[APPELLATE CIVIL JURISDICTION.]

1872.
May 23.

Special Appeal No. 238 *of* 1871.

BALVANTRA'V *alias* TA'TIA'JI BA'PA'JI .....*Appellant.*
PURSHOTAM SIDHESHVAR and another.....*Respondents.*

Hindu Law—Hereditary Office, fees of—Immoveable property—Limitation—Act XIV. of 1859 *Sec. I. cl.* 12 *and* 16.

The cl. of the Limitation Act (No. XIV. of 1859) which is applicable to a suit to recover fees payable to the incumbent of an hereditary office such as that of a village Joshi is cl. 12, and not cl. 16, of Sect. I. of that Act.

Krishnabhat v. *Kapábhat (a)* followed.

The meaning of the term immoveable property as used with regard to Hindu law, discussed.

THIS was a special appeal from the decision of M. B. Baker, Assistant Judge at Púna, in Appeal No. 116 of 1869, confirming the decree of the Subordinate Judge of Khed.

Purshotam and his brother Moro sued to recover from Balvantráv and another the amount of fees due to the holder of the hereditary office of a village Joshi for five years, from 1863-64 to 1867-68. The defendants, among other things, pleaded the law of limitation, and stated that the fees in question had not been received for ten years previous to the date of suit. The Subordidate Judge awarded the plaintiff's claim, and in appeal, his decree was confirmed on the 9th January 1871.

The appeal was argued before Gibbs and West, JJ., on the 31st August, 1871.

Dhirajlál Mathurádás for the appellant.

Shámráv Vithal, for the respondents.

The question argued was "whether Section I clause 12, or Section I clause 16, of the Limitation Act (No. XIV. of 1859) is applicable to a suit to recover fees payable to the incumbent of the hereditary office of village Joshi." On the 11th November 1871, the Court determined to refer the question to the Full Bench under the following minutes:—

(a) 6. Bom. H. C. Rep. A. C. J. 137.

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WEST J. :—In this case the one party relies on the ruling at Bombay H. C. Reports VI. A. C. J. 56 and the other on that at page 137 of the same volume. The two rulings do not appear to me to be reconcilable in principle. Down to the time of the latter of them, it would seem that immoveable property under the present Limitation Act was, in general, held to be substantially defined as "land or an interest in land." In the case at Bombay Report I. A. C. J. 186 *haks* payable out of land were, on that express ground, held to be subject to the 12 years' limitation as immoveable property, but where they could not be clearly made out to be a charge on land, in the case at Bombay Reports IV. A. C. J. 189, it was held that the 6 years' rule applied. In the earlier of the cases cited from the 6th volume (*Ráiji Manor* v. *Kalliánrái Hukamatrái*), which was one of a claim to *desáigiri haks*, our late learned Chief Justice says: "The first question is whether the money claimed is an interest in land"—and immediately afterwards, "The present *hak*, therefore, not being an interest in immoveable property, Clause 16, and not Clause 12, of Section I of the Limitation Act applies to it" thus identifying "an interest in land" and immoveable property. In this judgment my learned brother Gibbs concurred. Following the analogy of the late Sudder Court's decisions under the old law of limitation, he says: "In the present case 6 years' arrears could have been recovered, so the period for title should be the same." In the second case, however, that of *Krishnabhát* v. *Kapábhat*, the same learned Judges adopted a different test of immoveable property. The Chief Justice says: "I agree with the District Judge that the hereditary nature of the estate does not of itself make the office immoveable property and affect the term of limitation" adjudged by the District Court to be 6 years. "But," he continues, "in the absence of any interpretation clause, such as there is in the Indian Succession Act 1865, I think we ought, in applying the law of limitation between Hindus, to include in the term immoveable property whatever is in the Hindu Law understood to be such." After some further discussion the learned Judge concludes: "Although there-

