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to go on with the case, leaving the accused to take such steps to obtain redress for his wrongful arrest, if it were wrongful, as advised.

We consider these contentions are well founded. From section 1 (2) (*a*) of the Code of Criminal Procedure, it is clear that the Code does not apply to the police of Calcutta, unless expressly made applicable to them. Paragraphs (*p*) and (*s*) of section 4 have not been expressly made applicable, and hence they do not apply to the Calcutta police. Section 55 of the Code is, however, expressly applicable; so the arrest of Madho Dhobi by Inspector Hamilton, who says he is in charge of a police-station in Calcutta, appears to have been quite legal.

Further, the Honorary Magistrates were, it seems to us, empowered to put in force the provisions of section 109 of the Code, whenever they had credible information that the accused had no ostensible means of livelihood or was unable to give a satisfactory account of himself and was within the limits of their jurisdiction. How he came before them was immaterial. In support of this view we need only cite the case of *Emperor* v. *Ravalu Kesigadu* (1) in which a Magistrate had acquitted an accused, because he was of opinion that the accused had been illegally arrested. It was held that whether the officer who effected the arrest was within or beyond his powers in making the arrest did not affect the question whether the accused was or was not guilty of the offence with which he was charged.

For these reasons we make this Rule absolute. We set aside the order of discharge of the accused Madho Dhobi, and direct that he be re-arrested and that the Bench of Honorary Magistrates do proceed with the case against him under the provisions of section 109 of the Code of Criminal Procedure.

Rule made absolute.

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[561] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pratt.

PERKASH LAL *v.* RAMESHWAR NATH SINGH.*

[10th February, 1904].

Grant—Construction of deed of gift—Words of inheritance—Al aulad—Male descendants—Custom—Khairat Bishanprit—Chota Nagpore—Bengal Act I of 1879, s. 124.

In a deed of gift of the nature known as *Khairat Bishanprit*, made to a Brahmin by the proprietor of a Chota Nagpore Raj, it was provided that the grantee and his *al aulad* were to possess and enjoy the property, but the deed contained no words importing a right of alienation.

Held, that, although the words *al aulad* etymologically include female as well as male descendants, yet according to a custom proved to have prevailed at the time of the grant and subsequently in that part of the country, the words must be interpreted to mean lineal male descendants only.

Hiranath Koer v. *Baboo Ram Narayan Singh* (2), *Indur Chunder Doogur* v. *Luchmee Bibee* (3) and *Mana Vikarama* v. *Rama Patter* (4) distinguished; *Roopnath Konwur* v. *Juggunnath Sahee Deo* (5) followed.

* Appeal from Original Decree No. 264 of 1900, against the decree of Nepal Chandra Bose, Subordinate Judge of Hazaribagh, dated the 17th of May 1900.

(1) (1902) I. L. R. 26 Mad. 124.
(2) (1871) 15 W. R. 375; 9 B. L. R. 274.
(3) (1871) 15 W. R. 501.
(4) (1897) I. L. R. 20 Mad. 275.
(5) (1836) 6 S. D. A. Sel. Rep. 133.

[Expl. 42 Cal. 305 ; 19 C. W. N. 466=28 I. C. 610. Rel. on 20 C. W. N. 876=35 I. C. 383=1 Pat. L. J. 109. Ref. 46 Cal. 683=29 C. L. J. 332=26 M. L. J. 344=50 I. C. 1 ; 18 C. L. J. 89 ; 20 C. W. N. 876 ; 24 Bom. L. R. 800.]

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APPEAL by the plaintiffs, Perkash Lal and another.

On the 7th Aghan Sudi 1888 Sambat [1831 A. D.], Maharajah Moninath Singh, of Kanda Raj, District Hazaribagh, father of the defendant Raja Rameshwar Nath Singh, made a grant of mouzah Shakkerpur to one Janki Ram Misser, by a *sanad* which runs in these terms :—

"Whereas I have made a grant in *khairat bishanprit* to Sri Misser Janki Ram, of one village, mouzah Shakkerpur, in pergannah Kunda, in respect of which he, the Misserji, will with confidence settle and make settlements in the village and have it brought under cultivation: and all that it may yield he will appropriate. He will take possession of the [562] boundaries and limits, palm trees and orchards, mahwa fishes, bhitabari, kiari, high and low lands, all thereunto belonging by prescriptive right [established custom ?], and the land shall be continued in the possession and enjoyment of whosoever may be the descendants [*al aulad*] of the Misserji and my descendants [*al aulad*] shall never molest him in the place. All *abwabs* (cesses) having been remitted, I have granted the village in *khairat* free from all demand."

