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having heard that evidence, we have no hesitation in affirming its judgment.

It seems to us that there is nothing like any evidence to show that the plaintiffs were in possession within 12 years; on the contrary, the decision in the suit above referred to, goes to show that at the period of Ahlad Singh's lease, the plaintiffs were not in possession of the land, and we see no reason to believe that they ever got into possession afterwards.

We think it right to state, that Baboo Chandra Madhab Ghose proposed to submit to us certain documents, and what he called "the history of the previous litigation," commencing from the year 1828, but, having ascertained from him that the documents in question do not contain any evidence of possession within 12 years, and that they are not corroborative of the evidence of the witnesses as to that possession, we decline going into that mass of documents.

We think, therefore, for these reasons and for those referred to above, that the plaintiffs' suit has been rightly dismissed, and that this appeal also must be dismissed with costs.

Before Mr. Justice Phear and Mr. Justice Hobhouse,

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June 25.

Limitation—Lessee under Government—Act XIV. of 1859, *s.* 1, *cl.* 12 *and s* 17.

A. claimed certain immovable property as lessee, under a Government settlement made in 1859. B. had been in possession for more than 12 years before the institution of the suit. *Held*, that the suit was barred under clause 12 of section 1 of Act XIV of 1859. The mere fact that A. claimed as lessee under Government did not entitle him to the benefit of section 17, Act XIV. of 1859.

THIS was a suit brought in the Court of the Moonsiff of Sealtakh, in the district of Cachar, to recover possession of 12 *katas* and 5 *pans* of land.

The plaintiff derived their title from a settlement entered into with them by Government in 1859, but the principal defendant raised the defence of limitation, on the ground that he had

* Special Appeal, No. 3137, from a decree of the Officiating Deputy Commissioner of Cachar, reversing a decree of a Moonsiff of that district.

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held possession of the property for 14 or 15 years. The Moonsiff gave a decree for the plaintiffs, on the ground that, as they held under a Government settlement, their claim was not barred. On appeal, the Deputy Commissioner reversed the decision of the Moonsiff, and dismissed the suit of the plaintiffs.

Against this decision the plaintiffs appealed specially, urging, among other grounds, the following :—

"Since the defendants derive their title from and hold under Government, on their own showing, 14 or 15 years since, no plea of limitation can be successfully pleaded as against Government; and the present plaintiffs holding from Government, under a settlement dated 1859, no question of limitation as between these plaintiffs and defendants can reasonably arise."

Baboo *Mohini Mohan Burdan* for appellants.

The respondents were not represented.

The judgment of the Court was delivered by

PHEAR, J.—In this case, the suit is brought for the recovery of immovable property, and the lower appellate Court has substantially found that the cause of action arose more than 12 years previous to the institution of the suit. The lower appellate Court has, accordingly, held that the suit is barred by the operation of clause 12, section 1, Act XIV. of 1859. The special appellant taking the facts as found by the lower appellate Court, objects that the period of limitation in this case is not 12 years but 60 years, because the plaintiff claims the land which is the subject of suit as lessee under Govewnment.

The words of clause 12 are perfectly general. They certainly apply in terms to this case, and, therefore, the objection of the special appellant cannot be supported, unless there is something either in Act XIV. of 1859, or in some later Act, to prevent clause 12 of section 1 from having operation in cases where the plaintiff sues as lessee of Government property. Now the only legislative provisions which bear upon this point, are those contained in section 17, Act XIV. of 1859. That section

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says: "This Act shall not extend to any public property or "right, nor to any suits for the recovery of the public revenue "or for any public claim whatever, but such suits shall continue "to be governed by the laws or rules of limitation now in force." If, therefore, this is a suit brought to recover public property, or to assert a public right, or is a suit for the recovery of public revenue, or to make good any public claim whatever, then clause 12, section 1, has no operation in the case. But obviously the claim of the plaintiff is a purely private claim. He seeks to assert a private right. The remedy that he asks for would result solely in his own benefit. It does not appear by the terms of his plaint, nor is any fact disclosed by the answer of the defendant, which serves to indicate in any way that public property is in question in this suit, or that any public right or claim is sought to be vindicated.

In truth, if the statements of the plaintiff and the defendant are taken together, it would seem that the Government, so far from having suffered or being likely to suffer any loss in regard to public property or public right under the circumstances of the case, is actually receiving rent from two parties, namely the plaintiff and the defendant, simultaneously, for the plot of land, which is the subject of suit. In short, there is no pretence for saying that this is a suit falling within the reservation of section 17 of Act XIV. of 1859; and, consequently, the words of clause 12, section 1, of that Act must have full operation. That being so, on the finding of fact of the lower appellate Court, which is not impeached by the special appellant, the plaintiff's suit is barred, and the decision of the lower appellate Court is right. We, therefore, dismiss the appeal, but without costs, as no one appears for the respondent.