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and on this point we differ from the decision passed by the Principal Sudder Ameen.

The plaintiff may have lived in commensality with the defendants in the same house; but it is quite evident from the depositions, more especially of her married sister, and also of other witnesses, that she has never been in possession of any share of the property as a member of a joint Hindu family.

Holding this view of the case, we decree the appeal No. 8 of 1868, and dismiss the appeal No. 15 of 1868, dismissing the plaintiff's suit with all costs.

Before Mr. Justice Loch and Mr. Justice Glover.

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SRIMATI BHABATARINI DASI AND OTHERS (PLAINTIFFS) *v.* J. GREY (DEFENDANT)*

Arrears of Rent—Jurisdiction.

A took a farming lease from B, by which he agreed to pay to B a certain yearly rent, and stipulated further to pay to B half of any enhanced rent which he might succeed in realising from the ryots.

Held, that a suit by B to recover arrears of this moiety of enhanced rent would lie in the Revenue Court.

IN 1269 (1862), the defendant, J. J. Grey, took a farming lease of plaintiff's share in a zemindari, agreeing to pay rent at Rs. 8,884 per annum. By a distinct stipulation in the lease, he consented, in the event of his being able to enhance the rent of the ryots, to pay plaintiff half the profits arising from such enhancement. Plaintiff sued for her share in the enhanced rents which she said had been realised by defendant in the years 1864, 1865, 1866.

The Collector of Malda, on 20th May 1868, dismissed the suit, on the ground that it did not fall within clause 4, section 23, Act X., observing: "Defendant consented to pay a certain fixed yearly sum for his farm, and that being paid, the landlord cannot sue him for arrears of rent even though he fail to observe certain stipulations entered in the same document, and forming part of the conditions of entry. After specifying the yearly rent,

* Regular Appeal, No. 147 of 1868, from a decree of the Collector of Rajshahye, dated the 20th May 1868.

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the lease goes on to stipulate that for any trees wantonly destroyed, Mr. Grey must pay a certain sum; that he must supply to plaintiff 1000 mangoes yearly, or pay for them at market rates; he must, on raising the rents, pay half to the proprietor, &c. Not one of these items, more than another, can be claimed as an arrear of rent if not satisfied, for it was never contemplated that such cases should be brought before Revenue Courts in summary suits, each item involving judicial enquiry."

The plaintiff appealed.

Baboos *Anukal Chandra Mookerjee* and *Anand Chandra Ghosal* for appellant.

Baboo *Jagadanand Mookerjee* for respondent.

The judgment of the Court was delivered by

LOCH, J.—This suit has been brought for arrears of rent for 1271, 1272, and 1273 (1864, 1865, and 1866.) It appears that the defendant executed a kabuliat in favor of the plaintiffs, agreeing to pay rent at the rate of 8,884 rupees for plaintiff's share of the zemindari Sharshahabad, &c. There was a further stipulation in that kabuliat that the defendant was to measure and enhance the rents of the ryots, and of that enhanced rent he was to pay over half to the zemindar and retain half for himself. He was also bound, at the close of each year, to render an account to the zemindar. The present suit was instituted on the 2nd Baisakh 1275 (May 1868), and the Collector has held that the claim for rent of 1271 is barred by limitation, the suit not having been brought within three years from the close of the Bengal year 1271; and he has further held, that as the suit is not brought for the jumma specified in the kabuliat but for the amount of the enhanced rent realized from the ryots under the provisions of the lease, it is a suit only cognizable by the Civil Court. He has, therefore, dismissed the claim. We think that the Collector has taken an erroneous view of the nature of the claim; he has treated it as if it were similar to other stipulations in the kabuliat, such as damages for trees wantonly destroyed, supply of 1000 mangoes yearly; and he has considered that all these items can only be

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disposed of by a regular suit, and that it was never contemplated that they should be brought before the Revenue Court in summary suits, each item requiring judicial enquiry.