Janki Ram died about the year 1855, and the village was inherited by his two sons, Balgobind and Mukund. Balgobind was succeeded by his son Bhat Misser, and Mukund by his widow Jai Kuner. On the 28th June 1875, Bhat Misser and Jai Kuner granted a *mokurari pottah* of the village to one Lal Ram Garreri, on receipt of a premium of Rs. 2,500 and at an annual rent of Rs. 20. Lal Ram sold one-half of the said *mokurari* right to Perkash Lal, the plaintiff No. 1, for Rs. 2,751 by a *kobala* dated the 20th October 1886, and sold the remaining one-half of the *mokurari* to Mussummut Buto Sahun, the plaintiff No. 2, for Rs. 2,905 by a *kobala* dated the 13th September, 1888.

The present suit was instituted by the plaintiffs for

(i) recovery of possession of *mouzah* Shakkerpur, upon establishment of title after eviction of the Raja defendant ;

(ii) a declaration that the said *mouzah* could not in any circumstances be resumed by the grantor or his heirs ; and

(iii) mesne profits.

It was alleged that the plaintiffs, as successors of Lal Ram, obtained possession of the *mouzah* and continued in possession from the dates of their respective purchases ; that the Raja defendant, alleging that Bhat Misser died in 1886 without leaving any heir and that thereupon the *mouzah* became resumable by him, began to commit various acts to disturb the plaintiffs' possession ; and that ultimately in Asarh 1948 Sambat [July 1891 A. D.] he dispossessed them. The suit was instituted on the 25th July, 1898.

The defendant denied the genuineness and validity of the *sanad* set up by the plaintiffs, and urged that the grant to Janki Ram was made for the purposes of pujah and performance of religious [563] ceremonies without any power of alienation, that Bhat Misser, grandson of Janki, having died in August 1886 without leaving any male issue, the said *mouzah* was according to the usage prevailing in the Kunda Raj and under the conditions mentioned in the grant, resumed by the defendant and that from that date the defendant was all along in possession. The genuineness and validity of the *pottah* of 1875 were denied, and it was contended that the purchases made by the plaintiffs were speculative, without consideration and not in good faith.

The Subordinate Judge held that the *sanad* was a genuine document, but upon the construction of it, he was of opinion that the grant

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was heritable, but not alienable, and that the words *al aulad* referred to direct descendants in the male line. With regard to the evidence adduced by the plaintiffs as to the existence of one Ram Shanker Pandit, a daughter's son of Janki Misser, he held that, even if that evidence were reliable, Ram Shanker, who was not produced, must be taken to have virtually given up his rights in favour of the defendant, and he was further of opinion that the existence of some alleged descendants of the ancestors of Janki Misser had not been satisfactorily proved. He also held that the *mokarari pottah* of 1875, although a genuine document, was not binding against the defendant, that the purchases made by the plaintiffs were *bona fide*, that the plaintiffs were never actually in possession of the village in dispute, which the defendant resumed in 1887, and that the defendant had satisfactorily established by evidence the existence of a custom under which grants of this description were resumable on failure of male heirs in the direct line of the grantee. He accordingly dismissed the suit.

Dr. *Rash Behary Ghose* (Babu *Lal Mohan Das*, Babu *Saligram Singh* and Babu *Bishnu Pershad*, with him), for the appellants. The words *al aulad* in the deed of grant showed that Janki took an absolute estate. They are to be construed as words of inheritance, like *naslan bad naslan*, *putra poutradi krame*, etc. They mean direct descendants, either male or female. See Wilson's Glossary. Besides, the words must be taken to have the same meaning in the *sanad*, wherever used, and as applied to the descendants of the grantor they evidently include both male and [564] female descendants. See *Nursing Deb* v. *Roy Koylasnath* (1), *Ganendra Mohan Tagore* v. *Upendra Mohan Tagore* (2), *Krishnarav Ganesh* v. *Rangrav* (3), *Bhoobun Mohini Debia* v. *Hurrish Chunder Choudhury* (4). An estate in tail male is unknown to Hindu Law: *Ganendra Mohan Tagore* v. *Jatindra Mohan Tagore* (5). As to *putra poutradi krame*, see *Ram Lal Mookerjee* v. *Secretary of State for India* (6). The words *al aulad* in the case of a mohunt cannot mean his progeny, they must mean his heirs. A remainder which may fall into possession at any distance of time is opposed to public policy. If the construction to be put upon the *sanad* were different, the grant would be bad, and the Raja could have entered into possession at once. See *In re Hollis' Hospital and Hague's contract* (7) and *Nordenfelt* v. *Maxim Nordenfelt Guns* (8). The intention of the grantor must not be defeated; *Gobind Lal Roy* v. *Hemendra Narain Roy Chowdhury* (9), *Lalit Mohun Singh Roy* v. *Chukun Lal Ray* (10) and *Venkata Kumara Mahipati Surya Rau* v. *Chellayammi Garu* (11). No evidence of custom was admissible, nor is the evidence in the case on this point adequate. See *Hurpurshad* v. *Sheo Dyal* (12), *Hiranath Koer* v. *Baboo Ram Narayan Singh* (13), *Indur Chunder Doogur* v. *Luchmee Bibee* (14), *Mana Vikrama* v. *Rama Patter* (15); *Rup Singh* v. *Baisnai* (16) and *Menzies* v. *Lightfoot* (17);