fore the office of a priest in a temple, when it is not annexed to the ownership of any land or held by virtue of such ownership, may not in the ordinary sense of the term, be immoveable property, but is an incorporeal hereditament of a personal nature, yet being by the custom of Hindus classed with immoveable property, and so regarded in their law, I think in a suit betwen them, it should be held to be within clause 12 of Section I of Act XIV. of 1859, by analogy to the rule that what are to be deemed immoveables is determined by the *lex rei sitae.*" Mr. J. Gibbs in the same case says "when we look into the Hindu Law, we find no division of property into moveable and immoveable, but those terms have been used by English writers thereon for convenience in describing certain descriptions of property," then he shows that "Nibandha" means "'fixed property' that is *Sthávara* or immoveable" and finally as Nibandha includes "fees or perquisites due under a permanent title;" he concludes that property of this kind ranks as "analogous to real property," and is, therefore, to be considered immoveable property for the purposes of the Limitation Act.

If we adopt the criterion here set up, it seems to me impossible to support the decisions in the previous reported cases. Instead (at page 58 of Vol. VI.) of "the first question is whether the money claimed is an interest in land" should have been said "the question is whether this money ranks according to Hindu Law as "Nibandha." The answer would have been "it does," and the decision the reverse of the one actually arrived at. So also as to the two earlier cases, it is quite clear that in both the money claimed was, if due at all, "due under a permanent title" and, therefore, subject to the 12 years' rule, whether it were an interest in, or charge on, land or not.

But the method of interpretation adopted in *Krishnabhat* v. *Kapábhat* appears to me one that may admit of reconsideration. The Limitation Act having been drawn up in the English language by a legislative body of Englishmen, its terms ought apparently to be construed according to the

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ordinary usage of the language. To say that because 'Nibandha' property "classes" for some purposes "with immoveables" and because it includes a grant of "Sthávara" *i.e.* immoveable property, therefore the English word 'immoveable' used in an English law is to receive its meaning from 'Nibandha' does not seem a strictly legitimate process of reasoning. (By a similar process applied to the words *Lord Chancellor*, translating them into Latin as *praetor*, and then taking the latter to determine the meaning of the former, we might arrive at the conclusion that a Chancery Judge is a Military Commander.) The converse error of translating a vernacular word into some partial equivalent in English, and then treating the two as identical is notably common. Both should be avoided as far as possible. Property, as Sir R. Couch admitted, may be hereditary without necessarily being immoveable, therefore, the classing of "Vritti" or "Nibandha" with hereditary property does not seem properly to affect the question. If immoveable property, as is said by Mr. Justice Gibbs, includes "Chattels," as "dravya" is translated, all distinction between moveable and immoveable property is lost. But here again the two terms are not really equivalent; and it would not be fair to found on their equivalence an argument to show that the distinction, immediately afterwards drawn by my learned brother between moveable and immoveable property, is unsustainable. What really strikes one, is the contradictions that must arise from taking the words of an Act in varying senses according to the different meanings of the partial equivalents used by people speaking other languages. If the word "immoveable" is to be construed differently according to the class of people to whom the law is applied, so also should the words "month" and "year." We might then not only have property changing its character according to the hands it came into or the claimant who sought it, but a Muhammadan endorser of a bill of exchange sued by the English endorsee, after his own remedy against a prior Muhammadan endorser had become barred by limitation. The intention of the legislature is the thing to be ascertained, and there is, I think, no indication that it

intended the terms of the Limitation Act to operate differently according to the races to whose actions it was to apply.