It is necessary to point out to the Collector the difference in these items; the stipulation for damages on account of the wanton destruction of trees could not be claimed as rent, and could not, therefore, be sued for in the Revenue Court; the supply of 1000 mangoes yearly is clearly part of the rent paid in kind, the rest in cash, and the value of them is clearly realizable as part of rent in the Revenue Court. Further, the Collector is wrong in considering suits for rent under Act X. of 1859, to be summary suits. They are not summary suits, but they are to all intents and purposes regular suits, only tried by the Collectors and not by the Civil Court; and, therefore, there can be no doubt that every point on which the parties are at issue which comes before the Collector, does involve judicial enquiry.

Then with regard to the particular item which is claimed in the present case, we think that it is clearly a part of the rent, and may be sued for as rent. The defendant agreed to pay a certain fixed sum, and knowing that higher rents might be realized from the tenantry, he agreed with the plaintiff that if permitted to enhance the rents, he would, in addition to the sum already entered in his kabuliat, pay to him half of whatever should be realized from the tenants; he was bound to render an account every year to the plaintiff, and on looking at the accounts, if anything were in balance, whether part of the fixed rent as stipulated in the kabuliat or part of the enhanced rent and were not paid up, we see no reason why plaintiff should be debarred for suing for such sum in the Collector's Courts as arrears of rent. The case *Ashootosh Chuckerbutty* v. *Banee Madhub Mookerjee* (1) is very much in point; in that the durputnidar agreed, in addition to his rent, to realize and to pay to the putnidar the arrears of rent then due by the ryots to the putnidar; and it was held by this Court that the putnidar could sue for such rent realized by the durputnidar in the Revenue Court. It has been attempted by the pleader for the respondent to show that half of the enhanced rents, which were to remain in the hands of the

(1) 5 W. R., Act X. Rul. 34.

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defendant, must be considered merely as remuneration for the trouble that he took in measuring the lands and enhancing the rents, but this is a mistaken view; but whatever it may be, it certainly did not, in any way, alter the character of that money which was to be paid to the zemindar. A full Bench decision, *Raja Nilmani Sing* v. *Annada Prasad Mookerjee* (1) has been quoted by the respondent to show that a case of the nature before us, is cognizable by the Civil Court; that case is entirely at variance with, and is by no means applicable to, the present case. We think the suit is one for rent, and is triable by the Revenue Court, but as there is no sufficient evidence to dispose of this case, we, therefore, remand the case to the Collector that evidence may be called for and the case disposed of on the merits. With regard to the rent of 1271, we concur with the opinion expressed by the Collector, that the claim for the rent of 1271 is barred by limitation. The costs of this appeal will follow the ultimate result of the case.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

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MAHARANI BRAJA SUNDARI DEBI (PLAINTIFF) v. RANI LACHMI KUNWARI AND OTHERS (DEFENDANTS.)*

Limitation—Act XIV. of 1859, ss. 2 and 5—Purchase—Name of Idol—Trustee—Benami.

See also 15 B. L. R. 176

In 1799 an estate was purchased in the name of an idol, and immediately afterwards was mortgaged. Subsequently, when the mortgage debt had been paid off, it was re-conveyed to the idol. After this the names of the idol and of its shebait were entered in the Collector's books as owners of the estate. In 1812, the purchaser again mortgaged the property, and in 1816 his widow executed a second mortgage of it, to pay off the mortgage of 1812. In 1820, the second mortgage was foreclosed. The defendants held the property under titles derived from the mortgage of 1816. The shebait's representatives, in 1867, sue to recover possession of the property as belonging to the idol, alleging that the purchaser was a mere trustee for the idol; that the present holders of the property were cognizant of this, or might have learnt it by reasonable enquiry, and therefore took the property subject to the trust that, accordingly, the suit now brought was a suit against trustees within section 2 of Act XIV. of 1859, and could not be barred by any length of time.

* Regular Appeal, No. 132 of 1868, from a decree of the Judge of the Small Cause Court exercising the powers of Principal Sudder Ameen of Zilla Rajshahye, dated the 20th April 1868.

(1) 1 B. L. R. (F. B.), 93.