MARKBY, J.—The facts, as far as I have been able to gather them in this case from the statement of the pleaders, are as do not comply with the requirements of the law.

Now, by the law on this point, it is laid down that on issue of a notice, calling parties to settlement, all persons having any claims of any description are required to come forward and assert their respective claims to that settlement, but in the present case nothing has been shown that when the settlement took place the special appellant complied with the requirements of the law.

In this view I would dismiss this special appeal with separate costs to the Government and the other respondents who have appeared in this case.

HORHOUSE, J.—I agree in dismissing this special appeal with costs as above,

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Before Mr. Justice Bayley and Mr. Justice Macpherson.

The 22nd August 1868.

BHIKU SING AND OTHERS (PLAINTIFFS) *v.* THE GOVERNMENT AND OTHERS (DEFENDANTS.)*

Mr. *Woodroffe* (with him Baboo *Tarak Nath* Sen) for the appellants.

Mr. G. *Gregory*) with him Baboo *Krishna Kishor Ghose*) for the respondents.

BAYLEY, J.—This application for review of our judgment is made on the following grounds :—

1*st*.—That we are wrong in holding that the Government has any such absolute power in it as to entitle it to refuse a settlement with an ex-lakhirajdar whose lands have been resumed under Regulation II of 1819.

2*ndly*.—That we were also wrong in affirming the order of the lower Appellate Court which held that, on the ground of the Government having such absolute power of refusal, the plaintiff had no *locus standi* in Court.

3*rdly*.—That we were wrong in holding that limitation barred the suit, as the cause of action arose from the date on which settlement was made with Jai Prakash Sing on the 23rd December 1862, and this suit was instituted within three years of that date, *viz*.,on the 22nd December 1865.

It is stated by the lower Appellate Court that this land was resumed upon the rebellion of one Ekbal Ali, but when, is not stated nor shown to us. In fact, however, nothing has been pointed out to us to indicate that such was the cause of resumption. On the contrary, it is clear that,on the 22nd May 1826 the, lands were resumed under Regulation II of 1819 on account of the plaintiff's predecessors being unable to show that they held the land rent-free under any grant or title whatever.

The Government seems at first to have held the resumed lands khas, and then on the 22nd September 1840,a twenty years' settlement was made with parties alleged to be co-sharers with the plaintiff, but not with the plaintiff.

On the 22nd September 1847, *viz*., during the currency of the twenty years' temporary settlement, a petition was made by the plaintiff's predecessors begging that a settlement might be at once made with them,and if that could not be granted owing to the temporary settlement then existing and in force, there might be a recognition of their right to settlement,that is to say malikana might be allowed to them. The petition was refused by the Collector, who stated that he could not break in on the temporary twenty year's settlement,but that if the petitioners had any claim,they might take such further steps as they thought

* Application for Review, No, 205 of 1868, against the judgment of Mr. Justice Bayley and Mr. Justice Macpherson, on 11th June 1867 in Special Appeal No. 1622 of 1869.

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follows :—In the year 1835 certain land held by the zemindars of Roghorampore was resumed by Government as not comprised proper after the twenty years had expired; and that due enquiry would then be made. This order of rejection was upheld by the Commissioner in 1848, and it appears that the proceedings finally went in appeal to the Board of Revenue, who finally rejected the petition on the 22nd September 1849.

The learned Counsel, Mr. Woodroffe, states that the ex-lakhirajdar has preferential title to settlement, and cites ss. 7, 8, and 17 of Regulation XIX of 1793. Both sections relate to grants before 1st December 1790, and here there is no such grant shown. Moreover, s. 7 only enacts that the lands resumed shall be independent talooks paying revenue to Government, and s. 8 gives the rules for the settlement with the proprietor of the zemindari after survey and measurement. S. 17 states that a grant for land to be held exempt from the payment of revenue shall, if it has been forged, &c., "be adjudged null and void as far as regards the exemption of the land from the payment of revenue, and the land shall be subjected to the payment of revenue accordingly." But I do not read s. 17 to say, or to mean that therefore settlement must, as a matter of course, be made with the ex-lakhirajdar.

Cl. 4, s. 21, Regulation II of 1819, is next mentioned. That clause states that, after resumption, information should be given to the agent of the ex-lakhirajdar, and the revenue authorities shall proceed to make the assessment according to the law in force. That clause gives no title to settlement by any terms in it to an ex-lakhirajdar.

