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to and invades that right, and which would justify an injunction, or a decree for damages, or a decree for delivery of possession being passed against the defendant, if the Court had so thought fit to exercise its discretion. We concur generally in the opinion expressed above, but do not think the rule laid down is quite applicable to the present case, for though the plaintiff might have had relief from the Survey Authorities, yet we see that in the suit the defendant has resisted the title of the plaintiff, and claims the lands as his own, and the contention has been carried on to the extent that a remand, for the purpose of making a local investigation, was ordered by the lower Appellate Court. After this local enquiry, the first Court again took up and disposed of the case on the merits, and we think it is too late now for the opposite party to raise the objection that the plaintiff has no cause of action. Under this view of the case, we remand it to the Judge to be tried on its merits.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

GABIND CHANDRA (PLAINTIFF) *v.* THE COLLECTOR OF DACCA AND OTHERS (DEFENDANTS) *

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May 13.

Mehal—Batwara—Government Revenue—Limitation—Act XIV. of 1859, *s.* 1 *cl.* 15 & 16.

During the pendency of a batwara the plaintiff purchased a share in an ijmali mehal, and as the proportion of the Government revenue of each shareholder had not been ascertained, the shareholders including the plaintiff's vendor and subsequently the plaintiff paid to the Collectorate what they thought due from them on account of Government revenue. Upon an account stated in 1857, it was ascertained that after all necessary deductions a sum of rupees 655 was due to the plaintiff, who in 1864 applied to the Collector for payment of the amount, but the application was rejected as the money had been previously drawn away by certain creditors of his vendor.

In 1867 he sued the Collector for recovery of the amount. The defence set up was that the suit was barred by lapse of time.

Held, that the Collector was not a depositary under the meaning of clause 15, sec 1, Act XIV. of 1859; that the cause of action did not arise on the demand for and refusal of payment, but on adjustment of the account; and that the case came under clause 16, sec. 1, Act XIV. of 1859.

Baboos *Ramesh Chandra Mitter* and *Mahini Mohan Roy* for appellants.

Baboos *Anakul Chandra Mookerjee* and *Srinath Banerjee* for respondents.

BAYLEY, J.—I am of opinion that this appeal should be dismissed with costs. The plaintiff in the year 1842 purchased the 3 annas 4 gandas share of one

* Special Appeal, No. 3228 of 1868, from a decree of the Judge of Dacca, dated the 5th September 1868, affirming a decree of the Principal Sudder Ameen of that district, dated the 19th November 1867.

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Balaram, in an ijmali mehal in Pergunna Amirabad. It is stated that a batwara was going on in the mehal, both before and after the date of the plaintiff's purchase, and it is added that as the amount of Government revenue due from each sharer could not on that account then be precisely ascertained, the several sharers paid in what they thought due from them on account of the Government revenue.

In July 1864, the plaintiff asked for the surplus payment to be made over to him, as by account dated the 23rd March 1857, by which it was ascertained that after all necessary deductions there stood a balance of Rs. 655 and odd annas in his favour, but the Collector refused the prayer, stating that the money was not in the Treasury, having been previously drawn by certain judgment-creditors of Balaram.

The plaintiff has instituted this suit 10 years 16 days after the date of the adjustment of accounts, and 2 years 8 months after the rejection of his application for the 655 rupees. The first question is whether the suit is barred or not.

The lower Appellate Court has held that the suit is barred by limitation, and that the case does not come within the provisions of clause 15, section 1 Act XIV of 1859. It held that limitation is to run on the basis that the cause of action accrued to the plaintiff from the date of the adjustment of the accounts, *viz.*, the 23rd March 1857.

The plaintiff appeals specially against this decision, and urges that the lower Appellate Court was wrong in this view. It is pleaded that the Collector in this case was a depositary as contemplated by clause 15, section 1, Act XIV. of 1859; and it is further argued (though the ground is not specially taken in the petition of special appeal) that in fact the cause of action did accrue on the date when a demand for the money was made, and the Collector refused it.

I am of opinion that this plea is not good. The terms of clause 15, section 1, are: "To suits against a depositary, pawnee or mortgagee of any property "moveable or immoveable for the recovery of the same, a period of thirty "years if the property be moveable, and sixty years if it be immoveable from "the time of the deposit, pawn, or mortage; or if in the meantime an ac- "knowledgment of the title of the depositor, pawner, or mortgagor, or of his "right of redemption, shall have been given in writing signed by the deposi- "tary, pawnee, or mortgagee, or some person claiming under him, from the "date of such acknowledgment in writing." Now the first point to my mind is that the plaintiff's plea can only hold good if it can be shewn that there is a title in the plaintiff to make the Collector a depositary. Now the Collector could treat this money as paid on account of Government revenue from one of the recorded proprietors of this ijmali mehal in which Balaram was a coparcener.