Sir R. Couch thought that his judgment was supported by "analogy to the rule that what are to be deemed immoveables is determined by the *lex rei sitae*." To me, I must confess, the analogy points the other way. The *lex rei sitae* impresses on property a particular character for jural purposes determined for all by a uniform rule, as distinguished from the various personal circumstances which make moveable property subject to different laws. If personal characteristics are thus to determine the nature of the property, we may, using the language of Von Savigny (Section 366), enquire, "But what person is thereby meant? Without doubt, the person interested in the legal relation to this thing. But this is a very ambiguous notion; and thereby the whole doctrine, even if it were admitted, becomes extremely indeterminate and uncertain. By the party interested we may understand the owner; but then it remains doubtful whether, in a transfer of property, the old or the new owner is meant. So, too, in a dispute as to property, which of the two competing parties, each of whom claims for himself the property. But we may also entirely give up thinking of the owner, and take the possessor as the party interested, by which, certainly, the matter is made simpler and easier. Besides property, various other real rights come under consideration; and each of these, when it exists, or is even asserted, leads back to a new person interested in the thing."

There is, it seems to me, but one way out of these difficulties, the simple one of construing the words of the English law in a strictly English sense. The distinction of immoveable and moveable property is of course not one that would be adopted if the English division into real and personal were meant. It is drawn rather from the Civil Law. But still a definite sense can be given to the term 'immoveable' from its use, and that of the word 'moveable', in the Acts of the Indian Legislature; and this being ascertained, it should not, I think, be subject to fluctuations depending on the race, caste, or religion of those who have to do with the property.

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I would, therefore, refer the question of limitation in this case to a Full Court.

Gibbs J.:—I am still of opinion that the decision in the case of *Krishnabhat* v. *Kapábhat (b)*, in which Sir R. Couch sat with me, is correct, but as the question is one of considerable importance, I do not object to have it referred to a Full Court.

Accordingly on the 5th February 1872, the reference was argued before a Full Bench consisting of WESTROPP, C.J., GIBBS, LLOYD, MELVILL, and KEMBALL JJ.

Dhirajlál Mathurádás, for the appellant:—The suit is not for the recovery of immoveable property, but for the recovery of dues payable to an hereditary village Joshi. It ought, therefore, to have been brought within six years under Clause 16 Section I of Act XIV. of 1859. The plaint was not filed till the 21st January 1869. The last payment on account of the office was made in 1860, as found by the lower Court. Since then no payment has been made. The suit, therefore, is clearly barred. The right of an hereditary Joshi to receive certain fees is not of the nature of immoveable property. The words "immoveable property" must be taken in their plain and natural sense as commonly understood in the English language. Act XIV. of 1859 was framed by English lawyers and English legislators and, therefore, their meaning of the words "immoveable property" ought to be taken. Those words are not to be interpreted according to Hindu law or according to the religious usages of the parties. According to Hindu law, mesne profits come under immoveable property. But a claim for them between Hindus is not governed by Cl. 12 Section I. Our salaries also answer the description of "Nibandha," and would, therefore, fall under the denomination of immoveable property. He cited Special Appeal No. 4277 (FORBES and TUCKER JJ.) decided on the 23rd March 1865; Special Appeal No. 399 of 1866 (COUCH, C.J., NEWTON and WARDEN,

(b) 6 Bom. H. C. Rep. A. C. J. 137.

JJ.) decided on the 17th December 1866; *Maháraná Fatesangji* v. *Desai Kalyánráya* (*c*).

Shámráv Vithal, contra:—The parties to the suit are Hindus, and the suit relates to the Watan of a village Joshi. Whether the property in dispute is immoveable, or moveable, as regards limitation is to be determined, not by considering what is ordinarily meant by those words in the English language, but by a reference to what the law of the parties hold such property to be. The law of limitation is simply intended to prescribe some period within which people are to enforce their right, and not to change the nature of property. Regulation V. of 1827, Sec. I classes hereditary offices as immoveable property. The new Limitation Act (No. IX. of 1871, second schedule, Art 123) allows twelve years for a suit for the possession for hereditary office. He cited Mayne on Ancient Law, pages 273-74; 8 Moo. Ind. App. pages 242-50; Burgess's Common Colonial and Foreign Law, vol 2, page 86; Story on the Conflict of Laws, Section 576, Page 766, 6th edn.

