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it, has done them a wrong (assuming that they can prove what they affirm), and this wrong constitutes a cause of action. We, therefore, reverse the District Judge's decree, and remand the cause for retrial and a new decree. In such retrial, it will be expedient, if possible, that advertence should be had to the rights which the widow may meanwhile have established in her suit against the parties to this cause, or that the requisite steps should be taken for enabling the Court to pronounce at the same time upon the conflicting claims of the several parties, setting up an interest in the property to be administered. Costs to follow the final decision.

[APPELLATE CIVIL JURISDICTION.]

June 15.

Special Appeal No. 515 of 1873.

KRISHNARA'V RA'MCHANDRA and another... *Appellants.*

MA'NA'JI BIN SAYA'JI and another..... *Respondents.*

Jurisdiction—Small Cause Court—Act XI. of 1865, Sec. 6, Exception 4—Special Appeal—Suit for arrears of rent—Regulation XVII. of 1827, Section 31, Clause 3—Payment by a lessee to one of several joint lessors—Pleading.

The expression "or former year" in Regulation XVII. of 1827, Section 31, Clause 3, does not mean the year immediately preceding the current year, but any previous year, and a suit for rent could have been brought before a Revenue Officer, when Act XI. of 1865 was passed, and not before the Small Cause Courts constituted by that Act. A special appeal lay in a suit of this nature.

Payment of rent by the lessee to one of several joint lessors, and at his request, discharges the debt as to all; as also payment made at his request to one of several joint creditors. Where one of several joint-creditors, who has no rights separate from those of the others, refuses to join in the suit as plaintiff, and there is no averment of collusion on his part with the defendant, he cannot rightly be joined as a defendant.

THIS was a special appeal from the decision of R. F. Mac-tier, District Judge of Satara, affirming the decree of the First Class Subordinate Judge, Krishnarāv Vithal Vin-churkar.

This suit was brought by Krishnaráv Rámchandra and his brother Vináyak, to recover the rent of some *kuran*-land (grass-land) for the year 1868-69. The suit was based on a *kabuláyat* (rent-note) which the defendant Mánáji had passed, jointly, to the two plaintiffs and Sakhárám Khanderáv (defendant No. 2), under date the 18th June 1868. The plaint was filed on the 3rd April 1871, and stated that the whole rent was Rs. 40, of which the plaintiffs claimed two-thirds on account of their two shares, and that as Sakhárám refused to join as co-plaintiff, the plaintiffs made him a co-defendant. But no relief was asked by the plaintiffs as against Sakhárám. Mánáji answered that nothing was due to the plaintiffs on account of rent, as he had already paid it off, viz., Rs. 25-10, to Government on account of the *chavthái* tax, at the request of Sakhárám (defendant No. 2), and the balance to Sakhárám himself. Sakhárám, in his defence, admitted the payments which Mánáji alleged he had made. Both the lower courts, viz., the Subordinate Judge's Court and the District Court of Satara, held as proved the payments alleged to have been made by Mánáji, and threw out the plaintiffs' claim as unsustainable against the defendant Mánáji. The plaintiffs preferred a special appeal, which came on for hearing on the 9th June 1874, before WEST and LARPENT, JJ., when

Vishnu Ghanashám, on behalf of the respondents Mánáji and Sakhárám, took a preliminary objection that, under Act XXIII. of 1861, Section 27, no special appeal lay in the case, as it was a Small Cause Court suit. The action was one for rent, cognisable by a Court of Small Causes, under Act XI. of 1865, Section 6, unless it came within Exception 4 to that section. The suits for rent, excluded from the jurisdiction of Small Cause Courts, were those which might be brought before a Revenue Officer, as provided in Exception 4 to Section 6 of that Act. Now, the only suits or rent, cognisable by a Revenue Court, were suits for the current or former year, under Regulation XVII. of 1827, Section 31. The present suit, having been filed on the 3rd April 1871, and seeking to recover rent due for 1868-69,

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1874. was not, and could not be said to be, a suit for rent either of
 KRISHNARÁV the current or the former year. [WEST, J. :—“ Former
 RA'MCHANDRA year” does not mean immediately preceding year, as appears
 v. clear from Section 27 of the Regulation, where the expres-
 MA'NA'JI BIN sion “ former years” is used.] The words “ former year” in
 SAYAJI. Section 31, used as they are in connection with the words
 “ current year,” suggest the interpretation that “ former ”
 there means immediately preceding year. Under these
 circumstances, the High Court could not hear the present
 special appeal.

