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the year 1277 (1870), and recovered the rent claimed in this suit. Therefore, it follows that the rent claimed in this case became due in 1876 (1869-1870).

The decision of the lower Appellate Court is correct, and the special appeal is accordingly dismissed with costs.

Appeal dismissed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

PETAMBAR BABOO AND ANOTHER (PLAINTIFFS) *v.* NILMONY SINGH DEO AND OTHERS (DEFENDANTS).*

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Limitation—Grant in lieu of Maintenance—Right to resume.

Although a grant of a mokurrari lease in lieu of maintenance may be resumable by the grantor and his heirs, yet, if the grantor or any of his successors receives distinct notice of a claim on the part of the grantee to hold in perpetuity and not subject to resumption, and allows twelve years to go by without contesting such claims, he (such grantor or successor) will be barred for the time of his own enjoyment.

THIS was a suit instituted by the plaintiff as talookdar of Belouja, Parganna Khaspul, under the defendant Nilmony Singh, Raja of Chuckla Panchkote, to recover khas possession of Mouza Kururya, in Parganna Khaspul, from the defendants (other than the defendant Nilmony Singh). These defendants alleged that a permanent mokurrari settlement of the entire Mouza Kururya had been granted long ago at a fixed annual rental, not subject to abatement or enhancement, to their great grandfather, Anunta Lal Sekur Baboo, by the then Raja of Chuckla Panchkote, who was his brother-in-law (wife's sister's husband); that this grant had been confirmed to their grandfather, Shohun Sekur Baboo, by a sanad given about the year 1802 by the then Raja of Chuckla Panchkote; that they and their predecessors had ever since remained in possession of Mouza Kururya upon the terms of the original grant; and that the suit of the plaintiff was now barred by limitation. The defendant Nilmony Singh supported the claim of the plaintiff, and pleaded that the grant to the ancestor of the other defend-

* Regular Appeal, No. 157 of 1875, against a decree of Major E. Y. Walcott, Assistant Commissioner of Zilla Manbhoom, dated 13th March 1876.

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ants having been a grant in lieu of maintenance was, like all grants in lieu of maintenance, resumable at the will and pleasure of the Raja of Chuckla Panchkote. In support of the defendants' plea of limitation evidence was given that, in a suit instituted some time previous to the 3rd of August 1862, by the then talookdar of the village against these defendants, these defendants had succeeded in making out their right to hold the mouza as a mokurrari holding at the annual rent of Rs. 132, and no more. It also appeared that on failing to obtain an enhancement of the rent payable by these defendants, the then talookdar had, on the 3rd of August 1862, sued the then Raja of Chuckla Panchkote, upon the ground that the then defendants having set up and proved their right to hold the mouza at a mokurrari rent of Rs. 132, his (the Raja's) assurances in respect of the gross rental of the talook had proved unfounded to that extent, and that the talookdar was consequently entitled to a corresponding reduction of the talook rent paid by him; and that the talookdar had succeeded in this suit. The Court of first instance made a decree in favour of the plaintiff, being of opinion that the allegation of the defendants in the suit between them and the talookdar that their holding was a mokurrari one was not necessarily a setting up of a title adverse to the Raja, as the word *khorposh*, or maintenance, was superadded to whatever was said about mokurrari, so as to leave it to be supposed that the tenure was only mokurrari because the tenure was a maintenance grant. It might be "mokurrari" and "kaimi" so long as the grant in lieu of maintenance continued, and yet came to an end on the resumption of the grant. From this decree the defendants other than Nilmony Singh appealed.

Baboo *Troylock Nath Mitter* for the appellants.

Baboo *Mohini Mohun Roy*, Baboo *Bhowani Churn Dutt*, and Baboo *Golap Chunder Sircar* for the respondents.

The judgment of the Court was delivered by

JACKSON, J.—It appears to us that the decision of the Court below on the issue of limitation is erroneous. It appears that

in July 1865 a suit was brought by a person, who was then talookdar, against the defendants for arrears of rent, and in the plaint in that suit it was recited that previously this talookdar had sued the zemindar for a reduction of the talook rent on the ground that the present defendants had alleged their rent to be mokurrari, Rs. 132, whereas the talook rent had been assessed on the allegation of the zemindar that the rent was higher. That is the account given in the judgment of the Court below, and we understand what took place was this. The previous talookdar there spoken of had in the first instance sued these defendants for rent at a rate higher than Rs. 132, and these defendants had then made out their right to hold the mokurrari at Rs. 132, and no more; thereupon the talookdar, being defeated, sued the superior landlord upon the ground that the defendants having set up and proved their right to hold the mokurrari at Rs. 132, his assurances in respect of the assets of the estate had proved unfounded to that extent, and it seems that reduction of their rent was accordingly allowed. Now, in that way it was not merely a setting up of the mokurrari, but it was set up in such a manner as affected the raja zemindar with a loss *pro tanto* of his rent in consequence of this mokurrari. It was manifestly, we think, such an allegation as put upon the raja the necessity of attaching this mokurrari within twelve years. The Court below seems to think that the mokurrari in its fullest sense was not pleaded, because the tenure was described as one granted for maintenance. That seems to me merely to indicate the origin of the grant, and does not amount to any real difference in the nature of it.

Then it is said that, by the custom of this raj, grants for maintenance by the raja of the time being are liable to revocation at the instance and at the discretion of succeeding rajas, and this contention no doubt is supported by a decision of the Judicial Committee of the Privy Council in the case of *Anund Lal Sing Deo* v. *Maharaja Gurrood Narayun Deo Bahadur* (1). But I think it clear that if the right of resumption exists in such cases at the option of each raja at the time of his accession,

(1) 5 Moo. I. A., 82.

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and if he has notice of a claim to hold such mokurrari, and allows twelve years to go by without taking steps to get rid of it, he at least is barred for the time of his enjoyment. That being so, it appears to me that limitation barred the present suit, and that it ought to have been dismissed. The judgment of the Court below is reversed with costs.

Appeal allowed.

PRIVY COUNCIL.

P. C.* 1877 *Nov.* 23, 24, 27, 28, & 29.

RADHA PROSHAD SINGH (PLAINTIFF) *v.* RAM COOMAR SINGH AND OTHERS (DEFENDANTS).

RADHA PROSHAD SINGH (PLAINTIFF) *v.* THE COLLECTOR OF SHAHABAD (DEFENDANT).

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Diluviated Lands—Adverse Possession—Doctrine in Lopez's Case.

The doctrine in *Lopez's Case* (1) that diluviated lands, re-forming on their old site, remain the property of their original owner, does not apply to lands in which after their re-formation an indefeasible title has been acquired by long adverse possession, or otherwise.

Where a plaintiff relies on an alleged adverse possession of lands for more than twelve years after their re-formation, the question to be decided is whether he has had such possession for twelve years.

THESE were appeals from a decision of a Division Bench of the Calcutta High Court dated the 10th June 1874, which reversed a decision of the Judge of Shahabad of the 29th July 1872.

The suits in which these decisions were passed were two out of a number instituted by the father of the appellant to obtain possession with mesne profits of a tract of alluvial land in the Shahabad District, which he claimed as belonging to his estate named Nowrunga, and to which the several defendants laid claim as land which had re-formed on the site of land which had been submerged, and which before its submersion had belonged to them.

* *Present*:—SIR J. W. COLVILE, SIR B. PEACOCK, SIR M. E. SMITH, and SIR R. P. COLLIER.

(1) *Lopez* v. *Muddun Mohun Thakoor*, 13 Moo. I. A., 467; S. C., 5 B. L. R., 521.