Cur. adv. vult.

WESTROPP, C.J. :—The question referred to the Full Bench by a Division Court, consisting of GIBBS and WEST, JJ., is whether Section 1, clause 12, or Section 1, clause 16, of the Limitation Act XIV. of 1859 is applicable to a suit to recover fees payable to the incumbent of the hereditary office of village Joshi, *i.e.*, whether the measure of limitation prescribed in such a case is twelve or six years.

Section 1, clause 12 is: "To suits for the recovery of immoveable property, or of any interest in immoveable property, to which no other provision of this Act applies, the period of twelve years from the time the cause of action arose." The question, therefore, becomes simply whether the fees of an hereditary office constitute "an interest in immoveable property" within the meaning of that section.

The Limitation Act XIV. of 1859 does not itself contain any definition or description of immoveable property.

(*c*) 4 Bom. H. C. Rep. A. C. J. 189.

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Subsequent Acts have been referred to as containing definitions of immoveable property; amongst them the Indian Succession Act X. of 1865, as follows:—"'Immoveable property' *includes* land, incorporeal tenements, and things attached to the earth, or permanently fastened to any thing which is attached to the earth." But that is in truth no definition, as the use of the word "includes" shows. It is not by any means intended to be exhaustive. The explanation of the word "person" in the glossarial part of the same Act shows this. It is as follows:—"'Person' *includes* any Company or Association or body of persons, whether incorporated or not." No one could contend that the word "person," as used in that Act, does not also include an individual, and yet the glossary does not assert that it does. When the Legislature intends to speak exhaustively it uses the word "mean" or "means" ex. gr. "'year' and 'month' respectively *mean* a year and month reckoned according to the British Calendar," and again in the same Act "'Moveable property' *means* property of every description except immoveable property." It was argued for the defendant that the express user of the term "incorporeal tenement" in the Indian Succession Act showed that the Legislature would have mentioned incorporeal tenements or hereditaments in the Limitation Act, if it had intended that the same should be included amongst immoveable property; but we do not think that such an argument is sustainable. Before stating the reason for that opinion, it may be well to mention the Registration Act XX. of 1866 which, in Section 2, says, that "'Immoveable property' *includes* land, buildings, rights to ways, lights, fisheries, or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to any thing which is attached to the earth, but not standing timber, growing crops nor grass," and the General Clauses Act (I of 1868), which, however, applies only to Acts passed subsequently to its coming into operation, enacts that "unless there be something repugnant in the subject or context" of such Acts "'immoveable property' shall *include* land, benefits to arise out of land, and things attached to the earth" and that

"'moveable property' shall *mean* property of every description except immoveable property," which really amounts to no definition whatever, as the Act has not defined what immoveable property is, but has simply stated that the term "immoveable property" shall "include" certain specified property, but by no means indicates that it may not also include other property, which had, theretofore, passed under the denomination of immoveable property. The same remark applies to the Registration Act XX. of 1866 above referred to, in which also the inconclusive verb "includes" is used with regard to immoveable property.

Instead of looking to subsequent legislation for the true interpretation of the phrase "immoveable property" as employed in the Limitation Act XIV. of 1859, which itself throws no light on that question, we should consider what was understood by that phrase previously to the passing of that Act.

Colebrooke, in 2 Strange H. L. 363, states that if an office be hereditary, the dues belonging to it are partible. "But in such case it classes with immoveables and corodies, and the dues belonging to it cannot be reckoned household property." Mr. Ellis says that the official perquisites cannot "be accounted as household property." He adds: "For what is the real nature of them? Are they not given for the subsistence of the officer, enabling him to apply his whole time and attention to the accounts of the village; and would not the division of them among a number, for whose maintenance they cannot adequately provide, destroy their object? Again, does not the law that regards the grant of a corody apply to these and similar perquisites, and has not the grantor, or he who pays, a right to see that they are appropriated according to the original intention under which they are granted? I have no doubt but it applies, and that similar official perquisites, though certainly heritable, are not divisible; nor ought they to descend by primogeniture. The most capable of the direct, or in their default, of the collateral descendants of the first grantee, should be selected for the performance of the duties of the office, who should enjoy the whole perquisites." We then have Mr. Colebroke

