Special Appeal No. 126 *of* 1866.

SAYA'JI' bin HABA'JI' BHADVALKAR...... *Appellant.*
UMA'JI' bin SADOJI' RAVU'T .... *Respondent.*

Lease—Yearly tenant—Limitation.

A having been in possession of garden land from 1850, as tenant of B, under a two years' lease, continued to occupy, as yearly tenant, till 1860, when he was ejected in a suit brought against him by B.

In 1864, A sued B on a clause in the lease, which, he contended, gave him a right to remove certain trees planted on the land:—*Held* that the breach of contract (if any) took place when B took possession of the land together with the trees, in execution of his decree in the ejectment suit; and that A's claim was barred by Cl. 10 of Sec. I. of Act XIV. of 1859.

Where, on the expiration of a lease, the lessee is allowed to continue in possession as a yearly tenant, he does so on the terms contained in the expired lease, so far as they are consistent with a yearly holding.

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THIS was a special appeal from the decision of J. Gibbs, Judge of the Puná District, in Appeal Suit No. 283 of 1865, amending the decree of the Munsif of Puná, in Original Suit No. 303 of 1864.

The facts of the case appear from the following judgment recorded on the appeal in the District Court:—

"This is a suit brought by Sayájí to recover Rs. 125, the value of a building; Rs. 3,125, the value of 2,500 guava trees (perú); and Rs. 1,750, the value of their produce for four years. It appears that Umájí (in 1850) let a garden under a lease for two years to Sayájí; and that, after the expiration of the lease, Sayájí continued in possession as a yearly tenant, but having, when called upon to vacate, refused, Umájí sued him, and (in 1860) recovered possession of the garden.

"In the agreement is a clause (the 3rd) which was inserted for the benefit of Sayájí; and runs thus:—'The perú trees shall be removed when the two years of this lease shall expire, and no objection shall be made.' And it is on this clause that the present action is brought as regards the trees. Umájí defended the suit: pleading, 1st, that the claim was

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barred; and, 2nd, that it was not proved. The Munsif of Puná awarded for the building Rs. 14, for the trees Rs. 3,000, and for their proceeds Rs. 400. Umájí now appeals. He admits the building at Rs. 14; but objects to the decree against him for the trees, holding that portion of the claim to be barred.

"The question at issue is: Does Act XIV. of 1859 bar the claim for the trees; and I am of opinion that it does. It appears to be sometimes the custom to allow gardners to remove perú trees; and, accordingly, a clause was entered in this lease, giving Sayájí permission to do so. This he wishes now to do. While Umájí says he cannot; as the time has elapsed, and the claim is barred. The point turns mainly on, when did the cause of action arise. The agreement clearly fixes a limit, viz. two years after its execution, which would be 1852. * * * As the agreement which gave the right to remove that which, under ordinary circumstances, would have gone with the land, viz. trees planted therein, was a formal one in writing, no verbal or implied admission would extend the limit laid down therein; and, therefore, Sayájí's right to remove these trees commenced in 1852, and from that date must the cause of action be ruled to commence.

"Now comes the question as to the clause that applies. This must be either Cl. 10 or Cl. 16. Either it is a suit for a breach of contract under a written engagement, or it is one of those suits for which no special limit is laid down. Under the former clause three years and under the latter six years would be allowed. Under neither of these clauses could the claim be brought in 1864; and if respondent's argument, that the cause of action arose in 1860, when he gave over possession, be allowed, the former clause would still bar his claim. But I am of opinion that the subsequent possession of the garden does not save respondent's original right, which arose only in 1852. He might, perhaps, have removed these trees at any time while he was in possession, but once he gave over or had it taken from him, he must go back to his agreement, and his claim is barred.

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"I, therefore, under this view of the case, amend the decree of the Munsif, by rejecting so much of the plaint as relates to the trees and their produce; but confirm the portion relating to the building; costs in proportion."

The following (amongst other) grounds of objection were taken to this decision on special appeal:—

"That it is opposed to law, in that (1) the Judge was wrong in holding the claim barred by the law of limitation, since the cause of action did not arise up to the time the appellant was dispossessed of the garden, and a demand was made to remove the trees; (2) the Judge has misconstrued the agreement, in virtually holding that it was not necessary for the respondent to call upon the appellant to remove the trees, after the expiration of the period of two years, or subsequent to his (respondent's) obtaining possession of the garden; (3) the Judge was in error in not applying Cl. 12, Sec. I. of Act XIV. of 1859 to this case."

The case was heard before COUCH, C.J., and NEWTON, J.

Dhirajlál Mathurádás for the appellant.

Reid and *Vishvanáth Govind Cholkar* for the respondent.

COUCH, C.J.:—In this case the plaintiff having been in possession for two years, as the tenant of the defendant under the lease, continued to occupy at the expiration of that term, and was treated by the defendant as still being his tenant. In 1860 the plaintiff was ejected.

It appears that there were on the land some guava trees, planted, it would seem, partly by the plaintiff's father, and partly by the plaintiff himself; and if the plaintiff had any right, either by custom or by agreement, to take those trees away, he ought to have exercised it between the date of the judgment and the execution of the decree in the ejectment suit. He did not, however, attempt to do so; and the defendant obtained possession of the land under his decree.

The plaintiff now sues on the clause in the lease, which, he says, gave him a right to remove the trees. The Judge

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below says that the period for removing the trees expired with the two years' lease. In that respect we do not agree with him. Where, on the expiration of a lease, the lessee is allowed to continue in possession as a yearly tenant, he does so on the terms contained in the expired lease, so far as they are consistent with a yearly holding.

On the mere construction of the lease* we should have much doubt whether there was any contract to allow the trees to be removed at the expiration of the tenancy; but the defendant himself seems to admit that was what the parties intended. The breach of contract, we think, took place when the defendant took possession of the land together with the trees in execution of his decree. That act showed his intention to break the contract. That being so, the suit was barred, and the Judge was right in the conclusion he came to.

Decree affirmed with costs.

* NOTE.—Clause 3 of the lease literally translated was as follows :—" In your garden plantation (*wávar*) are guava trees which were formerly planted by my father. These trees—after the expiration of my two years' lease—the guava plantation I shall vacate and give over (*khálí karún deú*). With regard thereto I shall not state any difficulty (*harkat sánganár náhí*)." And it was suggested on behalf of the respondent, that the object of this clause would seem rather to have been to prevent the lessee from putting forward any claim to remain in possession of the plantation at the expiration of the term.—ED.