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evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of such suits for the ejectment of a ryot, or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed." On reading these sections together, it is clear that the zemindar's right to eject the tenant accrues on the tenant's nonpayment of the rent; but the mode of enforcing that right is restricted by ss. 22 and 52 of the Act. That being so, it is clear that, if in this case the zemindar did not conform to the procedure laid down in ss. 22 and 52, the tenant could recover possession of the tenure only upon the ground of illegal ejectment, and not upon the ground of any right. In this view of the case, we think that the lower Appellate Court was right in applying the limitation prescribed in s. 27 of the Rent Act. We, therefore, think that, upon both these grounds, the decision of the lower Appellate Court is correct, and the special appeal must be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

FUCKORUDDEEN MAHOMED AHSAN (PLAINTIFF) *v.* MOHIMA CHUNDER CHOWDHRY AND OTHERS (DEFENDANTS).*

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Limitation Act (IX of 1871), sched. ii, arts. 100 & 118—Suit for Contribution.

Quœre—Whether in a suit for contribution, on the ground that the plaintiff and defendants were jointly liable under a decree, in execution of which the plaintiff's property alone was sold, the limitation prescribed by art. 100, sched. ii of Act IX of 1871, is applicable, or that prescribed by art. 118, sched. ii of the same Act?

THE facts are fully stated in the judgment.

Baboo *Grija Sunker Mozoomdar* for the appellant.

* Special Appeal, No. 1717 of 1877, against the decree of Baboo Nund Coomar Basu, Second Subordinate Judge of Zilla Rajshahye, dated the 7th of May 1877, affirming the decree of Baboo Shumbhoo Chunder Dey, Munsif of Shahzadpore, dated the 14th of June 1876.

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The respondents were not represented.

The judgment of the Court was delivered by

MITTER, J.—We think that in this case the judgments of the lower Courts are not correct. The plaintiff sues for contribution on the allegation that he and the defendants were jointly liable under a decree, and that, in execution of that decree, his property alone was sold on the 7th June 1873. He brings this suit on the ground that as he and the defendants were jointly liable under the decree, and as the decree has been satisfied solely by the sale of his property, he is entitled to compel the defendants to contribute their share of the sum thus realized by the decree-holder.

The plaint was first filed on the 5th June 1876, but it was returned by the Munsif on the 14th June, in order that the plaintiff might specify the sums that he was entitled to get from each of the defendants, and he was directed to re-file it within one week. The amended plaint, however, was not filed until the 17th July 1876. It was rejected by the Munsif on the ground that the claim was barred by limitation on the face of the plaint under art. 100 of the second schedule of Act IX of 1871.

It appears that the plaintiff contended before the Munsif that, although in the plaint the date of his cause of action was stated to have been the 7th of June 1873, the date of the auction-sale, yet, as a matter of fact, his cause of action arose at a much later date,—that is to say, when the sale-proceeds were paid away to the decree-holder. The Munsif, however, refused to go into this matter. He held, that upon the face of the plaint it was clear that the plaintiff's claim was barred by limitation, and he therefore rejected it.

On appeal, the Subordinate Judge, taking the same view of the question of limitation, has confirmed the decision of the Munsif.

We think it is doubtful whether art. 100 of the second schedule of Act IX of 1871 applies to the facts of this case. That article provides for contribution by a party who has

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paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers. The date from which limitation begins to run is three years from the date of the plaintiff's advance in excess of his own share. In the present case nothing was paid by the plaintiff. Therefore it is a question, whether that article or art. 118 applies to this case? Article 118 is to the effect that a suit for which no period of limitation is provided elsewhere in this schedule, may be brought within six years from the time when the right to sue accrues.

However, without expressing any decided opinion on this point, and assuming that art. 100 applies, we think that the plaintiff was not bound absolutely by the statement made in his plaint that his cause of action arose on the date of the auction-sale. Upon the facts stated in the plaint, it is clear that the cause of action in the present case arose when the sale-proceeds were drawn out of Court by the decree-holder.

We think, therefore, that the lower Courts are not right in holding that the plaintiff's claim is barred without ascertaining the date when the sale-proceeds were paid to the decree-holder. The lower Courts are, therefore, wrong in dismissing the suit as barred by limitation without taking evidence upon that point. The decree of the lower Courts must be set aside, and the case remanded to the Court of first instance for trial. Costs to abide the result.

Case remanded.

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Markby.

EBRAHIM AND ANOTHER (DEFENDANTS) *v.* FUCKHRUNNISSA BEGUM (PLAINTIFF).

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and
August 17.

Appeal—Decision on one of Several Issues—'Judgment'—Letters Patent, 1865, *cl.* 15.

Held, that no appeal lay from a decision upon the settlement of issues that a certain hibbanama relied upon by the appellants was invalid.