have been consolidated with the rent under s. 54 of Regulation VIII of 1793. Not being so consolidated, they cannot now be recovered under s. 61 of that Regulation. If they were not payable at the time of the permanent settlement, they would come under the description of new abwabs in s. 55; and they would be in that case illegal.

Under these circumstances it appears to their Lordships that the High Court was right in treating them as payments or cesses which could not be recovered.

Their Lordships will, therefore, humbly advise Her Majesty to dismiss the appeal.

Appeal dismissed.

Solicitors for the appellant: Messrs. *T. L. Wilson and Co.*

C. B.

MAHAMMUD AMANULLA KHAN (PLAINTIFF) *v.* BADAN SINGH AND OTHERS (DEFENDANTS).

*P. C.** 1889 *April* 10.

[On appeal from the Chief Court of the Punjab.]

Limitation Act (XV of 1877), Sched. ii, Arts. 142, 144—Proprietors having refused at the first regular settlement to engage, and others having been admitted as malguzars of the land, effect of lapse of time—Discontinuance of possession.

Article 144 of sched. ii of Act XV of 1877, as to adverse possession, only gives the rule of limitation where there is no other article in the schedule specially providing for the case.

The proprietary right would continue to exist until, by the operation of the law of limitation, it has become extinguished; but if a claim comes within the terms of Art. 142 (enacting that when the plaintiff, while in possession of the property, has been dispossessed, or has discontinued possession, limitation shall run from the date of the dispossession or discontinuance), in such a case, by the law of Act XV of 1887, and previously of Act IX of 1871, adverse possession is not required to be proved in order to maintain a defence.

At the regular settlement in the Delhi District (1843) the plaintiffs' ancestors, *ex-mafidars* of a plot on which the rent-free tenure had been resumed in 1838, declined to engage for the revenue; and the plot was assessed along with the village in which it was; the village-proprietors through the *lambardars* engaging for and obtaining the land.

At the revision of settlement, more than thirty years after, the plaintiffs

* *Present:* LORD HOBHOUSE, LORD MACNAGHTEN, and SIR R. COUCH.

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claimed possession, alleging their title, and that the village co-parceners held only in farm from the Collector for the period of settlement.

Held, that there had been a dispossession, or discontinuance of possession, within the meaning of Art. 142; and that whether any proprietary right had existed or not in the plaintiff's ancestors, the twelve years' limitation ran from the date of the dispossession or discontinuance.

APPEAL from a decree (8th May 1885) of the Chief Court of the Punjab, reversing a decree (24th June 1884) of the Commissioner of the Delhi Division, and restoring a decree (29th October 1883) of the Judicial Assistant Commissioner.

The ancestors of the plaintiff, who now appealed, were said to have been the owners of about 320 bigahs of land, formerly a *mafi* plot, of which the *mafi* was resumed in 1838 before settlement, in Mouza Ghanaur in the Sonipat Pergunnah of the Delhi District. To recover possession of this land the suit was brought by the descendants of the *ex-mafidars*. The defendants, respondents, who were the zemindars and *lambardars* of that village, having engaged for the revenue upon the whole of it, including the plot in question, at the first regular settlement in 1843, when the plaintiffs' ancestors declined to engage, now relied upon limitation, besides denying the plaintiffs' title.

The question now raised was whether, in regard to the defendants having obtained possession of the land from the Collector, there was a dispossession or discontinuance of possession on the part of the plaintiffs, from which time had run under Art. 142 of sched. ii of Act XV of 1877.

The plaintiffs were descended from one Lutuffulla Sadik, who held the land as *mafi*, and was "*malik*." The earliest sanad produced was a grant from one Afiz Khan in the sixth year of the reigning King of Delhi. The *mafi* was resumed by an order, dated 9th October 1837; and the *ex-mafidars* were offered an engagement for the land revenue, which they declined on the 5th April 1838. The *lambardars* at the first regular settlement, as they regarded the land as belonging to the village, would not engage for it separately, and the result was that it was for some time held by the Collector "*kham tahsil*." In 1842, however, engagement for the *jama* of the whole village was made with the *lambardars*, as part of the settlement operations, and lasted throughout the settlement.