(1) (1862) 9 Moo. I. A. 55.
(2) (1869) 4 B. L. R. O. C. 103, 182.
(3) (1867) 4 Bom. H. C. A. C. 1, 17.
(4) (1878) I. L. R. 4 Cal. 23; 3 C. L. R. 399; L. R. 5 I. A. 138.
(5) (1872) 9 B. L. R. P. C. 377; 18 W. R. 359.
(6) (1881) I. L. R. 7 Cal. 304; L. R. 8 I. A. 46, 60.
(7) (1899) 2 Ch. 540.
(8) (1894) App. Cas. 535.
(9) (1889) I. L. R. 17 Cal. 686.
(10) (1897) I. L. R. 24 Cal. 884; L. R. 24 I. A. 76.
(11) (1893) I. L. R. 17 Mad. 150.
(12) (1876) L. R. 3 I. A. 259; 26 W. R. 55.
(13) (1871) 15 W. R. 375; 9 B. L. R. 724.
(14) (1871) 15 W. R. 501.
(15) (1897) I. L. R. 20 Mad. 275.
(16) (1884) I. L. R. 7 All. 1; L. R. 11 I. A. 149.
(17) (1871) L. R. 11 Eq. 459.

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Evidence Act, section 93. [RAMPINI, J. Act I of 1879 (B.C.), section 124, renders it probable that in those parts of the country grants might be made on the terms referred to in that section.] It was also the appellants' case that a daughter's son of Janki was yet alive.

[565] *The Advocate-General* (Mr. *J. T. Woodroffe*) (Moulavi *Mahomed Yusuf* and Babu *Umakali Mukerjee* and Babu *Kulwant Sahay* with him), for the respondent. Although the words *al aulad*, etymologically considered, include both male aud female descendants, yet according to the custom prevailing in the Kunda *Raj* at the time of the grant such *khairat* grants were resumable on the failure of lineal male descendants, and admittedly no such descendants exist. The evidence on custom is overwhelming. See Hunter's Statistical Account of Bengal, Vol. XVI, regarding the history of the Kunda *Raj*, and the case of *Roopnath Konwur* v. *Juggunnath Sahee Deo* (1). There is no question as to the creation of an estate in tail male and there are no words importing a right of alienation.

Dr. *Rash Behary Ghose* in reply.

Cur. adv. vult.

RAMPINI AND PRATT, JJ. This is an appeal against the decision of the Subordinate Judge of Hazaribagh, dated 17th May 1900. The suit out of which the appeal arises was brought by the plaintiffs to recover possession of *mouzah* Shakkerpur, *pergannah* Kunda, from which they say the defendant No. 1 dispossessed them in Assar 1298 Fusli, *i.e.*, June 1891 or 1948 Sambat. They aver that the *mouzah* was given by Raja Moni Nath Singh, the ancestor of the defendant Raja Rameshwar Nath Singh, to one Janki Misser in the year 1831 as a *khairat bishanprit* grant, that the gift was that of an absolute estate, that the *mouzah* was in 1875 leased in mokurari by Bhat Misser, the grandson, and by Jai Kuner, the daughter-in-law, of Janki to one Lall Ram Garreri, who sold the *mokurari* to the plaintiffs in 1886 and 1888, that they entered into possession and that, as the defendant No. 1 has dispossessed them, they are entitled to recover possession. The defendant's pleas were that the gift to Janki Misser was not of an absolute estate, but of an estate which descended to the male heirs of the donee, and that on the failure of the male heirs of the grantee, the donor and his heirs are entitled to [566] resume the grant, which has accordingly been done, and the defendant is therefore in lawful possession. The Subordinate Judge found in favour of the defendant and dismissed the suit. Hence this appeal.