A statement in detail of the account with the proprietors of the mehal prepared apparently in the Accountant's Department of the Collectorate in the year 1857, is relied upon for the special appellant as shewing that the plaintiff was a recorded proprietor, but I do not think

that that statement is any evidence of such fact. It is a statement not made in any way for the purpose of showing who the recorded proprietor is, but for the purpose of simply showing how much of revenue is paid, who pays, and so on. The rule is that Revenue Officers cannot pay money except on account of a mehal to recorded proprietors, save under a decree of a Civil Court. The Collector's Register of proprietors is the authoritative record of such proprietors, not an accidental account made up as in the statement referred to.

Then it is urged that the cause of action in this case accrued to the plaintiff when a request for the payment of money to the plaintiff was made to and refused by the Collector. I however totally dissent from this view. It would be then entirely at the option of the plaintiff to determine the time from which limitation shall run against him. I also agree with the lower Appellate Court in holding that clause 4 does not apply.

Clause 16, section 1. Act XIV. of 1859 is, in my view, the law which properly applies to this case, the cause of action accruing to the plaintiff not from the date, as he contends, of his demand for the money, but as the lower Appellate Court supposes from the date of the adjustment of the accounts, *viz.* the 23rd March 1857.

In this view I hold that the judgment of the lower Appellate Court is correct, and that this special appeal must be dismissed with separate costs to each defendant,

HOBHOUSE, J.—The facts of this case are rather peculiar. The plaintiff in 1842 was a purchaser of 3 annas 4 gandas share of Pergunna Amirabad. This share belonged to one Balaram, and apparently both before and after the time of the plaintiff's purchase, the mehal was under partition of shareholders; consequently no one of the shareholders was able to calculate exactly what amount would be due from him on account of his share for the Government revenue due upon the mehal. So each shareholder paid in, as his share of the Government revenue, whatever sums he thought to be due from him on that account. In this way matters seem to have proceeded until the year 1857 and in that year an account was taken by the Collector, and an adjustment of that account, a sum of rupees 655 odd annas was found to be due to Balaram, and perhaps it may here be said, for the sake of argument, to his purchaser the plaintiff. On the 12th July 1864, the plaintiff demanded this money of the Collector, but the Collector, for reasons into which we need not now go, refused to pay it, and the plaintiff now sues to recover it.

The Courts below have held that the plaintiff's suit is barred by the application of the Statute of Limitation, clause 16, section I.

In special appeal it is urged that in this case the Collector must be held to be in the light of a depositary, and so under the provisions of clause 15, section 1, the plaintiff has 30 years from the date of deposit. I quite agree with Mr Justice Bayley and the Courts below that the Collector cannot in this

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instance be held to be a depositary. It seems to me in this case, upon the face of the very statements made by the pleader for the plaintiff, that the monies paid in by the plaintiff to the Collectorate were nothing else than monies paid on account of Government revenue. They were not in any shape monies paid in as a deposit. They were simply monies paid over a certain number of years to meet uncertain sums due for Government revenue, and subject to an adjustment when the share of the revenue for which the plaintiff was responsible was ascertained. In this sense the Collector was in no way a depositary or trustee. He was in the position, it seems to me, of a person to whom an uncertain sum of money was from time to time due, and who was from time to time receiving money in part payment of that sum subject to an account afterwards. In this view I think that clause 15 will not apply in this case. Neither can I, under the provisions of the Limitation Act, find any clause applicable unless it be clause 16, section 1. By the provisions of that clause the plaintiff would have six years from the time that his cause of action accrued to him. The further question therefore is as to when did this cause of action accrue. The plaintiff's pleader alleges that it accrued from the time when he demanded and the Collector refused the payment, that is on the 12th July 1864, and that he is therefore in time. He has however failed to show us any authority on this point, and it seems to me that if this view of the law is correct, then in all cases in which there is no specific provision laying down the circumstances under which a cause of action arises, in all those cases the party suing is his own arbiter as to the date on which his cause of action arises, and it is impossible to conceive that the Legislature should have so intended; on the contrary I find in a cognate case to be found in the provisions of clause 9, section 1 of Act XIV of 1859, that the cause of action is definitely laid down at quite another period. There, in the case of money lent, the cause of action is held to accrue from the time when the debt becomes due, and the argument in that case seems entirely to apply to this. This is a case where monies were received by the Collector on account. When, therefore, the Collector adjusted the account, and in the adjustment declared that a certain sum was due to the plaintiff, then it seems to me the cause of action of the plaintiff arose, that is, it arose on his own shewing, in the year 1857, when the Collector declared the money to be due to him after adjustment of accounts. The plaintiff should, therefore, in my judgment, have sued in the year 1857, and as he did not do so, his suit was I think out of time.

I agree therefore in dismissing this special appeal with separate costs to each of the two respondents who have appeared in this Court.