"not been able satisfactorily to establish that "plaintiffs ever paid rent as tenants to "Oojul and his heirs, and eventually to the "judgment-debtor, I cannot consider de- "fendant entitled as proprietor to recover "rents from plaintiffs as tenants." Now, without going further, this was not a suit by the defendant to recover rent from the plaintiffs as tenants. This was a suit by the plaintiffs, alleging that their title had been invaded by this attempt on the part of the defendant to get a kubooleut from their co-sharers, and they, therefore, sued to establish, not only their lakheraj title, but for confirmation of their possession. It is, therefore, a suit in which the plaintiffs had, not only to prove their title as lakherajdars, but also that they had been in possession.

In appeal, the first point is that the plaintiffs had no cause of action; 2nd, that this being a suit for declaration of an alleged lakheraj title, the plaintiffs were bound to establish that title; 3rd, that there is no evidence of lakheraj title, that the oral evidence adduced by the plaintiffs is hearsay evidence, and that the evidence of the defendant does not, as stated by the Lower Appellate Court, admit the possession of the plaintiffs as lakherajdars, but admits only the possession of the plaintiffs as tenants of the defendants paying rent for the land they hold.

We think that all these grounds have been fully made out. On the first ground there really appears to be no cause of action on which the plaintiffs could sue. We see no invasion of the title of the plaintiffs, supposing them even to have a lakheraj title. On the second point, after reading the evidence of the three witnesses, Ameen, Panchoo, and another witness, it is clear that they gave evidence to the effect that they heard from the plaintiffs that this was their lakheraj land. There is no legal evidence of the alleged lakheraj title of the plaintiffs, and the evidence for the defence is not, as stated by the Lower Appellate Court, evidence admitting the possession of the plaintiffs as lakherajdars, but simply that the plaintiffs had been paying rents as tenants to the defendant's predecessors.

We think, therefore, that the decision of the Lower Appellate Court is wrong, and must be reversed. We decree this appeal and dismiss the plaintiffs' suit with costs.

The 12th January 1871.

Present:

The Hon'ble F. B. Kemp and F. A. Glover, *Judges.*

Right of worship—Cause of action—Limitation —Clause 16, Section 1, Act XIV., 1859.

Case No. 1639 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Hooghly, dated the 18th May 1870, affirming a decision of the Moonsiff of that District, dated the 31st March 1870.

Gour Mohun Chowdhry (Plaintiff), *Appellant,*

versus

Muddun Mohun Chowdhry and others (Defendants), *Respondents.*

Baboos Hem Chunder Banerjee and *Umbika Churn Bose* for Appellant.

Baboos Romesh Chunder Mitter and *Kalee Mohun Doss* for Respondents.

A claim to exercise a right to a turn of worship of an idol is not a recurring cause of action, and a suit to enforce such a right is governed by the limitation prescribed in Clause 16, Section 1, Act XIV. of 1859.

Kemp, J.—THE plaintiff is the special appellant in this case. He sued on the allegation that he was entitled to a turn of worship of a certain idol, which is kept at present in the female apartments of the house occupied by the defendant Muddun Mohun. In the plaint it is set forth that this idol was the ancestral idol of the family; that the defendants were entitled to the first fifteen days of the month worship; that the plaintiff was entitled to 7½ days worship and another party to the other 7½ days; that the plaintiff's right of worship was suddenly interrupted by the defendant on the 16th of Falgoon 1275; that this interruption gave the plaintiff a cause of action, and he therefore brought this suit to enforce his right to a turn of worship of the idol.

Both Courts have dismissed the plaintiff's suit, holding that this suit is barred, inasmuch as the plaintiff has failed to prove

that at any time within twelve years prior to the institution of the suit he enjoyed the right of worship.

In appeal to this Court, several grounds have been taken by the pleader for the special appellant. He contends, first, that the right of worship is a recurring cause of action; second, that Clause 16, Section 1, Act XIV. of 1859, applies to this suit, and that the period of limitation must be computed from the 16th Falgoon 1275; and as the suit has been brought within six years from the time the cause of action arose, the suit is within time. The next ground taken is that the Lower Appellate Court having found that Tarinee was in possession, and that Tarinee was the sebait, such finding was opposed to the evidence adduced by the defendant, which went to prove that not Tarinee, but her son Muddun Mohun was in possession. The last ground is that certain material witnesses cited by the plaintiff, namely, Ram Coomar Gungopadhya, Protap Chunder Gungopadhya, and Gooroo Pershad Roy, the brother-in-law of the principal defendant, Muddun Mohun, were not examined, although the plaintiff cited them to prove that he had exercised the right sued for within a period which would save his suit from being barred under the statute of limitation, and that the Lower Court refused to send for these witnesses.

We think on the first point that this is clearly not a case of a recurring cause of action. Baboo Hem Chunder Banerjee has attempted by some sort of analogy to a rent-suit to make out that this is a recurring cause of action. There is no doubt that a claim for rent is a recurring cause of action, but this is claim to exercise a right of worship of an idol, and cannot be said to be a recurring cause of action. We think that the period of limitation applicable to this case is that laid down in Clause 16, Section 1 of Act XIV. of 1859, and not the limitation prescribed under Clause 13, Section 1 of the same Act.

Under Clause 13, Section 1, suits to enforce a right to share in any property, moveable or immoveable, on the ground that it is joint-family property, &c., &c., 12 years is the prescribed period. Clause 16, Section 1, applies to all suits for which no other limitation is expressly provided, and gives a period of six years from the time the cause of action arose. Now, it cannot be said that this is a suit for a share in any family-property, whether moveable or immoveable; it is not a suit for a share in the idol, but a suit for a turn of worship of the idol; and therefore it is a suit for which no other limitation is provided by the Act, and 6 years under Clause 16, Section 1, is the proper time within which the suit must be brought; but the suit must be brought under Clause 16 within 6 years from the date of the cause of action, and therefore what the Lower Courts had to find was, whether the plaintiff's cause of action arose at the time he alleges it did, and, if so, whether this suit has been brought within 6 years of that cause of action.

In deciding this point, it is very material that the witnesses cited by the plaintiff who have not been examined should be examined. It is not very probable that the plaintiff or his father would give up their right to their turn of worship of the family-idol, and it was therefore all the more necessary that every opportunity should have been given to the plaintiff to prove his cause of action, more particularly as we find that the case was bandied about from one Court to another between the Court of the Moonsiff of Hureepal and that of the Moonsiff of Jehanabad, at the express motion of the defendants. We find that the plaintiff in both these Courts expressed great anxiety to have these three witnesses examined, and he appears to have been put off by the Moonsiffs of these two Courts, and principally by the Moonsiff of Jehanabad, who refused to send for these witnesses on a purely technical ground, namely, because the said witnesses having been summoned by the Moonsiff of Hureepal, they were not bound to attend before the Court of the Moonsiff of Jehanabad. That may be so, but inasmuch as one month and five days elapsed from the date of the application to enforce the attendance of these witnesses to the date on which the case was decided by the latter Moonsiff, we think that the ends of justice require that these witnesses should be examined, particularly as they were parties who were likely to throw light upon the case. We, therefore, remand the case directing the Lower Court to summon those witnesses and examine them, and after hearing them to decide the case; first on the issue of limitation on the principle laid down by this Court, and, if necessary, on the merits after disposing of the issue in bar.

Costs to follow the result.