Bhairavnáth Mangesh, for the appellants, referred to *Rám-
 chandra Raghunáth v. Abáji bin Rástyá (a)*, and contended
 that a suit for the rent of land was not cognisable by a Small
 Cause Court, and that, consequently, the present special
 appeal lay to the High Court.

The preliminary objection having been overruled by the
 Court for reasons stated in their judgment, the appeal was
 argued on the merits on the 15th June 1874 before the same
 Bench.

Bhairavnáth Mangesh, for the appellants :—The plaintiffs
 and defendant Sakhárám are admittedly members of a joint
 Hindu family, and therefore Mánáji was not justified in pay-
 ing the rent to Sakhárám alone, unless he could prove Sak-
 hárám to be the manager of the family : *Sangáppá bin
 Chanbasáppá v. Sáhebánná bin Kengedáppá (b)*, *Doorga
 Churn Surma v. Jampa Dasse (c)*. Payment of part of the
 rent to Government was made without any demand on the
 part of Government, and, therefore, would not bind the
 plaintiffs.

Vishnu Ghanashám (with him *Shámráv Vithal*) *contra* :—
 The case in 7 Bom. H. C. Rep. 141 does not apply, because the
 parties in the present case, as would appear from the plead-
 ings and issues, did not proceed on the basis of the principle
 of the Hindu Law laid down in that case. The case before

(a) 6 Bom. H. C. R. 12 A. C. J. (b) 7 Bom. H. C. R. 141 A. C. J.
 (c) 12 Beng. L. R. 289.

the Court is simply the case of three joint lessors and one lessee. A plaintiff must be restricted to the case set up in the plaint and pleadings, (d). A portion of the rent was paid to Government at the request of Sakháram, one of the joint lessors, as admitted by him in his written statement, and not denied by the plaintiffs. Payment in satisfaction made to one of several joint creditors, discharges the debt against all: Leake on Contracts 486, *Husband v. Davis (e)*, *Brandon v. Scott (f)*. So, accord and satisfaction made with, and accepted by, one of several joint creditors, discharges the debtor as against all: Leake on Contracts, 470.

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The judgment of the Court was delivered by

WEST, J. :—It was pressed on us that as this was a suit to recover rent, it was, through the effect of Act XI. of 1865, Section 6, clause 4, and Bombay Regulation XVII. of 1827, Section 31, a case cognisable by a Small Cause Court, and one, therefore, in which no special appeal would lie. This depends on whether, when Act XI. of 1865 was passed, the suit for rent could have been brought before a Revenue Officer. It was said that by Section 36 of the Regulation, the Collector could entertain a suit for rent only for the “current” or “former,” *i.e.*, the immediately preceding year, and as this suit was one for rent three years in arrears, the Collector could not have jurisdiction, and the Small Cause Court would. But this construction of the word “former” as equivalent to “immediately preceding,” is not one which the ordinary use of the term necessitates, and although the whole expression, “disputes regarding the rent of the current or former year,” may at first sight suggest that “former” probably means “the year before,” yet a comparison of Section 27 shows that the intention of the Legislature was not thus limited. By that section a superior holder is debarred from recovering arrears of rent due for former years otherwise than by a suit instituted before the Collector, according to the provisions of Chapter VIII., of which Section 31 is the first

(d) S. A. 179 of 1873, decided by MELVILL and WEST, JJ., 12th Aug. 1873.