S. 5, Regulation XIII of 1825, has been next quoted, but that section enacts that it shall be competent to the Governor-General in Council in consideration of certain circumstances, such as long possession, to continue a talookdar or a lakhirajdar in possession.

Then s. 15, Regulation VII of 1822, has been quoted as enacting that Courts of Justice shall have full power to decide what claimants have the best title to settlement. But reading that and the preceeding section together, it is quite clear that the meaning of that section is that which is admittedly recognised, *viz.*, that if A and B respectively claim a settlement before a settling officer, the settling officer, shall, looking to the possession of the party, decide which of them is entitled to a settlement, and refer the other party to a Civil Court for adjudication of his alleged right.

The learned Counsel then cites the rules of the Board of Revenue for settlement, and various proceedings on record in the Gya Collectorate as prescribing rules directing settlement to be made with ex-lakhirajdars, if they are willing to accept the jumma, and fulfil the other conditions of the settlement. There is no doubt that this in the revenue department is the recognized administrative and executive rule and practice which settlement officers ordinarily follow; still there is nothing shown in the Regulations of Government, which prescribes that, if the Government, for some reason of its own, declines to make a settlement with the ex-lakhirajdar, there is any provision of law which compel Government under a decree of the Civil Court to make a settlement with the ex-lakhirajdar, whether he wishes or not. On this point, therefore, I do not see any reason to alter the decree already passed by us in this case.

The case of *Hurree Ram Bukshee* v. *Ram Chunder Banerjee* (a) merely states that the Resumption Courts only declare land liable to assessment, and do not decide conflicting proprietary rights between parties, and that such claim appertains to the Civil Courts.

(a) S. D. A., 1850, 407.

within the limits of their permanently-settled estate; the land being in fact a recent alluvial formation. After the resumption, the land in question remained under khas collection until 1842, when a temporary settlement was made with persons who had no previous interest in the property. Subsequent temporary settlements of a similar character were made until the year 1867, when a permanent settlement was made with the defendant in this suit, who is the owner of an 8 annas share of the zemindari. In each of these temporary settlements, a calculation was made of malikana at 10 per cent. on the jumma due to Government, and the sum so arrived at remained in deposit in the Collectorate treasury to the credit of the maliks. When the permanent settlement was made with the defendant, this sum was at his request applied in satisfaction of the Government claim for revenue under the settlement.

The plaintiff now sues to have it declared that he, as owner of an 8 annas share in the zemindari, is entitled to a share in that settlement.

The lower appellate Court has given the plaintiff a declaration that he is entitled to a 4 annas share only.

The defendant has appealed, and the points which he has urged are, that the suit is barred by limitation; that there was no evidence that this land formed as an accretion to the main land; that, on the contrary, it was resumed by Government as an island; and that the Government had therefore a right to make a settlement with any one they pleased; that no such suit

On the point of limitation, I think it is clearly laid down that when, as here a party claims malikana, which is well known to be in other words a claim for recognition of right settlement on the ground of being an ex-proprietor, and his title to settlement and to proprietary right are rejected, the order of rejection could only be set aside by a suit brought within three years of that time. It is quite clear that, after the refusal of the recognition of plaintiff's right to settlement (which is urged on the ground of his being an ex-lakhirajdar) in 1849 no steps were taken by him to sue. He is therefore in my opinion barred by limitation in the present suit. On that point, therefore, I do not think it necessary to alter the decree passed by us.

This application will, therefore, be rejected with costs. Separate costs to be allowed to Government.

MACPHERSON, J.—I concur in rejecting this application for review. My reasons are stated in the judgment I delivered at the hearing of the appeal, and I do not see any cause to alter the opinion I then formed. The application will be refused with costs.

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as the present would lie; and that at any rate the Government ought to be made a party to the suit.

With regard to the two last points, I think they are easily disposed of. Without going minutely through the language of the Regulations, I think it quite clear that it has been the invariable practice in this country to allow a person who alleges that he is entitled to a permanent settlement to come into the Civil Court to obtain a declaration of that right; and that the Government has invariably recognised the right so declared by making or altering the permanent settlement accordingly. The Government moreover has no sort of interest in such a suit, the remedies which they have making it almost entirely a matter of difference to them with whom the settlement is concluded. And though, under some circumstances, it might be convenient to make the Government a party to the suit, and though this has been sometimes done, it is by no means, as far as I can discover, the invariable practice to do so. I think, therefore, we ought to hold that the suit will lie, and that the omission to make the Government a party is not a ground for dimissing the suit.