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and Mr. Ellis, although differing as to the partibility of the emoluments of an hereditary office, concurring as to their being not household but immoveable property and in the same category with corodies. Sir Thomas Strange also (Vol. I. H. L. pp. 209, 210) classes the dues of an hereditary office with corodies. Speaking of the classification of the property of Hindus (*Ibid* p. 16) he says: "As with us also, property is further distinguishable into *real* and *personal*, *moveable* and *immoveable*; real or immoveable property, among the Hindus, including, besides land and houses, *slaves* attached to the land and annuities secured upon it, the latter bearing a close resemblance to that species of incorporeal heriditament which we call corodies." The first edition of his work was published in 1825.

The first edition of Colebrooke's translation of Jagannáth Tercapanchana's Digest was published in 1801. At Vol. II. page 162, placitum XXXIV., is the following passage:—

"Yájnyawalcya:—Let a king having given land or assigned a corody, cause his gift to be written for the information of good princes who will succeed him, 2. Either on prepared silk, or on a plate of copper, sealed above with his own signet. Having described his ancestors and himself, 3. The quantity of the gift, with the penalty of resumption, and set his own hand to it, and specified the time, let him render his donation firm." *(d)*. Thus we see that Yájnavalkya classes together land and a corody, and directs that the donation of either should be "firm." The commentator on pl. XXXV. says (Ibid p. 163): "In the Dipacalicá, a corody is thus explained: the gift of a future thing by a previous agreement in this form 'I will give a hundred *suvernas* every month of cártici' or 'out of this mine, or this village, I will annually give a hundred *suvernas*' or 'I will monthly give one suverna.'" The property over which the father has full dominion is mentioned in Vol. III, at page 31 pl. xc, xci; and next at page 34 the property over which his sons have equal dominion with him. Plac. xcii. is: "Yájnyawalcya:—"Over land acquired by the grandfather, over a corody out of

(d) Vide *Ibid* p. 167.

mines or the like, settled on him and his heirs by the king, and over slaves employed in his husbandry, (or over gold and the like, for the word 'dravya' is expounded variously,) the father and the son, when the grandfather dies, have equal dominion;" and the Commentator says: "'A corody,' a fixed pension receivable out of mines or the like, and settled on him and his heirs by the King or other benefactor.'" Plac. XCIII is: "Brhaspati:—Of property acquired by the grandfather, whether moveable or immoveable, equal shares are ordained for the father and the son." "The Commentator considers 'moveable' as here signifying anything not immoveable, as gold or the like. In expounding the text of Yájnyawalcya (XCII) the Retnácara has this gloss: 'that which is fixed or made fast (nibadhayati), is a corody *(nibandha)*, or fixed pension receivable out of mines or the like. 'Equal Dominion': in this case no greater share is allotted to one than to another; nor can the father give away such property at his pleasure." Here again we have in these placita XCII and XCIII and in the commentary corodies classed with land. With regard to the word "dravya" as occurring in pl. XCII the better opinion seems to be that it is there employed simply to mean "slaves". It is so expounded in Raghunandana's treatise entitled Dáyatatva: Dáya Bhág, clause II, pl. 9, n. 9 by Colebrooke; and the same exposition is given by Chudámaṇi and A'chynta: *Ibid* pl. 13, 14 and n. 14 by Colebrooke, and pl. 25. The word "dravya" should, therefore, it seems, be there understood, as when used in composition thus "sthira-dravya," or (when abridged) "sthávara," which indicates fixed or immoveable property: see Wilson's Glossary p. 149, 490. Slaves attached to the land, as we have seen, are immoveable property: 1 Strange H. L., 16. Devánda Bhatta in the Smriti Chandriká, chapter VIII., referring to the same placitum from Yájnyavalkya, says (para. 18): "A corody (Nibandha) signifies a permanent allowance received from saleable articles in virtue of an agreement or promise." The translator (Krishnasvámi Iyer) has in the note to that passage at p. 98 (2nd edn.) collected six descriptions of the term corody (Nibandha). Of these we have already men-

