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for the Courts constituted under Act XI of 1865 are applicable to Courts constituted under a different Act, and subject in their establishment to quite different conditions. The Court of a Subordinate Judge then exercising Small Cause Court powers under section 28 of Act XIV of 1869 is, under section 5 of the Code of Civil Procedure, one of the "other Courts exercising the jurisdiction of a Court of Small Causes," and as such Court its procedure is governed by the Civil Procedure Code without the variations provided by Act XI of 1865.

The second schedule to the Code taken with section 5, determines which of its sections are applicable to Courts exercising Small Cause Court jurisdiction, and amongst the sections enumerated there is not one corresponding to section 20 of Act XI of 1865. Instead of this we have section 223 of the Code, and under article (*d*) of that enactment the Court which has passed a decree in its Small Cause Court jurisdiction may, for any good reason to be recorded in writing, transfer its decree to the other branch of the same Court, as it might to a different Court, for execution according to the powers of such Court. For the purpose in question the two branches or sides of the Subordinate Judge's Court may be regarded as different Courts, seeing that they exercise different powers, and the transfer is not to be made of course, but only if under the circumstances it appears just and expedient.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

December 1

MORBHAT PUROHIT (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANGA'-DHAR KARKARE (ORIGINAL DEFENDANT), RESPONDENT.*

Inámdár—Khot—Landlord and tenant—Suit for money value of fixed quantities of grain payable by tenant to landlord—Nature of such claim for purposes of limitation—Suit to enforce payment of money charged on land—Immoveable property—Nibandha—Money value of goods, what is—Act XV of 1877, Sch. II, Arts. 62, 115, 132, 144.

An *inámdár*, in a suit against his tenant, established his right to the money value of a fixed quantity of grain to be paid to him yearly by his tenant, and

* Second Appeal, No. 431 of 1882.

subsequently brought this suit to recover from his tenant the arrears of such payments for ten years at the market rate prevailing in the last month of each of those years. The defendants contended that arrears for only three years were recoverable under the Limitation Act (XV of 1877), and that the rates applicable to ascertain the amount were the Government auction rates.

Held that the plaintiff's right would, under the Hindu law, be "*nibandha*," and would under that law rank for many purposes as immoveable property, but that a different principle applied to sums realized and become payable in the hands of him who realized them to the intended recipient. The interest or jural relation of right of such recipient was *nibandha*, but the particular sum due to him was either money received to his use, or payable on a contract, and money which would remain due, though the grant constituting the *nibandha* were cancelled and had ceased to exist after the realization of the money. It being thus distinguishable from the original right which produced it, the claim in this suit was barred by limitation after three years.

Money value means the market value, that for which the grain would actually sell, not a merely arbitrary value called auction rates.

THIS was a second appeal from the decision of C. E. G. Crawford, Assistant Judge of Ratnágiri, confirming the decree of Ráv Sáheb P. D. Gadgil, Subordinate Judge of Sangameshvar at Devrukh.

In a former suit between the parties the plaintiff alleged that he, as *inámdár* of the village of Tural, was entitled to possession and management of the village, and claimed certain fixed quantities of grain from the *khot* defendant. His right to possession and management was negatived, but it was decided that he was entitled to the money value of the grain. The plaintiff now sued the defendant to recover arrears for ten years at market rates prevalent in the last month of each of those years. The defendant opposed the claim on several grounds, but contended principally that the portion of the claim relating to more than three years previous to the institution of the suit was barred, and that the rates applicable were the Government auction rates. Both the lower Courts allowed the defendant's contention on these points, and decreed to the plaintiff only three years' arrears at the Government rates. The plaintiff appealed to the High Court.

Ráv Sáheb *Vásudev Jagannáth Kirtikar* for the appellant.—The limitation applicable is twelve years under article 132 of Act XV, 1877, sch. II. The plaintiff *inámdár* derives his title by *sanad*, and this is really a suit to enforce payment of money charged upon

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immoveable property. In *The Government of Bombay* v. *Gosvámi Shrí Girdharlálji*(1) it was held that, in considering whether an allowance was or was not immoveable property, the test followed should be "is or is not the allowance a charge upon land or other immoveable property?" That test is applicable to the present case. The term 'immoveable property' is, as held in *Máhárána Fatesangji Jasvatsangji* v. *Desái Kalliánráyji Hukámatráyji*(2), not limited to lands and houses only. That term is to be understood in the sense which the Hindu law attaches to it—*The Collector of Thána* v. *Harí Sitárám*(3). The *sanad* to the plaintiff grants to him all but the rights of "*hakdárs*" and "*inámdárs*", which means that it is a grant of the soil, as held in *Rávji Mandlik* v. *Dádáji Desái*(4). But the case on which we chiefly rely is that of *Chhaganlál* v. *Bápubhái*(5). In that case, as in this, the right between the parties had been determined by an anterior suit, and the plaintiff claimed and was allowed twelve years' arrears in respect of his share of the income of a *vatan* admittedly connected with a hereditary office, but was not, strictly speaking, charged upon immoveable property. With regard to the remarks of Mr. Justice Melvill upon the ruling in this case in the case of *Harmukhgauri* v. *Harisukhprasád*(6), I submit a distinction was drawn between a suit against a person whose receipt of the income was in its inception lawful and a suit against one who has wrongfully received it.

