The 18th May 1865.

Present:

The Hon'ble C. B. Trevor and G. Campbell, *Judges.*

Jurisdiction—Suit for collections of Shrines.

Case No. 1371 of 1864.

Special Appeal from a decision passed by the Principal Sudder Ameen of Behar, dated the 12th March 1864, affirming a decision passed by the Moonsiff of that District, dated the 30th November 1863.

Sheo Suhaye Dhamee and others (Plaintiffs), *Appellants,*

versus

Bhooree Muhtoon and others (Defendants), *Respondents.*

Baboo Khettur Nath Bose for Appellants.

Baboo Poorno Chunder Mookerjee for Respondents.

A suit will lie for the collections of a shrine, either in right of property in the place, or of lawful and established office attached to it.

RESPONDENT takes objection that a special appeal will not lie. But we find that this is not a suit on a contract, but a claim for the offerings at certain temples on the expr ss ground of "*Mourosee Milkeut*" or hereditary property. It is not a suit of a Small Cause character.

The claim has been most illegally and improperly non-suited by the Courts below—illegally, because no such procedure is known to the present law, and the plaint cannot be rejected after summoning the defendant; and, further, most improperly, because the reason given is altogether frivolous, *viz.*, that plaintiff did not state the names of the pilgrims.

A suit for fees voluntarily paid to one man will not lie on the part of another, when there is neither contract nor tangible property; but, when the parties claim the collections of a shrine, either in right of property in the place, or of lawful and established office attached to it, it is well established that the suit will lie. Plaintiff's suit would seem by his declaration to be of this character, and it must be enquired into to ascertain whether it is so or not. If it is, and plaintiff's claim to the share alleged by him is established; if, moreover, it appears that the collections were made by defendants—then it will lie on the defendants to render to plaintiff an account, and pay him his share of the proceeds. Plaintiff cannot be called on for a nominal roll of collections which he did not make, or to give evidence of that which is not in his cognizance. The case is remanded for a proper trial.

The 19th May 1865.

Present:

The Hon'ble G. Loch and W. S. Seton-Karr, *Judges.*

Limitation (Clause 14, section 1 of Act XIV. of 1859)—Resumption or assessment of Lakheraj.

Case No. 3291 of 1864.

Special Appeal from a decision passed by Mr. A. Pigou, Judge of Hooghly, dated the 8th August 1864, modifying a decision passed by Moulvie Tofel Ahmed, Moonsiff of that District, dated the 19th February 1864.

Krishto Mohun Doss Bukshee (Defendant), *Appellant,*

versus

Joy Kishen Mookerjee (Plaintiff), *Respondent.*

Baboo Brojendro Coomar Seal for Appellant.

Baboos Banee Madhub Banerjee and *Tarucknath Sein* for Respondent.

Clause 14, section 1 of Act XIV. of 1859, applies to all suits to resume or assess lands held rent-free, whether before or after the Permanent Settlement.

THIS was a suit for resumption instituted on 23rd November 1863. The defendant pleads limitation, inasmuch as the suit is not brought within twelve years from the date on which the plaintiff's title accrued. The defendant does not distinctly quote clause 14, section 1, Act XIV. of 1859, but his words sufficiently indicate that he brings his plea under that law. In his petition of special appeal he distinctly specifies the law; and, when the suit was brought, that law was the only law of limitation in force. Section 18 of that Act provides that all suits instituted within the period of two years

from the date of the passing of the Act shall be tried and determined as if the Act had not been passed; but all suits to which the provisions of this Act are applicable, that shall be instituted after the expiration of the said period, shall be governed by this Act, and no other Law of Limitation, any Statute, Act, or Regulation now in force notwithstanding. The Act was passed on 5th May 1859, and, to avoid the effect of the limitation prescribed by the Act, it was necessary to have filed this suit on or before the 5th May 1861; but by section 1 of Act XI. of 1861, the time was extended to the 1st January 1862. That law declared that suits instituted before 1st January 1862 were to be tried and determined as if Act XIV. of 1859 had not been passed. It is clear, therefore, that the plaintiff can derive no further immunity than he has already obtained from the provisions of section 18 of Act XIV., and we have to determine whether the suit now brought is barred by limitation under clause 14, section 1 of the Act.

It is, we think, perfectly clear that the Law of Limitation (Act XIV. of 1859) is applicable to all suits, unless they be exempted from its operation by any provision of that or any other law—thus suits for the recovery of public revenue, or for public claims, are exempted by section 17 of the Act; and suits for rent are governed by the provisions of Act X. of 1859, which contains a Law of Limitation expressly enacted for such suits. Now, looking at clause 14, section 1 of Act XIV. of 1859, we find it enacted that all suits by the proprietor of any land, or by any person claiming under him, for the resumption or assessment of any lakheraj or rent-free land, must be brought within the period of twelve years from the time when the title of the person claiming the right to resume and assess such lands, or of some person (*the* person) under whom he claims, first accrued. That this part of the law is applicable to Bengal is obvious from the latter part of the clause, which specially provides for suits regarding rent-free lands in *permanently settled estates*, and declares that, though they be brought within twelve years from the time when the title of the party bringing the suit accrued, they shall not be maintained if it be shown that the land has been held lakheraj or rent-free from the period of the Permanent Settlement, *i. e.*, from 22nd March 1793.