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tioned three. The others are: "Anything which has been promised, deliverable annually or monthly or at any other fixed periods." Srikrishna; "So many leaves receiveable from a plantation of betel, pepper, or so many nuts from an orchard of areca": Mitak., ch. 1, Section V, pl. 4. The Sanskrit term Nibandha is by Wilson in his Glossary, p. 375, described thus: "In law, fixed or immoveable property; also a corody or fixed allowance granted by the Raja or person in authority, to be received from the proceeds of a manufactory, mine or estate."

Now certain it is that whether rightly, or wrongly, whether too indiscriminately, or otherwise, the writers, upon whom the framers of the Elphinstone Code for Bombay were almost wholly dependent for their knowledge of Hindu law, namely, Colebrooke and Strange, treated hereditary offices, corodies, land, and slaves attached to it, as in the same class, namely, immoveable property.

Accordingly we find that in Regulation V of 1827 (which down to the passing of Act XIV. of 1859, constituted the law of limitation for the Mofussil of this Presidency) hereditary offices are most distinctly recognized as immoveable property. Section 1, cl. 1 of that Regulation is as follows:— "Whenever lands, houses, *hereditary offices or other immoveable property*, have been held without interruption for a longer period than thirty years whether by any person, as proprietor, or by him and his heirs, or others, deriving right from him, such possession shall be received as proof of a sufficient right of property in the same." Sec. 2 admitted the bringing of a suit within sixty years, if the possession exceeding thirty years had been obtained by fraudulent means.

Although corodies are not specified in that Regulation, the words "other immoveable property" are quite sufficient to include them, if they then did properly rank as immoveable property, and that they did so, the high authorities to which we have referred would seem to establish.

There is no more settled or safe rule of construction of enactments than that they are to be construed in reference

to the principles of the common law. It is not to be presumed that the Legislature intended to make any innovation upon the common law further than the case absolutely required. The Courts infer that the Act did not intend to make any alteration other than what is specified, and besides what has been plainly pronounced; for, if the Legislature had that design, it is naturally said, they would have expressed it.

Act XIV. of 1859, which is intituled "an Act to provide for the limitation of suits" recites that "it is expedient to amend and consolidate the laws relating to the limitation of suits," and does not afford, so far as we can discover, the slightest intention of altering the nature of property, *i.e.*, of removing that which had theretofore been deemed immoveable property to the rank of moveable property, or *vice versa*. To have done so would apparently have been quite beyond the object of the Act, namely, the prevention of the bringing of *stale* claims into Courts of Justice, and might have affected many persons injuriously. For, although, the distinction between moveable and immoveable property amongst Hindus (who constitute the great majority of the population of India) is not nearly so great as that between real and personal property in England, yet there is for many purposes a distinction. The power of a Hindu to deal with moveables is greater than his power over immoveables; and if that which has been immoveable be transferred to the rank of moveable, his heirs are exposed to greater risk: Dáya Bhága, ch. II, pl. 22, 23; II. Colebrooke Dig. p. 113, pl. XIII, p. 131, pl. XVIII, p. 157, 159; III. Ibid 36, pl. XCV; 1 Strange H. L. 17, 20, 21. The widow in this Presidency takes a limited estate only in the immoveable property of her childless husband, or son, but she takes his moveable estate absolutely: 1 Bom. H. C. Rep. 56, 117, 130; 2 Ibid 323; 2 Strange H. L. 13.

