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of limitation as against the plaintiff. We accordingly affirm the original decree and dismiss the appeal with costs.

HOLLOWAY, J. :—The plaintiff had a complete cause of action in 1837. The fact that he failed to obtain the required certificate will no more suspend the statute than the inability to procure evidence would have done. The statute is a statute of peace, and is to be liberally construed. Here, however, it is quite manifest that much more than twelve years have run against the plaintiff's remedy. That the certificate was not procured may be from the plaintiff's misfortune or from his negligence, but with that the Court had no concern.

This case really proceeds on the very obvious principle that a plaintiff's failure to procure what is necessary to the institution of his suit does not keep alive a cause of action. The cause of action accrued in 1837, and even allowing for the time occupied by the former suit, the remedy was barred unless the frivolous excuse was to be admitted. Of course there is the point that through the plaintiff's laches the former suit was no suit at all : but no opinion is expressed upon that.

Appeal dismissed.

APPELLATE JURISDICTION. (a)

Regular Appeal No. 31 *of* 1862.

UDAYA VARMA and others..................*Appellants.*

NÁYAR CHAMBITHU and others............*Respondents.*

Where the plaint, in a suit to establish a right to landed property and to recover arrears of rent, alleged no specific acts of ownership since 1845, but contained a statement general enough to let in evidence of such acts, and it did not appear that the plaintiff had been questioned:—*Held* that the plaint should not have been rejected under sec. 32 of Act VIII of 1859 on the ground that it appeared to the Court that the right of action was barred by lapse of time.

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THIS was a regular appeal from the decree of R. Chatfield the Civil Judge of Mangalur, in Original Suit No. 3 of 1861. The suit was brought to establish the plaintiff's right as proprietors and hereditary mukhyasthans to the devastháṇa of the pagoda of Kshetrapala, and also to re-

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cover arrears of rent from the defendants, who had been in possession of the pagoda-estates. The defendants brought a cross-suit in 1860 to establish their title to the estates as hereditary mukhyasthans, which had not been disposed of at the date of the present suit.

In 1845 disputes regarding the right to the pagoda-property commenced, and thereupon the then arasus were ordered by the Assistant Collector to establish by a civil suit their right, if any, to the property in question. On appeal to the Principal Collector this order was confirmed in 1845; but the arasus did not take any steps to protect their interests till 1860, when a suit was instituted by the defendants to establish their right to the office of Mukhyasthans of the pagoda. Thereupon the plaintiffs presented Petition No. 492 of 1861, which had not been disposed of at the date of finding the plaint, and afterwards brought this suit, which was dismissed by the Civil Judge.

The Civil Judge's decree contained the following passage:

"In the opinion of the Court this present suit must be summarily rejected under section 32 of Act VIII of 1859, as more than fifteen years have elapsed since in 1845 disputes regarding proprietary rights commenced, and the then arasus were directed by the Assistant Collector to establish any personal or hereditary claim to the property of the pagoda by a civil suit. On appeal this order was confirmed by the Principal Collector in 1845, but the arasus omitted to take any steps to protect their interests until alarmed by the suit instituted in 1860, by the defendants, to establish their right by hereditary succession to the office of mukhyastan. In 1851, Mr. Maltby, the Collector, referred to this order of his predecessor as if for the express purpose of attracting their notice and defining the position they occupied, viz., that the arasus were *nominated* additional mukhyastans with the assent of the proprietors, and in consideration of their character and position, and not from any inherent right of their own. And if the plaintiffs are correct in their assertion that the three first defendants have no title to the dignity, and never were mukhyastans, they cannot be sued for arrears of rent, &c. from property never in their possession, or under their control."

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Branson for the appellants, the plaintiffs, contended that the suit was not barred, and that the law of limitations did not apply.

Mayne (*Tirumalachariyar* with him) for the respondents, the first, second and third defendants, referred to section 32 of the Code of Civil Procedure, which enacts that "If upon the face of the plaint, or after questioning the plaintiff, it appeared to the Court that the subject-matter of the plaint does not constitute a cause of action, or that the right of action is barred by lapse of time, the Court shall reject the plaint. Provided that the Court may in any case allow the plaint to be amended, if it appear proper to do so."

SCOTLAND, C. J. :—Having heard this case fully discussed we may at once state our judgment. The question is whether the case as it appeared before the Civil Judge, when the plaint was presented, warranted his deciding *in limine* that the cause of action was barred and rejecting the plaint. Now, though the 32nd section of the Code of Civil Procedure should be given its full effect when the case comes clearly within its provisions, still the power it gives of concluding the right to sue, subject to appeal, by rejecting the plaint, is one that requires to be very carefully exercised. On the one hand, the power thereby bestowed upon the Court of considering at the outset whether the law of limitation bars the suit may have the effect of preventing objectional litigation and of saving considerable expense; but, on the other hand unless that power be carefully exercised, the Judge may, upon more partial preliminary statements, from an *ex parte* opinion not warranted by a full knowledge of the facts. The provision contained in that section is as follows :—[His lordship here read it.] Now looking at the plaint itself in the present case, it cannot be doubted that although no specific acts of ownership as proprietors are alleged, yet that the general statements which it contains are enough to let in evidence at the hearing of such acts since 1845 in exercise of the right claimed by the plaintiffs. What would have appeared in this respect if the Civil Judge had, as he might have done, required the plaint to be amended, we have before us no means of saying, neither can we form any opinion as to whether or not at the hearing anything will be proved to prevent the lapse of time being a bar. Dealing simply with

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the statement in the plaint as presented, I think this is not a case in which it appears on the face of the plaint that the right of action is barred by lapse of time within the meaning of the 32nd section, so as to warrant the rejection of the plaint on that ground. The section, it is true, also gives the power of rejection after questioning the plaintiff, but we having nothing before us to shew, nor is it alleged, that the plaintiff was questioned. All that appears out of the plaint affecting the plaintiff is the Collector's certificate, to which we suppose the Civil Judge referred under section 138 of the Code of Civil Procedure. We cannot therefore say whether in this respect anything appeared to warrant the rejection.

The plaintiff may, consistently with what is stated in the plaint, be able to shew acts of control of the property and affairs of the pagoda since 1845. It seems admitted that they have done acts as mukhtasars, and so far as appears it is rather prejudging the case to say that their only acts have been acts done not as owners, but merely as mukhtasars. I am therefore of opinion that the case is not brought within the provision of section 32 of the Code, and that the order of the Civil Judge must be reversed and the case sent back to be heard on the merits.

FRERE, J. concurred.

Case remitted.