With regard to the second objection that thare was no evidence that this land formed as an accretion, and that it was resumed by Government as an island, so that they had the right to make a settlement with whom they pleased, I think the judgment of the lower Appellate Court is satisfactory upon that point. I think the reasoning is perfectly sound, and, as far as I have seen, fully justified by the facts that the Government have all along treated this, not as land which they had an absolute right to dispose of as they pleased, but as land over which the zemindars of the neighbouring zemindari had a prior right of settlement. This can only have been on the ground that the land in question was an accretion to their estate.

The remaining objection, which is that this suit is barred by limitation, is one which is not altogether free from difficulty. Had this been *res integra*, I should have had some doubt whether, under the circumstances of this case, the zemindars of this zemindari had not altogether lost their right to demand from the Government that a settlement shouldbe made with them

It appears that in the year 1851, a notice was issued to them to come in and take a settlement, and that Shambu Chandra, the father of the present plaintiff, appeared as the representative of the maliks on that occasion, but that he refused on their behalf take a settlement at the jumma fixed. Now the proprietors of this zemindari were no doubt entitled to this accretion, but subject, nevertheless, to assessment of revenue under Regulation II of 1819, and the other Regulations in force; and looking to the general tenor of the Regulations upon this subject, specially to Regulation VIII of 1793, s. 44, and Regulation XIX of 1793, s. 8, I should have been inclined to think that the zemindars having once refused a settlement their right was gone; but the tenor of the decisions and the practice of the revenue authorities appear to be otherwise. As far as I can ascertain, the pratice has been to recognize the right of the zemindar to come in and claim a settlement of any accretion to his estate as in no way interfered with so long as only temporary settlements are made with other parties, provided always that the proprietary right of the original zemindars has been recognized. Several cases, *Gooroopersad Roy* v. *Sunduloonissa Bibi* (1), *Monikurnika Chowdhrain* v. *Kali Chunder Chowdhry* (2), *Ram Monee Chowdhrain* v. *Moulvie Myenooddeen* (3), *Gourkissen Deb* v. *Ramkanye Deb Roy* (4), *Ramaisher Singh* v. *Saïwa Zalim Singh* (5), *Mohammed Mohiboollah* v. *Mahomed Ataoollah* (6) and *Bheema* v. *Pahlad* (7), to this effect are collected in Thomson on Limitation, 2nd edition, page 154. The decision of Norman and Seton-Karr, JJ., in *The Government* v. *Tekait Pokharun Sing* (8) is distinguishable. That relates to the resumption of land held under an invalid lakhiraj tenure, which stands on a wholly different ground from land which has been added by accretion to a parent estate. The zemindar of an estate to which there is an accretion is by Regulation XI of 1825, s. 4, cl. 1, the proprietor of that accretion. But the holder of an invalid lakhiraj tenure has not, as I understand

(1) S. D., 1859 470.
(2) W. R., 1864, 149.
(3) 7 W R., 182.
(4) 1 W R., 55.
(5) 2 Agra, 8.
(6) 1 Agra, 231.
(7) 2 Agra, 38.
(8) 7 W. R., 465.

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the decisions, any proprietary right in the land after it is resumed see the decision of Bayley, J., in *Golack Chandra Chowdhry* v. *Ali Mollah* (1). Moreover I think there is authority, which we ought not now to dispute, for holding that this right is not barred by lapse of time, so long as it is formally and distinctly recognized by the revenue authorities when making the temporary settlements. No doubt, such temporary settlements interfere in some measure with the full enjoyment of the zemindar's rights, but, both here and in the Courts of the North-Western Provinces (see Thomson on Limitation *ubi supra*), it has been held that the period of limitation which bars the claim to a settlement does not begin to run so long as the proprietary right of the zemindar is recognised, and no permanent settlement is made with any other person, and it seems to me sufficient in this case to say that we ought to follow the rule which has been so long acted on.