On the question of rates we submit that the grain should have been awarded at the current market rates, and not the Government rates.

Mánekshâh Jehángirsháh Taleyárkhán for the respondent.—The question of limitation depends upon the nature of the claim, and not upon the original nature of the property out of which the particular claim arises. Assuming that the grant to the plaintiff was '*nibandha*,' it does not follow that the profits of the property already realized and payable to the plaintiff in the hands of the defendant are also '*nibandha*'. The plaintiff's allega-

(1) 9 Bom. H. C. Rep., 222.
(2) 10 Bom. H. C. Rep., 281.
(3) I. L. R., 6 Bom., 546.
(4) I. L. R., 1 Bom., 523.
(5) I. L. R., 5 Bom., 68.
(6) I. L. R., 7 Bom., 191.

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tion is that the defendant has received certain monies which he ought to have handed over to the plaintiff. His claim is, therefore, for money had and received to his use, and the limitation applicable to it is three years under article 62 of Act XV of 1877, sch. II. The case of *The Government of Bombay* v. *Gosvámi Shri Girdharláljí*(1) does not deal with the question of limitation. It only lays down that a prescriptive title cannot be acquired by mere receipt of an allowance from Government which is neither incidental to a hereditary office, nor a charge upon immoveable property, nor supported by a Government grant. The case of *Rávji Mandlik* v. *Dádáji Desái*(2) is not to the point, as the only question there was whether a certain *sanad* granted the soil or not. As regards the case of *Chhaganlál* v. *Bápubhái*(3), it is partially overruled by that of *Harmukhgauri* v. *Harisukhprasád*(4). Mr. Justice Melvill himself says that article 62 was not brought to his notice in the earlier case, and that if it had been, the result would have been different. In the case of *The Collector of Thána* v. *Hari Sitárám*(5) the question of the twelve years' limitation did not at all arise, and was not discussed.

On the question of rates we submit that the decision of the lower Courts was also correct.

The judgment of the Court was delivered by

WEST, J.—The right of the *inámdár* plaintiff in this case as against the *khot* defendant was determined by a previous suit between them. The decision settled that the *inámdár* was entitled—not, as he asserted, to possession or management, but only to the money value of fixed quantities of grain. The *khot*, it was decided, was liable to pay the sums due; but whether as a proprietor subject to assessment or rating by the Government and paying the *inámdár* as assignee of the Government, or as an officer or agent of the Government carrying out its command in favour of the *inámdár*, was not determined. But whether the *khot* holds towards the *inámdár* the one position or the other, we think the claim for arrears is in this case equally subject

(1) 9 Bom. H. C. Rep., 222.
(2) I. L. R., 1 Bom. at p. 526.
(3) I. L. R., 5 Bom., 68.
(4) I. L. R., 7 Bom., 191.
(5) I. L. R, 6 Bom., 546.

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to limitation. In either case the plaintiff's right and the corresponding duty, *i.e.*, the relation between him and the *khot* arising out of the grant, and having for its object the money periodically payable would, under the Hindu law, be "*nibandha*". It would, under that law, rank for many purposes with *sthavra* or immoveable property, and some decisions have ruled that this is enough in cases peculiar to Hindus to make the interest immoveable property under the Limitation Acts. But while this is so, a different principle must, we think, apply to sums realized and become payable in the hands of him who has realized them to the intended recipient. The latter holds an interest, *i.e.*, a jural relation of right which is properly called *nibandha*, but the particular sum due to him out of collections from a village is either money received to his use or else payable on a contract, or a duty as binding as that arising from a contract, and money which would remain due, though the grant constituting the *nibandha* were cancelled after the realization of the money, and so the *nibandha* itself ceased to exist. It being thus distinguishable from the original right which produced it, the claim to it arising immediately is barred by limitation after three years, and on this point we confirm the judgment below.

As to the rates of commutation, it was decided by the earlier judgment that the *inámdár* was entitled to the money value of fixed quantities of grain. The money value means the market value, that for which the grain would actually sell, not a merely arbitrary value called auction rates. The receipt of this for some years would not create a right and duty as to that precise mode of commutation, and it could not at all overcome the adjudication between the parties as properly construed. We, therefore, modify the decree by directing the commutation to be made at the current market rates at each period when payments became due, as ascertained in execution.

Each party to pay his own costs of this appeal.

Decree modified.