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the firm are to pay the plaintiffs Rs. 17,590 as above.* The evidence fails as to who supplied the capital and on what terms the partnership was constituted. The payments made by the different partners for the firm were presumably made out of the funds of the firm, and the contrary is not proved by any satisfactory evidence. Hence we must fall back on the ordinary presumption that at the moment when the firm was dissolved by Balápá's death, he was entitled to a moiety of the existing assets, *i.e.*, Rs. 58,500, minus a debt for cart-hire of Rs. 300. His execution-creditor seized and sold Rs. 13,535 worth of timber, out of the proceeds of which Rs. 2,025 were handed back to Keshav. The account is made up accordingly, and the defendants must pay the balance to plaintiffs. Costs throughout in proportion.

* Balápá in account with Keshav & Co.

Dr.			Cr.	
To Timber attached in execution	Rs. 13,535		By cash paid to Keshav on account of execution	Rs. 2,025
Balance	,, 17,590		A moiety of remaining assets	
			58,500 — 300	
	31,125		———	= 29,100
			2	
				31,125

[APPELLATE CIVIL JURISDICTION.]

March 10.

Regular Appeal No. 65 *of* 1873.

GIRIA'PA' .....*Plaintiff and Appellant.*

JAKANA' and others.....*Defendants and Respondents.*

Hereditary office—Succession—Resumption—Adverse possession—Limitation.

J held the office of *Pátil* more than fifty years ago as representative of two branches descended from a common ancestor, and then united in interest, there being two other branches descended from the same ancestor, but severed in interest from those represented by *J*. *J* having died in 1824, was succeeded by his son *T*, without any opposition from the two other branches. *T* was temporarily displaced from the office by *G*, who represented the two other branches, but recovered it in 1850. In an action brought by the plaintiff, as representative of *G*, in 1873, to establish his claim to the office held by *T*'s sons, it was contended on behalf of plaintiff, in answer to de-

fendants' plea of limitation that in the absence of evidence of the circumstances under which *T* succeeded to the *Pátilship*, *T* must be presumed to have been nominated to that office by all the members of the *watandár* family jointly, or with their assent sought and granted, and was consequently the representative of all of them :

Held that the succession of a son to his father in an hereditary office is primarily to be referred to a right based upon the relation subsisting between them, just as would be the son's succession to his father's property.

Held also that the presumption thus arising against *T* having been a nominee of all the branches of the family, and not having been rebutted by any evidence of an assertion and admission of the rights of the other branches, *T's* occupation of the *Pátilship* was adverse to the plaintiff's right, and being adverse at its beginning, it was equally adverse when, after a temporary displacement by *G* (whom the plaintiff now represents), *T* recovered it in 1850.

Held also that an interval of more than twelve years having passed between 1850 and the institution of the present suit in 1873, the claim was barred, and the possession of the office obtained by *T's* representatives could not be disturbed.

THIS was a regular appeal from the decision of S. Tagore, Senior Assistant Judge in Kaládgi, in original suit No. 10 of 1873.

The plaintiff, Giriápá, brought this suit against the three sons of Timaná bin Jakaná, and prayed for a declaration that he was entitled to a fourth share in the *Pátilki watan* of Ingalgi and to officiate as *Pátil* in turn with the defendants. The Assistant Collector was also made a co-defendant, because he refused to enter the plaintiff's name in the *Pátilki* Register of the village. The first three defendants denied the plaintiff's right, set up an exclusive claim in themselves, and pleaded the Limitation Act, saying that they had been in uninterrupted enjoyment of the office for more than thirty years previous to the date of the plaintiff's suit. Mr. Tagore found that the plaintiff had originally a fourth share in the *watan*, but held that the members of the defendants' branch of the family had exclusively performed the office of the *watan* since the introduction of the British rule; that for about four years Timaná was deprived of his office by the plaintiff's brother, Govind; that the said Timaná, however, recovered the office from Govind, in 1850; that since that time the *Pátilship* continued in the possession of the said

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Timaná, and after him of his sons and representatives, the first three defendants, and that, therefore, the plaintiff's claim was barred. Mr. Tagore accordingly dismissed the plaintiff's suit with costs.

The appeal was argued before WEST and NA'NA'BHA'I HARIDA's, JJ., on the 10th March 1875.

Jardine (with him *Fakirápá*) for the appellant.

Farran (with him *Dhirajlál Mathurádás*, Government Pleader,) for the respondents.

WEST, J.:—It seems to be well established, notwithstanding some vague and inconsistent evidence to the contrary, that Jakaná held the office of *Pátil* more than 50 years ago as representative of two branches descended from a common ancestor, Bhimaná, and then united in interest. There were two other branches severed in interest from those represented by Jakaná, and, when Jakaná died, in 1824, if those branches had a right to nominate a successor, they ought then to have asserted it. Jakaná was in fact succeeded by his son Timaná, and Timaná's succession implies, if unexplained, as it is, that the right to hold the office was confined to Jakaná's line. It has been urged by Mr. Jardine that the circumstances, under which Timaná succeeded, do not appear, and he would have us infer that Timaná was nominated by all the members of the *watandár* family jointly, or took the office with an assent on their part, sought and granted which would make him their representative. There is some force in this argument, but we think that the succession of a son to his father in an hereditary office is primarily to be referred to a right arising from that relation subsisting between them just as would be his succession to property. A presumption thus arises against Timaná's having been a nominee of all the branches of the family, and this presumption not having been met by any evidence of an assertion and admission of their rights, Timaná's occupation of the *Pátilship* must be taken to have been adverse to the right now set up by the plaintiff, who belongs to one of the branches not represented by Jakaná. Having been adverse at its beginning,

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it was equally adverse when after a temporary displacement by Govind, whom the plaintiff now represents, Timaná recovered it in 1850. Between that time and the institution of the present suit, there was an interval of more than twelve years, and the possession of the office obtained by Timaná's representative could no longer then be disturbed. If the plaintiff, Giriápá, being united in interest with Timaná, had been necessarily represented, in the absence of a special agreement by Timaná, while Timaná was *pátil*, his right would not of course have become practically extinguished by limitation, and thus it is that the plaintiff, Venkaná, in the other suit has been enabled to succeed, but here no union of interests has been averred as the foundation of the plaintiff's right. He has claimed merely as representative of a separated branch against which Timaná's tenure of the office was always adverse.

We must therefore confirm the decree of the District Court with costs.

NOTE.—A review was applied for in this case, but the Court (WEST and NA'NA'BBA'I HARIDA'S, JJ.,) on the 23rd September 1875, rejected the petition, on the ground that no sufficient reason was shown for the review sought.

[ORIGINAL CIVIL JURISDICTION.]

Suit No. 229 *of* 1874.

March 9.

JUSAB HA'JI JA'FAR.....*Plaintiff.*

HA'JI GUL MUHAMMAD .....*Defendant.*

Registration Act VIII. of 1871, *Section* 17, *Clauses* 2 *and* 3, *Sections* 18 *and* 49—*Agreement for purchase of immoveable property contemplating a future conveyance—Payment of earnest-money.*

A "bargain paper" for the purchase of immoveable property above the value of Rs. 100, which contemplates the execution of a future conveyance does not require registration.

THIS was a suit, tried by Sir C. SARGENT, J., in a Division Court on the 15th January 1875, for specific performance of an agreement to purchase two houses. The agree-