation prescribed in section 233, Chota Nagpur Tenancy Act. That section is as follows:—

“Suits for ejection of an occupancy raiyat or a non-occupancy raiyat on any of the grounds mentioned in section 22 or in clauses (b) and (c) of section 41 shall be instituted within two years from the date of the misuse or breach complained of.”

The misuse in the present case was the erection of huts on the holding. It has been found, as pointed out by Agarwala, J., that the huts complained of in this suit were erected more than two years previous to the institution of the suit. It is true that huts have been erected since the suit was

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instituted, but the Court is not concerned with those huts in the present litigation as they do not provide a cause of action previous to the institution of this suit. Everything turns on the meaning of the phrase "date of the misuse or breach complained of". Mr. Das contended that the date of the misuse or breach was the date upon which these huts were erected, and they were erected between 1924 and 1930. According to Mr. Das, the moment a hut is erected there is a misuse or breach which occurs once and for all. Dr. Mitter, on the other hand, has urged on behalf of the plaintiff-respondent that the erection and maintenance of huts on an occupancy holding is a continuing misuse of that holding or a continuing breach of the conditions upon which the tenant holds such holding. It appears to me that the erection and maintenance of huts intended for the habitation of workmen on an occupancy holding is a misuse of that holding which continues as long as the huts remain standing. It is only when the huts are removed that it can be said that misuser no longer exists. In my judgment the acts complained of in this case amount to continuing wrongs, and the question arises what effect that has upon limitation.

As pointed out by Agarwala, J., continuing wrongs are dealt with in section 23, Limitation Act, and that section governs the articles in Schedule I of the Act. No difficulty would arise if the period of Limitation in this case was prescribed in the Limitation Act. Mr. Das has argued that section 23, Limitation Act, cannot govern or affect the provisions of section 233, Chota Nagpur Tenancy Act. It has already been pointed out that the provisions of the Limitation Act, in so far as they are not inconsistent with the Chota Nagpur Tenancy Act, are applied to that latter Act by section 230. It is clear that any provision of the Limitation Act inconsistent with the provision of the Chota Nagpur Tenancy Act can have no application. For example,

suits of the nature of the present suit brought in Bengal or Bihar would be governed by article 32, Limitation Act, which provides a period of two years from the date when the misuse or perversion first became known to the person injured thereby. Clearly that article can have no application to tenancies in Chota Nagpur because it is wholly inconsistent with section 233, Chota Nagpur Tenancy Act, which prescribes a different period of limitation. In my view, however, there is nothing in the Chota Nagpur Tenancy Act inconsistent with section 23 of the Limitation Act. Section 23 defines the period of time in which suits can be brought where the wrong complained of is a continuing one, and in my judgment section 23, Limitation Act, is applicable to the facts of the present case as the Chota Nagpur Tenancy Act is silent as to when time begins to run in the case of continuing wrongs. Once it is held that the misuser or the breach complained of in this case is in the nature of a continuing wrong, the plaintiff, in my judgment, could maintain the present action as long as the misuser continued and within two years after it ceased. Mr. Das strenuously argued that the phrase "the date of the misuse or breach complained of" suggested that time began to run from the moment misuser had taken place or the moment a condition was broken. The meaning of such a phrase has been dealt with by their Lordships of the Privy Council in the case of *Rajrup Koer v. Abul Hossein*(1). In that case their Lordships were considering the period of limitation applicable to suits brought for compensation for obstruction of waterways. The period of limitation then applicable was two years from the date of the obstruction. Their Lordships held that time did not run from the moment the waterway was obstructed, because obstructing a waterway was a continuing wrong. The cause of action was renewed day after day as long as that obstruction

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causing such interference was allowed to continue. I can draw no distinction from the phrase "date of misuse" and the phrase "date of obstruction" where both user and obstruction are continuing wrongs. It appears to me that this Court is bound to hold that the "date of misuse or breach complained of" in section 233, Chota Nagpur Tenancy Act, does not mean the actual commencement of the misuser. A period of two years can be calculated from any day during which the misuser or breach complained of continued.

For the reason which I have given, I am satisfied that the suit in this case was within time, and I entirely agree with the order proposed by Agarwala, J. in his judgment.

S.A.K.

*Order accordingly.*

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**APPELLATE CIVIL.**

Nov. 20, 21.  
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*Before Harries, C. J. and Dhavle, J.*

AKHAURI HALIWANT SAHAY.

v.

DEO NARAIN MALI.\*

*Limitation Act, 1908 (Act IX of 1908), section 23—"continuing wrong", meaning of—construction of chabutra on public land more than twelve years before suit—case of continuing wrong or complete ouster—suit for removal of obstruction, whether barred by limitation.*

A trespass or nuisance may or may not be a continuing wrong, according to circumstances. If the act complained of creates a continuing source of injury and is of such a nature as to render the doer of it responsible for the continuance, the wrong would be a continuing wrong within the meaning of section 22 of the Limitation Act, 1908.

\*Appeal from Appellate Decree no. 639 of 1936, from a decision of Mr. Nidheshwar Chandra Chandra, Additional District Judge of Shahabad, dated the 30th May, 1936, confirming a decision of Babu Hargobind Prasad Singh, Munsif at Sasaram, dated the 20th September 1937.