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At the revision in 1879 of the old regular settlement, the plaintiffs claimed the land. By their plaint, filed in August 1883, they claimed that, their ancestral rights having remained under suspension during the term of settlement, they now were (having been, by their ancestors, proprietors all along, as well as *mafidars* and *ex-mafidars* of the plot) entitled to re-entry and possession, upon cancellation of what they designated as "the farm" from the Collector to the defendants, which they alleged was only for the term of settlement. The defendants insisted on their title as village proprietors; and that the plaintiffs having been deprived of possession, as the result of the orders of the revenue authorities, made as far back as 1837, and again acted upon in 1843, the suit was barred by time.

The Judicial Assistant Commissioner, Delhi, dismissed the plaintiffs' claim; but the Commissioner, reversing his decision, decreed for the plaintiffs. The latter was of opinion that, independently of the presumption arising in their favour, one which was recognised under Regulation XXXI of 1803, the plaintiffs had proved their rights as proprietors, prior to the resumption of the quality of freedom from revenue assessment which was taken away from the lands in 1837; and that they had also proved that they were set aside from the possession simply for refusing to engage at settlement. He did not consider that this refusal, and the fact that the land was managed *khám tahsil*, "abrogated the plaintiffs' proprietary right," or gave a starting point for limitation. Nor had, in his opinion, the subsequent occupation of the defendants, which he concluded to be that of farmers, from 1842, for the terms of settlement, any such effect. He quoted Regulation VII of 1882, which, in s. 4, refers to the kind of arrangement which had been made in this case; that section enacting as follows:—"In admitting particular parties to engage, it was in no degree the intention of Government to compromise private rights or privileges, or to vest the *sadr malguzars* with any right not previously possessed by them, &c., &c., &c. On the contrary, it is the anxious desire of Government, and the bounden duty of its officers, to secure every one in the possession of the rights and privileges which he may lawfully possess, or be entitled to possess." He held that the suit was within

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limitation, and that the plaintiffs were proprietors at the time when the defendants got a farm of the land for the period of settlement, the plaintiffs being therefore entitled to recover possession.

On appeal to the Chief Court, a Bench (C. A. Roe, and T. W. Smyth, J.J.) reversed the above judgment. The Judges agreed with the Commissioner that, in 1838, the plaintiffs' ancestors were proprietors; but they held that the claim must be dismissed as barred by limitation. "The plaintiffs had not shown that the defendants in exercising, as they had done, all the rights of proprietors over the land, exercised those rights, not as proprietors under the old settlement of 1843, but as farmers; nor had they shown that limitation did not begin to run against the plaintiffs until the expiration of the settlement in 1879. A continuous possession the plaintiffs had not shown. There was no documentary evidence to show that the defendants held as farmers; nor were there sufficient grounds for the inference that their holding was only upon such terms. The inference to be drawn from the settlement proceedings was that the defendants had the land made over to them. At the settlement in 1842, the land was entered in the record by the description "*milk mafi*" of Bakar Ali, who had died three years before, and from whom the plaintiffs were descended. But the land was treated as part of the *shamilat* of the village, and had remained as such with the defendants ever since. The plaintiffs had exercised no rights over it, of any kind, certainly since 1842; and, as far as could be seen, not since the resumption in 1838." The Judges, accordingly, held the suit barred by limitation, and dismissed the suit; but, considering that the result of the order was to confirm the defendants in the possession of property which once belonged to the plaintiffs' ancestors, without costs.

The first plaintiff, the Nawab Amanulla Khan, appealed alone to Her Majesty in Council.

On this appeal, Mr. *R. V. Doyne* and Mr. *C. W. Arathoon* appeared for the appellant.—They contended that the claim did not fall within the terms of any one of the articles of sched. ii of the Limitation Act XV of 1877. They referred to Act XXXIII of 1871; and to a case in the Chief Court in

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1881, *Latf Ali* v. *Khushwakt Rai* (1). There was no effective dispossession, or discontinuance of possession, within the meaning of Art. 142 of sched. ii; nor was there, on the other hand, any adverse possession on the part of the defendants which could render Art. 144 applicable.

The respondents did not appear.

