by the Subordinate Judge, that Mr. Grant, the lessee under the Court of Wards, wrongfully dispossessed the plaintiff or his father without suit. If the plaintiff had sued for restoration to possession on the ground that he had been dispossessed otherwise than by due process of law, and sought to exclude the question of title, as appears to have been the case in Marshall's Reports, page 117, the suit should have been brought within six months after the time of the dispossession—see Section 15 of Act XIV. of 1859.

In the suit now brought it is incumbent on the plaintiff to show that he had a right to possession subsisting at the time of the commencement of the suit. He must, therefore, show that the lease under which he claims is valid and binding against the present ghatwal.

A point very closely resembling that with which we have to deal was considered by the late Sudder Court in the case of Hur Lall Singh *versus* Jorawun Singh, VI. Select Reports, pp. 169 to 171. In that case, a ghatwalee estate had been divided by a previous ghatwal amongst his family, and one of the family, who was, in fact, the eldest son of the ghatwal, sued for partition and separate possession of the one-third share which had been assigned to him. After full consideration the Court dismissed the suit, deciding that ghatwalee lands are grants for particular purposes, especially of police, and to divide them into small portions amongst heirs of the ghatwals would be to defeat the very end for which the grants were made. Mr. Rattray says: "The lands "are held conditionally on the due perform- "ance of certain defined duties. They be- "long to the office, and should not be fritter- "ed away into portions inadequate to the "remuneration of the duty demandable from "the occupants of the whole as a whole. I "would not allow the division even with "the sanction of an entire family or clan."

In the case already referred to in Marshall's Reports, the Court say that they think that the ghatwals of Beerbhoom are, under Section 2, Regulation XXIX. of 1814, possessed of estates of inheritance without the power of alienation.

The late Sudder Court, S. D. A., 1853, page 900, held that "ghatwalee tenures "of Beerbhoom, being, not the private property of the ghatwals, but lands assigned "by the State in remuneration for specific "police-services, are not alienable or attach- "able for personal debts."

The language of the judgment is quite general, but the case before the Court was of an attachment of the ghatwalee estate in the hands of Bharut Chunder Singh, ghatwal, under a decree against the former ghatwal Digbijoy Singh. This case came under the consideration of the High Court—Sir Barnes Peacock and Mr. Justice L. S. Jackson, in the case of Binode Ram Sein *versus* the Deputy Commissioner of the Sonthal Pergunnahs, 7 Weekly Reporter 178. The Court, in holding that the rents of a ghatwalee tenure are not liable in the hands of the heir in possession to attachment for debts of his ancestor, the former holder of the tenure, say that, "under the Regulation, "the holder of the tenure is to enjoy the "whole income of the tenure," and that "it must have been intended that each "ghatwal should be entitled to the whole "income of the estate, and that such income "should not be charged or incumbered by a "previous ghatwal."

With this opinion we entirely agree. We think that the supposed lease by Sham Narain was an incumbrance which, as a ghatwal, he was incompetent to make, and that the succeeding ghatwals were not bound to recognize such lease.

Mr. Graham was content to take our judgment on this point, and therefore we did not go into the many other objections to the judgment of the Court below.

We reverse the decision of the Subordinate Judge, and dismiss the suit with costs in both the Courts.

The 18th January 1871.

Present:

The Hon'ble E. Jackson and Onookool Chunder Mookerjee, *Judges.*

Application for Probate—Stamps—Article 1, Schedule II., Act VII., 1870.

In the Matter of

Judoonath Shadhookhan and others, *Petitioners.*

Baboo Bungshee Dhur Sein for Petitioners.

The stamp requisite for an application for a probate of a will, or letters of administration, is not required to be proportionate to the value of the property involved as such applications come under the provision made in Article 1, Schedule II., Act VII. of 1870, for common applications and petitions.

THE petitioners presented an application to the High Court, representing that the

Judge of the 24-Pergunnahs returned an application for probate made to him on a stamp of the value of 8 annas, on the ground that the stamp was insufficient, and that such applications should be engrossed on a stamp of the value provided for plaints, and prayed for the Court's interference for its admission.

The Judge was called upon to explain the grounds upon which he based his order in respect of the stamp, and those also upon which he considered the stamp to be insufficient, and was referred to Act VII. of 1870 as repealing the Schedule of Act X. of 1865.

In his letter No. 651, dated the 16th December 1870, the Judge explained as follows: "In reply to your letter No. 3757 of the 13th instant, I have the honor to observe that, since the repeal of the Schedule of Act X., 1865, there is apparently no specific rule fixing the stamp requisite for applications for probate of wills. Cases instituted under Act X., 1865, and therefore cases under Act XXI., 1870, are declared to be in the nature of suits; and therefore I held that the stamp requisite for the application must be proportionate to the value of the property covered by the will. If the application be considered as coming under the rule of Clause 6, Article 1 of the 2nd Schedule of the Court Fees Act, the stamp for a common petition would suffice; but it seems to me that cases of applications for probate or letters of administration, and also certificate-cases under Act XXVII., 1860, and any other case which is to be tried as a regular suit, ought, according to strict interpretation of the law, to be covered by the stamps required for plaints. This appears to me to involve considerable hardship, and I shall be glad if the High Court can put a different interpretation on the law."

Note by the Deputy Registrar.—Act VII. of 1870 (Schedule 1, Article 11) fixes *ad-valorem* fees for a probate of a will or letters of administration, and (Article 12) for a certificate granted under Act XXVII. of 1860.

It does not expressly provide for *an application* for probate, &c., which is evidently intended to be treated as an ordinary application for which provision is made in Schedule 2, Article 1, Note c.

Judgment of the High Court.

Mookerjee, J.—We are of opinion that the view of the law taken by the Judge is incorrect. Section 329 of Act X. of 1865, and the Schedule appended to that enactment, having been repealed by the Court Fees Act (VII. of 1870), and no separate or special provision having been made by Act XXI. of 1870, or any other subsequent enactment, for stamps for applications for probate, &c., those applications appear to us to come under the provision made by law for common applications and petitions in Schedule 2, Article 1 of Act VII. of 1870.

The case will go back to the Judge who will admit the application as made on a proper stamp.

The 19th January 1871.

Present:

The Hon'ble J. P. Norman, *Officiating Chief Justice*, and the Hon'ble G. Loch, *Judge.*

Breach of contract—Damages.

Case No. 123 of 1870.

Regular Appeal from a decision passed by the Additional Judge of Backergunge, dated the 24th March 1870.

Raj Coomar Roy Chowdhry and another (Defendants), *Appellants*,

versus

Rajah Debendro Narain Roy (Plaintiff), *Respondent.*

Baboos Kallee Mohun Doss, Romesh Chunder Mitter, and *Doorga Mohun Doss* for Appellants.

Babóo Amerendro Nauth Chatterjee for Respondent.

D contracted to sell to P a piece of land for Rs. 4,500, of which he received 700 as earnest-money. A contract was drawn up by which D agreed to execute and register a bill of sale, and deposit a part (Rs. 1,800) of the price, and P was to execute a bond for Rs. 2,000 to bear interest conditioned for the payment of that sum by a fixed date, the transaction to be completed within a specified period. D was ready and willing to perform his part of the contract by the time named; but finding that P would not complete the purchase, but demanded back the earnest-money, he sold the property to a third party for Rs. 3,800. P then sued to recover the earnest-money and damages.

HELD that P was bound to show that the circumstances were such as to give him an equitable right to have back the earnest-money, and that, had it not been deposited, D could have justly sued for damages to the extent of the loss incurred by the second sale, and therefore P was not entitled to recover the 700 rupees.