The pleas urged on behalf of the appellants are—

(1) that the Subordinate Judge is wrong in finding that the grant of Janki Misser was of an estate to the grantee and his descendants in the male line, and that it was resumable by the donor and his heirs on the failure of such descendants.

(2) that the Subordinate Judge was wrong in finding that according to the custom prevalent in the defendant's Raj, such *khairat* grants are resumable on the failure of the male descendants of the grantee;

(3) that, even if his finding on these points be correct, the Subordinate Judge is wrong in coming to the conclusion that there has been a failure of the male descendants of Janki Misser; and

(4) that his finding that the plaintiffs never were in possession of

(1) (1863) 6 S. D. A. Sel. Rep. 133.

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the mouza and that the suit is accordingly barred by limitation, is also incorrect.

We will deal in the first place with the question of the nature of the grant to Janki Misser. The *Sanad*, Ex. VI, p. 73, has been found to be genuine by the Subordinate Judge, and there is no cross appeal on this point. It is manifestly a grant in *khairat bishanprit* to Misser Janki Ram and covenants that mouzah Shakkerpur shall remain in possession of the descendants (*al aulad*) of the Misserji and that the grantor's descendants (*al aulad*) shall never molest him in the place. There has been much discussion before us as to the meaning of the vernacular words *al aulad*. It is evident that they signify "offspring" or "progeny" and therefore, etymologically considered, include female as well as male descendants. Hence, the *sanad* does not by itself show that the grant to Janki Misser was one of the nature of which the defendant contends that it was; on the other hand the *sanad* contains no words importing a right of alienation. It therefore does not show that the grant was one of an absolute estate, as contended by the plaintiffs.

[567] But we think that the ambiguity in the wording of the deed is sufficiently elucidated by the evidence given for the defendants in this case and on which the Subordinate Judge has relied, to the effect that such *khairat* grants were according to the custom prevailing in the defendant's Raj at the time of the grant and subsequently, grants of an estate descendible to male descendants only and resumable on the failure of such descendants. There is first the oral evidence on this point, which has been discussed by the Subordinate Judge. He points out that the witnesses, who have given evidence on the subject, belong to two classes, *viz.*, (1) *khairatdars* or holders of *khairat* villages, who depose that they can be resumed on the failure of their male heirs and whose evidence is therefore contrary to their own interests or to that of their descendants; and (2) of witnesses, who are in possession of villages formerly held as *khairat* villages, which have been resumed by the defendant or his ancestor on the failure of the male heirs of the grantees. We agree with the Subordinate Judge in considering that this evidence establishes the existence of the custom set up by the defendant. But there is further authority in support of the custom. In the first place, in Sir William Hunter's Statistical Account of Bengal, Vol. XVI, in a sketch of the history of the Raj Kunda, in which the disputed village of Shakkerpur is situated, it is said that "both feudal and religious tenures escheat to the estate on failure of male heirs of the grantee." Then, the defendant has adduced several judgments of the Court of Chota Nagpore, the jurisdiction of which *mouzah* Shakkerpur is subject, in which the custom referred to, or one similar to it, was held to be established. In one of these, being a judgment of the Judicial Commissioner of Ranchi, dated the 13th August 1844, the plaintiff, whose father had made a *khairat* grant to the grantee and his *al aulad*, was held entitled to resume it on the ground that *al aulad* signified "male heirs," and that he had established the usage, contended for by him, that such *khairat* grants were resumable on failure of the male heirs of the grantee. The Judge says:—"I am therefore of opinion that the usage relied on by the plaintiff has been fully proved, that is to say, that the absence of male heirs of *jaghirdars* of *pergannah* Palamau

causes *ispo facto* reversion of the jaghir to the original grantor of the jaghir, and it does not devolve on heirs in general."

