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KUBER
v.
THE TA'LUK-
DA'RI SETTLE-
MENT OFFICER.

at all events, if not before, the right of resumption accrued. Even in this country the office of cook can hardly be considered hereditary. Jiva's successor in the office, Morar Ganesh, is not shown to have been his heir. There must have been a fresh appointment; and if the use of the land were intended to be the remuneration of the new cook, a resumption and re-grant were necessary. Nothing of the kind is shown to have been done. It is true that, ten years after Jiva's death, the land was entered in the name of Morar Ganesh. But Morar Ganesh never had possession of the land. The plaintiffs and those through whom they claim (or their mortgagees) have had undisturbed possession for some forty years; and, at all events since Jiva's death, that possession must be regarded as adverse to the Talukdar. His right to resume or to assess the land is, consequently, barred by Act IX. of 1871, Section 29, and Article 130, Schedule II.

For these reasons we reverse the decree of the Courts below, and allow the claim, with costs on defendants throughout.

Decree reversed.

[APPELLATE CIVIL JURISDICTION.]

Before Mr. Justice Melvill and Mr. Justice Kimball.

RAGHOJI BHIKAJI AND OTHERS (DEFENDANTS, APPELLANTS) v.
ABDUL KARIM (PLAINTIFF, RESPONDENT).^{*}

Limitation—Promise—Acknowledgment—Recovery of barred debt—Act XIV. of 1859, Section 4—Act IX. of 1871, Section 20—Act IX. of 1872, Section 25, Clause 3.

The "promise" referred to in Section 20 of Act IX. of 1871 is a promise introduced, by way of exception, in a suit founded on the original cause of action, and not a promise constituting a new contract, and extinguishing the original cause of action. Accordingly a suit is not barred which is brought on a bond executed, in consideration of a barred debt, after the expiration of the period prescribed for its recovery.

THIS was a special appeal from the decision of W. Wedderburn, Judge of the District of Ratnágiri, amending the decree of the 1st Class Subordinate Judge of Ratnágiri.

The plaintiff, on the 18th of August 1875, sued the defendants to recover from them two instalments on a bond for Rs. 1,400,

^{*} Special Appeal No. 303 of 1876.

with interest at 12 per cent. per annum, dated the 7th of August 1873. He claimed Rs. 200, payable on the 1st of November 1873, and Rs. 300, payable on the 1st of November 1874, with interest Rs. 118, but allowing a set-off of Rs. 50 already received, in all Rs. 568.

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The defendants denied the execution of this bond, and stated that they owed nothing.

The bond purported to have been executed for a balance due on a previous instalment bond, in regard to which default had been made in payment of the first instalment as far back as September 1864, although payments had been received by the creditor up to 1873. The Subordinate and the District Judge in appeal found the bond proved; the former declared that only Rs. 98 remained due to the plaintiff, the latter awarded Rs. 568.

Shúntáráim Náráyán, with him *G. N. Nadkarni*, for the special appellants:—The bond now sued on, is merely an acknowledgment or promise to pay the debt which had accrued on the old bond No. 34. This debt had already become barred, since the period of limitation in regard to it dated under the old law from the first default, and the change made by the new law did not revive a time-barred debt. Such a promise was not by the new law of limitation, Section 20 of Act IX. of 1871, sufficient to sustain the suit. In this enactment the Legislature has made two important additions to the old law on the subject contained in Section 4 of Act XIV. of 1859, which revived a barred debt by an “acknowledgment” in writing, signed by the party to be charged therewith. The Legislature has coupled the word “promise” with acknowledgment, and placed a limitation to the revival of the debt, by enacting that the promise or acknowledgment must be signed “before the expiration of the prescribed period.” They cited the cases mentioned in the judgment below.

[MELVILL, J. :—In Section 25, Clause 3 of the Contract Act, the Legislature has preserved the well-known rule of law that a time-barred debt is sufficient consideration to support a contract.] The two provisions should be so read as to form but only one rule, embodying this limitation.

Honourable V. N. Mandlik, Acting Government Pleader, for the respondent, was not called upon.

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The judgment of the Court was delivered by

MELVILL, J. :—The alteration in the former law (Section 4 of Act XIV. of 1859) made by the introduction, into Section 20 of Act IX. of 1871, of the words “promise,” and “before the expiration of the prescribed period,” gives some colour to the argument that it was the intention of the Legislature that a debt once barred by lapse of time should not, under any circumstances, be recovered. But the supposition of any such intention is contradicted by Section 25, Clause 3, of the Indian Contract Act: from which it is clear that the “promise” referred to in Section 20 of Act IX. of 1871 is a promise introduced, by way of exception, in a suit founded on the original cause of action, and not a promise constituting a new contract, and extinguishing the original cause of action. The distinction is pointed out in the cases cited at the bar: *Mulchand v. Girdhar*,⁽¹⁾ *Hargopal Premukulás v. Abdul Khan Háji Muhammad*,⁽²⁾ and also in *Gopeekishen Goshamee v. Brindabunchunder Sircar*.⁽³⁾

The decree of the Court below must be affirmed with costs.

Decree affirmed.

[APPELLATE CIVIL JURISDICTION.]

Before Mr. Justice Kemball and Mr. Justice Nánúbhái Haridás.

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March 8.

RAMBHAT AGNIHOTRI (PLAINTIFF, APPELLANT) v. THE COLLECTOR OF PUNA (DEFENDANT, RESPONDENT.*)

Prescription—Possession—Adverse possession—Limitation—Regulation V. of 1827—Act XIV. of 1859—Act IX. of 1871.

Some lands in the village of Shirasgám in the Puna Collectorate, commonly called “Kolháti Bawás Inám,” originally belonged to His Highness Scindia. Plaintiff’s family were proved to have been in actual possession of them from 1841 to 1854, and in constructive possession during their attachment by the Inám Commission from 1854 to 1863, when, by a mistake in carrying out the orders of the British Government, the lands passed into the possession of Scindia, and remained with His Highness till 1872, in which year the British Government, by exchange of lands, came into possession. In a suit brought on 29th July 1872,

(1) § Bom. II. C. Rep. 6, A. C. J. (2) 9 *Idem* 429.

(3) 13 Moore I. A. 37; see page 54.

* Regular Appeal No. 18 of 1876.