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6 of 1864, shows that a person who fails at the Survey to take up *mál* land which he held without assessment before the Survey, and allows it to be taken up by another cultivator who pays the assessment upon it, must be held to have forfeited his claim to such land. It does not appear whether this had happened in the present case. This is a point into which the Assistant Judge should inquire, and we think that he should also reconsider the other evidence. It is to be observed that the deed of sale, exhibit No. 3, speaks of the *mál* land of the field "Tullái" as being on the south of the field, while in the plaint the land claimed is stated to be to the north of the field "Tullái."

Decree reversed and case remanded.

August 7.

Special Appeal No. 180 *of* 1871.

BA'PU RA'M PARBHU .....*Appellant.*
VISA'JI CHANDO SAKTANEKAR .....*Respondent.*

Joint Kabuláyatdárs—*Exclusive Collection by one* Kabuláyatdár—*Prescription.*

Where a *kabuláyatdár* collected Government revenue for more than thirty years, the *kabuláyat* being signed each year by his co-*kabuláyatdár* as well as by himself, it was hold that by so doing he had not, under the circumstances, acquired a prescriptive right to collect the revenues to the exclusion of his co-*kabuláyatdár*.

THIS was a special appeal from the decision of A. Lyon, Assistant Judge of Ratnágirí, in Regular Appeal No. 462 of 1868, confirming the decree of the Munsif of Kharepátan.

The plaintiff was the hereditary *Kulkarni*, and the defendant the hereditary *Gámkar* or *Mirási*, of the village of A'chrá. The village is partly *inám* and partly the property of Government, and the revenue collected is payable in part to the temple committee, as managers of the *inám*, and partly to Government.

The plaintiff brought this action to recover from the defendant certain money which the plaintiff had a right

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to collect, but which the defendant had collected. The money collected was the revenue due by the *dhárekaris* of the village.

The Munsif found that the plaintiff alone had the right to collect the revenue, and, therefore, awarded his claim.

In appeal the Assistant Judge confirmed the decree, and recorded the following reasons for his decision :—

" On the first issue I think that originally both parties had a right to collect. The principal evidence of this is the fact that both execute the *kabuláyats*.

" On the second issue I am of opinion that the plaintiff has had exclusive enjoyment of the right for thirty years as owner, and has, therefore, acquired a prescriptive title. Throughout the case there is no evidence of collections by the defendant. Every item collected up till the date of this dispute was collected by the plaintiff. The deposition No. 26, made in 1841, shows clearly that the *Kulkárṇi* then, and for several years before that, exclusively collected the rents. The defendant himself therein says : 'The plaintiff takes the rents and all responsibility for profit and loss ; I don't take any of the rents.' Before the defendant could speak of this practice as customary, it must have continued for some years. That the defendant did make this statement is, I think, sufficiently established, considering the date of the document, by the evidence of the *Aval Kárkun*, No. 81, and the *Kárkun*, No. 74.

" I affirm the decree with costs."

The special appeal was argued before MELVILL and KEMBALL, JJ., on the 7th of August 1871.

Dhirajlál Mathurádás, for the special appellant :—The Assistant Judge was wrong in holding that thirty years' collection of the revenue by the plaintiff previously to the institution of the suit was sufficient to constitute a prescriptive right in his favour. Such collection is, by the defendant signing the *kabuláyat*, proved not to have been adverse.

Shántárám Náráyaṇ for the special respondent.

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PER CURIAM:—The Assistant Judge has found as a fact on the first issue that both parties originally had a right to collect the revenue. On the second issue he has found that the defendant has lost this right because he has not exercised it for thirty years. The finding on this point is not very satisfactory, for the Assistant Judge has mistaken the date of exhibit No. 26, which is 1856, and not 1841. But even supposing that the actual collections have been made by the plaintiff for thirty years, we do not think that the defendant has thereby forfeited his right. The fact that he or one of his family has all along executed the *kabuláyats* jointly with the plaintiff shows a continuous assertion of his right by the defendant, and an admission of it by the plaintiff. It is argued before us that the defendant's signature to the *kabuláyats* was allowed as a mere honorary distinction, and imports nothing; but this is inconsistent with the Assistant Judge's finding that the defendant's family originally had as much right to collect the revenue as the plaintiff's family. There is no doubt that, as an ordinary rule, joint *kabuláyatdárs* make themselves jointly responsible for the Government revenue, and, as a necessary consequence of their liability, have an equal right to manage the village; and it would be very difficult to hold that one of two *kabuláyatdárs* who collects a portion of the revenue does so illegally. He is, of course, responsible to his partner for the due application of the money received, but it is difficult to see how he can be made to refund it as money had and received for his partner's use. We think that the decrees of the courts below must be reversed, and the claim disallowed with costs.

Decrees of lower courts reversed.