Counsel for the appellant having been heard, their Lordships' judgment was delivered by

SIR R. COUCH.—The plaintiffs in this suit are descendants of one Lutuffulla Sadik, who held the land which was the subject of the suit as *mafi*. The earliest sanad appears to have been, as far as the evidence shows, a grant by one Afiz Khan in the sixth year of the reign of the King of Delhi. It is not material when the title commenced. This *mafi* was resumed in 1837, and at that time the ancestors of the plaintiffs, who had the *mafi*, were offered an engagement for the land revenue. They, on the 5th of April 1838, declined to take the land and engage for payment of the revenue. Then the defendants, who are called in the judgments of the lower Courts the *lambardars*, and were the representatives of the villagers, and held a large quantity of land in the village, undoubtedly as proprietors, were asked if they would take up the engagements. They appear, in the first instance, to have declined to do so, alleging that they had got a settlement which included this land. However, it was found that this was not correct, and for a time the settlement operations were discontinued, and the Government appears to have held the land as khas. In 1842 a settlement was made, and then an engagement was made with the *lambardars*, or representatives of the villagers, for the whole of the village, including the land which is the subject of this suit, and making no distinction between the way in which this land and the other land, of which the villagers were undoubted proprietors, was to be held. That settlement was to last for thirty years, and would expire in 1872. Steps do not appear to have been taken immediately upon the expiration; but on a revision of settlement in 1879, the plaintiffs applied for what they called a

(1) Reported in the Punjab Record, Civil Judgments, 1881, p. 89. This is the case referred to in their Lordships' judgment.

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cancelment of the farm to the defendants, and to have possession of the land as their ancestral estate. The defendants refused to surrender the land, and consequently the plaintiffs were referred to the Civil Court, and then the present suit was brought.

Two questions were raised in the suit. One was, whether the plaintiffs (or rather their ancestors) were the proprietors of the land, as they alleged; and the other was, whether the suit was barred by the law of limitation.

Upon the first question, the Commissioner, before whom the case came by way of appeal, and whose finding on this matter was conclusive in the further appeal to the Chief Court, found that the plaintiffs were the proprietors; and no question remains about that.

The question which has now to be determined is, whether the suit is barred by the law of limitation. The Chief Court, upon the further appeal from the decision of the Commissioner, has held that it is barred. The Act applicable to the case is Act XV of 1877, and the Article is No. 142, which says that for possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed, or has discontinued the possession, the time from which the period allowed for bringing the suit begins to run is the date of the dispossession or discontinuance. It appears to their Lordships to be clear that when there was this refusal on the part of the plaintiffs, or their ancestors, to make the engagement for the payment of the revenue, and the Government made the engagement with the villagers, the defendants, there was a dispossession, or a discontinuance of possession, of the plaintiffs within the meaning of this article.

It is to be observed that the lower Courts in their judgments treat it as being a dispossession. The Commissioner, where he deals with the facts of the case, says: "Independently therefore of the presumption afforded by Regulation XXXI of 1803, the plaintiffs have, in my opinion, afforded most satisfactory evidence of their character as proprietors prior to the resumption of the lands in free tenure." Then he goes on: "And their dispossession for refusing to engage at settlement." In his opinion what took place was that at the time when they so refused they became dispossessed. Then Mr. Justice Plowden, in the passage

which is quoted from his judgment, treats it also as a dispossession, for he says: "When, upon the occasion of a settlement, a proprietor is in proprietary possession of the estate, and asserts his proprietary title, and it is formally recognised, but in consequence of his refusal to engage for the revenue, he is excluded from the enjoyment of his estate" (which was the case here) "which is therefore transferred to a farmer for a defined period, it is intelligible that there is not such a discontinuance of possession or dispossession as would support a plea of limitation;" and he goes on to give as the reason that the dispossession is not "adverse," which word is not in Art. 142. The Chief Court in their judgment say also: "All this shows that in 1838 plaintiffs were undoubtedly proprietors; but the land is now, and has been since 1842, equally undoubtedly in the possession of the defendants, who have exercised over it all the rights of proprietors." There has been no possession of any description in the plaintiffs or their ancestors since the period of the engagement with the defendants; and whether any proprietary right may have existed is not the question: it is whether there has been a dispossession or discontinuance, which there clearly was. No doubt the proprietary right would continue to exist until by the operation of the law of limitation it had been extinguished; but upon the question whether the law of limitation applies, it appears to be clear that it comes within the terms of the Art. 142, and if there has been any doubt in the minds of the Courts in the Punjab as to what was the effect of the law of limitation in cases of this description, it seems to have arisen from the introduction of some opinion that there must be what is called adverse possession. It is unnecessary to enter upon that inquiry. Article 144, as to adverse possession, only applies where there is no other article which specially provides for the case.

In this case their Lordships think Art. 142 does provide for the case, and that the suit is barred by the law of limitation. Consequently the decision of the Chief Court should be affirmed and the appeal dismissed, and their Lordships will so humbly advise Her Majesty. *Appeal dismissed.*

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

C. B.