[568] In another case, *viz.*, Appeal No. 40 of 1844, the Deputy Commissioner of Chota Nagpore, on the 4th August 1845, decided that on the death without issue of the grantee of a *birt* (free of rent) tenure, the pottah of which conveyed the land to the lessee *putra poutradi*, the plaintiff Maharaja was undoubtedly entitled to resume. This decision is not quite in point, but it shows that in Chota Nagpore the words "*putra poutradi*" have been held not to convey an absolute estate, as they have been interpreted as doing in other parts of the province. To the same effect is a judgment of the High Court, dated 4th July 1863, in which it is said :—"We consider that it was clearly admitted in both the lower Courts that there was a special custom prevalent in the district, in which this estate is situate, with regard to *jaghirs* of the description of that now in dispute, and that such *jaghirs* were granted to the original grantee and his lineal direct heirs to the exclusion of all collateral heirs and on the failure of direct heirs were liable to resumption. The meaning of the words "*putra poutradi*" should therefore in this special description of estate be guided by the customs of the country." The case of *Roop Nath Konwar* v. *Juggunnath Sahee Deo* (1) has also been cited to us. This was a case coming from Chota Nagpore. In it, it was held that a *jaghir* could under local usage be resumed on the death of the *jaghirdar* without lineal descendants. We may also allude to the provisions of section 124 of Act I of 1879, the Chota Nagpore Landlord and Tenant Procedure Act, which recognises the existence of under-tenures held conditionally on the survival of heirs made of the grantee and which, on failure of such heirs, revert to the grantor free of all incumbrances. It has been argued by the learned pleader for the appellants that the *khairat* grant of Shakkerpur made to Janki Misser is not an under-tenure. This may be so, but it is significant and supports the contention of the defendant of the existence of the custom relied upon by him that, when the present defendant attached the village of Shakkerpur in execution of a decree against Bhat Misser, he described it as a tenure resumable on failure of male heirs, and that the plaintiff Perkash Lal, who objected to the execution, did not plead that the tenure had been [569] wrongly described, and that it was not resumable on failure of male heirs.

The learned pleader for the appellants has called our attention to many rulings of the Privy Council and of the Courts of this country—among others to the cases of *Nursing Deb* v. *Koylasnath Roy* (2), *Ganendra Mohan Tagore* v. *Upendra Mohan Tagore* (3), *Ganendra Mohan Tagore* v. *Jatindra Mohan Tagore* (4), *Krishnarav Ganesh* v. *Rangrav* (5), *Bhoobun Mohini Debya* v. *Hurrish Chunder Chowdhry* (6), *Ram Lal Mookerji* v. *Secretary of State for India* (7) *Lalit Mohun Singh Roy* v. *Chukkan Lal Roy* (8), *Venkata Kumara Mahipati Surya Rau* v. *Chellayammi Garu* (9), and *Gobind Lal Roy* v. *Hemendra Narain Roy Chowdhry* (10). The cases of *Ganendra Mohan Tagore* v. *Upendra Mohan Tagore* (3), and *Ganendra Mohan Tagore* v. *Jatindra Mohan Tagore* (4) have

(1) (1836) 6 S. D. A. Sel. Rep. 133.
(2) (1862) 9 Moo. I. A. 55.
(3) (1869) 4 B. L. R. O. C. 103, 182.
(4) (1872) 9 B. L. R. P. C. 377 ; 18 W. R. 359.
(5) (1867) 4 Bom. H. C. A. C. 1, 17.
(6) (1878) I. L. R. 4 Cal. 23; 3 C. L. R. 339 ; L. R. 5 I. A. 138.
(7) (1881) I. L. R. 7 Cal. 304 ; L. R. 8 I. A. 46. 60.
(8) (1897) I. L. R. 24 Cal. 834 ; L. R. 24 I. A. 76.
(9) (1893) I. L. R. 17 Mad. 150.
(10) (1889) I. L. R. 17 Cal. 686.

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been relied on as authority for the proposition that "estates tail male cannot according to Hindu Law be created either by will or gift." The other cases are authorities for the contention that words in grants such as "from generation to generation," "*putra poutradi*," and "*santan santati krame*" have been held to convey absolute estates of inheritance, alienable and never resumable. The answer to these arguments would seem to be that all law is liable to be overridden by custom, and that none of the cases cited relate to the words "*al aulad*" or lay down how such words are to be interpreted, particularly in Chota Nagpore and Raj Kundu, where custom apparently ascribes to them the meaning of "lineal male descendants."