It was however contended in this case that, as the malikana was never paid to the plaintiff, but applied, in fact, to the benefit of the defendant, the proprietary right of the plaintiff had not been recognized. But I do not think that the payment of malikana is the sole and exclusive method in which a proprietary right can be recognized. Why the malikana was applied exclusively for the benefit of the defendant, and why a settlement was made with him to the exclusion of the plaintiff, does not appear. From the portion of the proceedings of the revenue authorities which has been read to us, it would appear that the plaintiff and his predecessors have been recognized all along in the most formal manner, as part proprietors in this zemindari, and the malikana, which was reserved, has been kept in deposit for the benefit of the proprietors generally. I think this should be considered as a recognition of the plaintiff's proprietary right, notwithstanding that the malikana was not ultimately paid to him.

These are the only objections which have been taken to the decision in the Court below; and as they have failed, I think this appeal should be dismissed with costs.

(2) See *ante*, p. 528.

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There are five other appeals, Nos. 869, 870, 872, 873, and 874, of 1871, of a similar kind, which it was agreed should abide the result of this case. They will, therefore, likewise be dismissed with costs.

BAYLEY, J.—The plea that there is a defect of parties, as Government was not a party, is untenable, because the plaintiff's suit against the defendant here is one which can be decreed or dismissed without the right of Government being affected. Whoever is or becomes the recorded proprietor will be answerable for the revenue, and in default the estate will be sold for the recovery of the arrears in the name of the recorded proprietor.

As to the land not being found to be an accretion to a parent estate, there is substantially, and on a view of the whole judgment, a finding of fact on evidence that the land in dispute is in contiguity to the parent mehal.

In regard to limitation, it is clearly laid down in Sir John Shore's Minute on which the permanent settlement Regulations were based (5th Report, page 472), that malikana is the right of land lords who refused to take the original settlement. The settlements made subsequently of *taufir* or alluvial land, as part of a parent estate, are merely supplementary settlements of the original permanent one. The principle on which malikana is due in the one of the above cases would apply to the other. But invalid lakhiraj or rent-free land is in a different position. It is not part of a permanent settlement, that is, not part of the assets on which a zemindar engaged to pay revenue to Government under the settlement of 1793 upon the assets of his revenue-paying estate. Invalid lakhiraj, that is rent-free land, is in a seperate category. There the Government on resumption takes the land as its absolute property, *i. e.*, as not belonging to a Government revenue-paying estate, or forming part of the assets of that estate. Government, it is true, settles with the ex-lakhirajdar on a malikana of 50 per cent., but gives both the settlement and the malikana in that case as acts of its own free grace.

On the whole, I am of opinion that limitation does not apply

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to a right of a malik to engage on the expiry of temporary settlements made of assessed alluvial land, and contiguous to the parent estate of such malik. At least, I am aware of no law or ruling to that effect, and experience is to the contrary. Here indeed, it is clear, the malikana was kept as a deposit to the account of the recorded proprietors of the parent estate whoever they might be. It may be added that, in every one of the temporary settlements in this case, the most clear and distinct reservation of the rights of the proprietors to come in and take the permanent settlement on expiry of the temporary settlement was recorded.

I would also dismiss the special appeals

Appeal dismissed

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March 15

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice L. S. Jackson.

DINDAYAL PARAMANIK (PLAINTIFF) *v.* RADHAKISHORI DEBI AND OTHERS (DEFENDANTS.)*

Limitation—Act X of 1859, s. 23, cl. 5 ; ss. 32 and 78— Ejectment—Stamp.

The plaintiff had sued the defendant at the end of the year 1272 to recver arrears of rent for 1271, and to eject him for non-payment. The litigation lasted till 1276 when the plaintiff obtained a decree, which however was not executed, as the defendant paid the amount and costs within 15 days. In 1276 the plaintiff brought this suit to recover the rents of 1272 and of subsequent years. It was held that the plaintiff's claim for the rents of 1272 was not barred by the lapse of three years, under s. 32 Act X of 1859.

The plaintiff in this case held a kabuliat from the defendant for a certain piece of land, by which he was entitled, in default of payment of rent, to take possession of the land himself. The defendant fell into arrears at the end of the year 1271 (1864-65), and the plaintiff instituted proceedings under s. 23, cl. 5, and s. 78 of Act X of 1859, for the arrears and for ejectment. This litigation lasted till 1276 (1869-70) in which year the plaintiff obtained a decree for the arrears and for ejectment. The amount of arrears had in the meantime been paid up, and the costs

* Special Appeal, No. 1249 of 1871 from a decree of the Officiating Judge of Nuddea, dated the 21st June 1871, modifying a decree of the Deputy Collector of that district, dated the 16th February 1870.