Before coming to a conclusion, whether this suit, which is for the resumption of lands alienated subsequent to the Permanent Settlement, is barred by the new Law of Limitation, it is necessary to determine whether clause 14, section 1 of Act XIV. of 1859, applies to such cases, or has reference only to lands held rent-free in Bengal previous to 1790. In looking at this question, it is necessary to bear in mind that section 10 of Regulation XIX. of 1793 has not been repealed; and that, if, in respect to these cases, there be a concurrent jurisdiction, as has been lately ruled by a majority of this Court, in the Civil Courts, and in the Collector's, a suit brought in the former for the resumption of lands separated after the Permanent Settlement is not barred by limitation, if the plaintiff be able to prove that the lands in dispute formed at any time a part of his permanently settled estate; whereas a suit before the latter under section 28 of Act X. of 1859 is affected by limitation, if not brought within twelve years from the time when the plaintiff's title accrued. It is therefore of the greatest importance to determine whether the provisions of clause 14, section 1 of Act XIV. of 1859, refer only to cases held rent-free previous to 1790, or whether they operate to supersede and set aside the privilege given to lakherajdars by section 10 of Regulation XIX. of 1793.

We think that the new Law of Limitation is applicable to all suits relative to rent-free tenures whether created previous to or subsequent to 1790. There can be no doubt that it is applicable to the former. It is, we think, equally applicable to the latter, as may be gathered from the object, the wording, and the proviso contained in the latter part of the clause. One object of the law, as it appears to us, is to assimilate the procedure of the Civil Courts with that in the Collector's Court, to make the Law of Limitation applicable equally to suits instituted in the former as in the latter, otherwise we should have the anomaly of two sets of Courts with concurrent jurisdiction trying the same class of cases, in one of which the suit might be barred by limitation, while in the other limitation could not be applied. The effect of thus assimilating the law in both classes of Courts is to put a stop to the harassment which holders of rent-free tenures under 100 beegahs have been subjected to by suits brought by zemindars and others for the resumption of lands held admittedly as rent-free for a long course of years. After so long a period has elapsed, it is almost impossible for the owners of such tenures to give satisfactory

oral or documentary proof of the creation of their title. Witnesses, who might have spoken to the fact, have long since been dead; and those who are called can only speak to the existence of the tenure as rent-free within their own knowledge which probably extends only to a few years back. Documents, which might prove the fact, have been lost or destroyed, or, if produced, do, from want of registration or other cause, share the general suspicion to which all such documents are exposed. Persons who have purchased on the faith of a good title, and have held possession undisturbed for a series of years, or the heirs of the original grantees whose title has hitherto been unquestioned, find themselves, after time has destroyed their means of adducing sufficient proof to support that title, immersed in a vortex of litigation by parties who derive their own title from the zemindar, such as putneedars and durputneedars who have but one object in view, to increase their rent-roll.

But it may be asked, if the object of the law was to prevent further unnecessary harassment to the holders of rent free tenures, why was section 10 of Regulation XIX. of 1793 left unrepealed? The reason is obvious. The Legislature had also to protect the interests of a class of persons other than the holders of rent-free tenures, *viz.*, the auction-purchaser at a sale for arrears of Government revenue. Knowing the frauds to which such a person is exposed, and the difficulty he has, when obtaining possession of an estate, to discover the lands which belong to his estate at the time of the Permanent Settlement to which as purchaser he is entitled, it left to him the right to bring a suit for the resumption and assessment of such lands, so re attaching them or their rent to the assets of his estate; and it declared that, as against his suit, if brought within twelve years from the date on which his title accrued, the occupant of lands held rent-free subsequent to the Permanent Settlement, and separated from the estate as such at any time after that date, should not be able to plead limitation. An auction-purchaser at a sale for arrears of Government revenue is entitled to receive the estate free of all encumbrances imposed subsequent to that Settlement by the previous zemindars, and no plea of long possession can hold good against him if his suit be brought within twelve years of his purchase. A person receiving a grant from Government might also, under the provisions of clause 14, section 1, bring a suit within twelve years from the date of such grant, to set aside a tenure held as rent-free on invalid title. But a zemindar, or a party deriving his title from a zemindar, who, with every opportunity to bring his action, has allowed time to run on, and failed to take steps to resume and assess rent free tenures of this kind, must be held to have lost his remedy; and against his suit limitation may now be pleaded, as he failed to bring his action within twelve years from the date on which his title accrued.