The learned pleader for the appellants has further called our attention to certain rulings on the subject of custom, *viz.*, *Hiranath Koer* v. *Baboo Ram Narayan Singh* (1) (in which he relies [570] on certain *dicta* of Mr. Justice Markby), *Mana Vikrama* v. *Rama Patter* (2) and *Indur Chunder Doogur* v. *Luchmee Bibee* (3). In respect of the first of these cases, it is sufficient we think to say that in our opinion there is sufficient evidence to establish the existence of the custom in question in Raj Kunda, to which the village of Shakkerpur appertains. In the Madras case, it is laid down that in order that the practice on a particular estate may be imported as a term of the contract into a contract in respect of land in that estate, it must be shown that the practice was known to the person whom it is sought to bind by it and that he assented to it. The last case is authority for the proposition that no custom can possibly override the plain terms of a contract and must not be irrational, absurd and contrary to the principles of equity and good conscience. But in this case the contract was made 63 years ago. The contracting parties are all dead. It is sufficient we think, if evidence is given, as we consider has in this case been given, of the existence and the prevalence of the custom in question on the defendant's estate at or about the time of the grant, so that it may be inferred that the grantee must have been cognizant of, and must have accepted the grant subject to it. With reference to the last case, it is sufficient to observe that the terms of the grant to Janki Misser are not plain, and that the custom set up by the defendant is neither irrational, absurd nor contrary to equity and good conscience.

The appellants' next plea which we have to consider is that which impugns the Subordinate Judge's finding as to the failure of heirs of the grantee Janki Misser. But in the first place, as we agree with the Sub-Judge in finding that the existence of the custom set up by the defendant is proved, and that the words *al aulad* in the deed must be interpreted as "lineal male descendants," this plea fails. Admittedly no such descendants exist. It is alleged that one Ram Shankar Pandit is a descendant of Janki Misser through a female. We are of the same opinion as the Sub-Judge that this allegation has not been proved. Ram Shankar Misser has not appeared, though summoned. His son has not appeared. Witnesses have been called on both sides to [571] prove and disprove his relationship to the family of Janki Misser. Those who say he is not related to the family have apparently as good means of being acquainted with the family as those who swear that he is a relation. In these circumstances, we cannot disturb the finding of the

(1) (1871) 15 W. R. 375; 9 B. L. R. 274.
(2) (1897) I. L. R. 20 Mad. 275.
(3) (1871) 15 W. R. 501.

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Subordinate Judge that he has not been proved to be a descendant of Janki Misser, and on the view we take of the meaning of the sanad, even if he be, as alleged, a descendant of Janki Misser through a female, the defendant is entitled to resume.

We further concur with the Subordinate Judge in his finding as to possession. The plaintiffs have, we think, entirely failed to establish their possession of the lands of the village at any time. We have nothing to add to what the Subordinate Judge has said in the part of his judgment, in which he gives his reason for his finding on the sixth issue, which relates to the alleged possession of the plaintiffs.

The learned pleader for the appellants argues that the defendant's right to resume is barred by limitation, as the right arose on the death of Janki Misser. But we are of opinion that this is not so. The grant is shown to be one to Janki Misser and his male heirs, and the right to resume could not arise till the death of the last male heir, *viz.*, Bhat Misser, which took place about August 1886, and the defendant is alleged to have taken possession within about five years of that date.

For all these reasons we dismiss this appeal with costs.

Appeal dismissed.

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[572] APPEAL FROM ORIGINAL CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Sale and Mr. Justice Pargiter.

WATKINS v. SARAT CHUNDER GHOSE MOULICK AND OTHERS.*

[13th April, 1904.]

Commission—Administrator-General's Act (II of 1874), ss. 52, 54—Assets, meaning of—Revenue-paying estate.

The Administrator-General is entitled to charge only one commission upon his commission.

He is entitled to commission upon the entire collections of a revenue-paying estate.

He is not entitled to commission on the value of the corpus of such part of the estate as is in the hands of a Receiver, but only on realizations made and handed over to him by such Receiver.

PER SALE, J. The entire rents of a revenue-paying estate, when collected by the Administrator-General, become the "property" of the estate in his hands, and the application of such property in the payment of revenue is a distribution of such property in due course of administration.

In this sense the property of a deceased person applied in payment of revenue is "an asset" within the meaning of the Administrator-General's Act and as such is chargeable with commission.

[Ref. 41 Cal. 771.]

APPEAL by the defendants, N. S. Watkins and H. Bateson, the executors of the late Administrator-General, and by the present Administrator-General.

In the year 1895 two suits were instituted against the Administrator-General, who was acting as the executor of the will of Kumar Inder Chunder Singh of Paikpara for the construction of the said will and for

* Appeal from Original Civil Nos. 5 and 6 of 1904 in Suits Nos. 675 and 753 of 1895.