It must also be remembered that Limitation Acts are in abridgment of the common law right to sue, which is unlimited as to time, and those Acts being thus restrictive, should receive a strict construction, as Lord Nottingham C.

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said in a case upon the then recently passed Statute of Frauds: "all Acts which restrain the common law ought themselves to be restrained by exposition:" *Ash* v. *Abdy* (*e*) decided 13th June 1678.

We see nothing in Act XIV. of 1859 to cut down what was the received meaning of "immoveable property" before the Act was passed. We think that the rules of construction which we have mentioned are stronger than any argument drawn from such a circumstance as that Act XIV. of 1859 was an English Act, passed by an English legislature, and, therefore, that the term "immoveable" should receive the construction which that word ordinarily bears in common parlance amongst English people. It is not a *vocabulum artis* of the English law, and has not by it had any such indelible character stamped upon it as to countervail the meaning heretofore attributed to it in this Presidency amongst the majority of its population, and by the most skilled English writers upon Hindu law.

Nor do we find in subsequent Acts anything calculated to give us the impression that the received doctrine as to immoveable property amongst Hindus was wrong, or that Act XIV. of 1859 was intended to narrow the scope of that phrase, or to show that it is not a term elastic enough to suit itself to the law of any community to whose property it may be necessary to apply it.

We observe in the new Limitation Act IX. of 1871, which enters much more into detail than the previous Acts, that twelve years is the limit applicable to suits for the possession of an hereditary office: Schedule II. art. 123; and that the same limit is applicable to suits to establish a periodically recurring right (art 131,) and to suits for money charged upon immoveable property including Málikána and haqqs (haks): art. 132.

Sir W. Macnaghten, whose work was published subsequently to 1827, *i.e.*, in 1829, includes slaves and corodies amongst immoveable property. Vol. I. p. 1.

(*e*) 3 Swanston 664.

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We are of opinion that Cl. 12, and not Cl. 16, of Section 1 of Act XIV. of 1859 is applicable to a suit to recover the fees of an hereditary office, such as a village Joshi.

It may be that *Krishnabhat* v. *Kapábhat* (*f*) decided by COUCH, C.J., and GIBBS, J., which this decision upholds, may be inconsistent with *Ráiji Manor* v. *Desái Kalliánrái* (*g*) and the like cases which treated *todá garás* as moveable property and the limit, to suits for it, as six years. It is unnecessary for us now to decide whether or not this inconsistency exists. For my own part, I may say that I have had considerable doubts as to the soundness of those decisions as to *todá garás*.

Having answered the only question submitted for our decision, we remit this case to the Division Court (with that answer) for final disposal.

[APPELLATE CIVIL JURISDICTION.]

Miscellaneous Special Appeal No. 22 *of* 1871.

March 13.

PIRJA'DA' NASARUDIN.....*Appellant.*

VENKAT PRABHU .....*Respondent.*

Jurisdiction—North Kanara—Decree passed by Principal Sadr Amín—Execution of such decree—Act (Bombay) III. of 1863 *Secs.* 6 *&* 7—*Act XIV. of* 1869.

A decree passed by a Principal Sadr Amín of the district of North Kanara before that district was transferred to the Bombay Presidency, should be executed by the First Class Subordinate Judge who has succeeded to the Court and functions of such Principal Sadr Amín, and cannot by him be delegated for execution by a Second Class Subordinate Judge, though the amount of such decree be less than Rs. 5,000.

The provision in the Bombay Courts' Act (XIV. of 1869), that in suits under Rs. 5,000 the Second Class Subordinate Judges only shall have jurisdiction, does not affect the execution of decrees passed before that Act came into force.

THIS was a miscellaneous special appeal from an order of A. L. Spens, Acting District Judge of Kárwár, reversing an order of Venkatráv Pándurang, Second Class Subordinate Judge at Kárwár.

(*f*) 6 Bom. H. C. Rep. A.C.J. 137. (*g*) *Ibid* 56.