Then as to the wording of the law. It declares that in suits brought by the proprietor of any land, or by any person claiming under him for the presumption or assessment of *any* lakheraj or rent-free land, "the period of twelve years from the time when the title of the person claiming the right to resume and assess such lands, or of some person under whom he claims, accrued." Now, it is clear from these words, as well as from the proviso that follows, that a suit for lands held free from assessment from a time previous to 1st December 1790 could not be entertained under any circumstances, for most zemindars, who under the provisions of Regulation XIX. of 1793 and Regulation II. of 1819, had liberty to sue, had already allowed more than twelve years to elapse since their title accrued, and therefore in regard to such lands an action was clearly barred. But we do not think that this was all that the Legislature intended by this section of the law passed nearly seventy years after the time for bringing such suits began to run. The law, as we read it, appears to refer to another class of cases; and these, we think, must be cases under section 10 of Regulation XIX. of 1793, which an auction-purchaser or other party in similar favourable circumstances might bring successfully, unless the defendants were able to shew that the lands had been held rent-free from the Permanent Settlement. It is obvious, from the proviso at the close of clause 14 of section 1 of Act XIV. of 1859, that even an auction purchaser could not resume lands proved to have been held rent-free from the period of the Permanent Settlement. The fact of their having been so held is sufficient to close the door to all enquiry as to the validity of the title under which the tenure is held. If, therefore, an auction-purchaser is precluded from making a resumption of such tenures, it is clear that the zemindars with whom the Permanent Settlement was made, or their representatives, are equally precluded. If then rent-free

tenures in existence at the Permanent Settlement, whether held on valid or invalid tenures, are protected equally from both these classes of zemindars, to what class of cases does the Law of Limitation prescribed by clause 14 apply, unless it be to cases under section 10 of Regulation XIX. of 1793; These, it appears to us, are not protected from the auction-purchaser if he bring his suit within twelve years of his purchase; but they are protected from the zemindar who has slept over his rights.

Looking, then, at the wording of the clause, and the proviso with which it closes, we think that its provisions were intended to embrace all claims to resume or assess lands held rent-free, whether before or after the Permanent Settlement; that the Legislature did not rescind section 10 of Regulation XIX. of 1793, because there might be certain persons as auction-purchasers at sales for arrears of Government Revenue, who would be entitled to receive the estate, as it stood at the Permanent Settlement, free of all encumbrances subsequently created; that, if such party brought an action to recover within twelve years from the date of his title, no length of possession by the defendant, as lakherajdar subsequent to the Permanent Settlement, could be pleaded against him as barring the suit. But if it could be shewn by the defendant that the tenure had been held as lakheraj from the period of the Permanent Settlement, the suit, though within time, could not be maintained. The rule laid down is that every person claiming a right to resume shall bring his action within twelve years from the date when his title, or of the person under whom he holds, first accrued; and it appears to us to be a general rule applicable to all parties seeking to resume. The Court will look first to the time when plaintiff's title accrued. If the action be brought after twelve years from the date of plaintiff's title, it is barred by limitation, and probably nine-tenths of the suits instituted since Act XIV. of 1859 came into force are in this predicament.

Applying the above ruling to the case before us, we find that the plaintiff is a putneedar, deriving his title from the zemindar. The zemindar's title to resume commenced at the Permanent Settlement, and he never sought to resume these lands. He cannot revive a privilege which has become extinct by his own laches by creating a putnee, nor can he confer on the putneedar a power which he himself no longer possesses. As, therefore, the right to resume has become extinct in the zemindar, we think it cannot be received in the putneedar who derives his title from the zemindar. We therefore hold that the present suit is barred by limitation; and, reversing the order of the lower Court, we dismiss the plaintiff's suit with all costs.

The 19th May 1865.

Present:

The Hon'ble E. Jackson and F. A. Glover, *Judges.*

Mesne-profits (extent of).

Case No. 3704 of 1864.

Special Appeal from a decision passed by the Judge of Shahabad, dated the 5th September 1864, affirming a decision passed by the Principal Sudder Ameen of that District, dated the 20th May 1864.

Gossain Runjeet Geer (one of the Defendants), Appellant,

versus

Lalla Doorga Pershad (Plaintiff), *Respondent.*

Baboos Romesh Chunder Mitter and *Mohesh Chunder Chowdry* for Appellants

Baboo Kalee Kishen Sein for Respondent.

A plaintiff can obtain a decree for mesne-profits only as far as his title is proved.

This was a suit to obtain mesne-profits of 4 annas of certain landed estate. The lower Court has admitted that the plaintiff's title to more than 2 annas is doubtful, but on the ground of plaintiff's possession has given him a decree for wasilat for the 4 annas.

This is taken exception to on special appeal.

We think the decision cannot stand. The plaintiff can obtain mesne-profits only as far as his title is proved, *viz.*, as to 2 annas. The lower Court's decree is amended accordingly to mesne-profits on the 2 annas with interest from date of ascertainment (not from date of institution as stated by the first Court) to date of realization.

The respondent will pay the costs of this appeal.