(e) 20 L. J. C. P. 118.

(f) 26 L. J. Q. B. 163.

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section. If it had been intended that there should be no remedy for rent for more than one year in arrears, this would have been plainly said. It is not said; and as for rent in arrears for former years, generally, the superior holder is directed to the Collector's Court, Section 31 must be construed so as to make this direction effective, and the more so as this involves no violation of its grammatical interpretation. As the suit then could have been brought before the Collector, it was not a small cause cognisable, in 1865, by the Small Cause Courts constituted by Act XI. of that year, and a special appeal is not excluded. The two plaintiffs in this case and the defendant Sakhárám joined in a lease to the defendant Mánáji. Mánáji, at Sakhárám's request, paid a portion of the sum due as rent to Government for "chavthái," and the rest he paid to Sakhárám himself. The payment to one of several joint creditors, and at his request, discharges the debt as to all. This is the rule of English law, as shown by the cases cited, and also of the Roman law. It has been argued that the case of *Sangáppá v. Sahebánná* is an authority for the claim now set up, but in the present case the three lessors, whatever their relations *inter se*, were, as regards the defendant Mánáji, joint lessors and jointly bound by a payment to any one of their number. The case at 12 Beng. L. R. 289 was one based on a refusal to pay shares of rent remaining unpaid, after the right of several recipients to *aliquot* portions had been recognised. In such a case payment of the whole amount due to one of the co-creditors (who cannot then properly be called joint creditors) does not discharge the debtor as against the others; but the debtors in the Bengal case had, in fact, paid only their own shares to the co-sharers, made defendants along with him. The suit proceeded on the alleged collusion. Here the whole amount due by Mánáji has been paid to Sakhárám, and the suit is not grounded on any alleged fraud in attempting to keep the plaintiffs out of the money due to them. There is nothing to remove the case from the ordinary category of money due to joint creditors and paid to one of their number. As to Sakhárám nothing was claimed from him. He was made a defendant, because

he would not be plaintiff. If the plaintiffs had separate rights, this was superfluous. If they had no rights separate from his, it could not cure the defects of the case, as they did not base their suit on an averment of collusion. Sakháram was a necessary party as plaintiff. We confirm the decree of the District Court with costs.

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[APPELLATE CIVIL JURISDICTION.]

June 18.

Miscellaneous Special Appeal No. 18 of 1873.

GOVIND LAKSHUMAN *Appellant.*

NA'RA'YAN MORESHVAR..... *Respondent.*

Limitation Act IX. of 1871, Sec. I., Clause (a)—Application for execution of a decree—Suit—Act I. of 1868, Section 6—Act XIV. of 1859, Section 20—“Proceeding.”

The Limitation Act IX. of 1871 comes into operation from 1st July 1871 with respect to appeals and applications, and is not controlled by the General Clauses Act I. of 1868, Section 6.

An application for execution of a decree being made on the 27th September 1871, *Held* not to be a suit within the meaning of Section I., clause (a) of Act IX. of 1871, and, therefore, barred under Schedule II., No. 167 of that Act, as having been made more than three years after the date of the last preceding application.

The application of the 27th September 1871 cannot be regarded as a mere continuation of a proceeding pending, viz., of the last preceding application of the 7th January 1868, within the meaning of Act I. of 1868, Section 6, at the time when the new Limitation Act came into operation, though the order on the latter application having been made on the 31st March 1870, would possibly have been a sufficient proceeding within the 20th section of Act XIV. of 1859, to constitute a fresh terminus, whence time might run under that Act.

THIS was a miscellaneous special appeal from the order of W. H. Crowe, Acting Assistant Judge of Tanna, reversing the order of Mangeshráv Balvant, Subordinate Judge at Pen. The facts of the case are as follows :—

Naráyan Moreshtar obtained a money decree in the Munsiff's Court at Pen against Govind Lakshuman and two others on the 28th June 1864. In execution of that decree, Nárá-