

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kishna Nand v. Kunwar Partab Narain Singh, from the Court of the Judicial Commissioner of Oudh; delivered February 23rd, 1884.

Present :

LORD BLACKBURN.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE facts of this case are that on the 22nd of May 1873 the Plaintiff instituted a regular suit for possession of certain villages which are named in his plaint, and he obtained from the Court of the Settlement Officer a decree for sub-settlement right enjoyable for life. This decree was set aside by the First Court of Appeal, which was confirmed by the Second Court. The Plaintiff then appealed to Her Majesty in Council, and the decree in his favour was restored, so that he was declared entitled to recover possession of these villages, of which, in January 1871, the manager under the Oudh Talookdars Act, Act 24 of 1870, had taken possession, and dispossessed the Plaintiff. The present plaint is entitled Kishna Nand Misir, Plaintiff, against the Mehdowna estate, Defendant; but it appears from the proceedings that a summons had been issued and served upon the manager of the estate. On the 21st of October 1880, pending the suit, the estate having been released by the Government, it was asked that a fresh summons should be issued. Although this summons does not appear on the proceedings, it would appear to have been a summons to the present Respondent, who had been put in posses-

sion of the estate on its being released by the Government. His Counsel appeared for him before the Judge on the 24th of November 1880. It may, therefore, be taken that he became the Defendant in the suit. The plaint stated that the Plaintiff, having thus regained possession under the decree of Her Majesty in Council, was entitled to profits from the time of the dispossession and during the pendency of the suit, and claimed mesne profits for nine years. No written statement was put in ; but it appears from what was stated by the Counsel for the Defendant, when he appeared before the Judge, that the defence raised was that the suit was barred by the law of limitation, except as to the mesne profits for three years before the filing of the plaint ; that is, before the 26th of July 1880. The First Court gave judgement for mesne profits for that period, and refused to allow the mesne profits for the previous time. That judgement was affirmed by the Judicial Commissioner. There was also a claim for interest, which was not allowed ; both Courts saying that they did not think it reasonable to allow it.

Upon the appeal to Her Majesty in Council which has now been heard, three questions were raised by the learned Counsel for the Appellant. First he contended that under the law of limitation he was entitled to a greater amount of mesne profits than had been allowed. The article 109 of the second schedule of Act 15 of 1877, which was the limitation Act in force at the time when the suit was brought, was referred to. That article is in these terms : “ For the profits of im-
 “ moveable property belonging to the Plaintiff
 “ which shall have been wrongfully received by
 “ the Defendant :—when the profits are received,
 “ or, where the Plaintiff has been dispossessed by
 “ a decree afterwards set aside on appeal, when
 “ he recovers possession.” The learned Counsel

sought to show that the dispossession was in the nature of a dispossession under a decree, because the Settlement Officer, or the manager acting under the Oudh Talookdars Act, was acting, as it were, judicially; but when he found that, in the course of the argument, he could not support such a contention, he very properly abandoned it. The question of the law of limitation may be therefore considered as disposed of.

Another question raised was that the Courts had only allowed in the mesne profits for the three years the sums which had actually been received; and it was sought to charge the present Defendant, who was not the person who received the mesne profits, but who had come into possession of the estate upon its being released by the Government, with sums which might have been received except for wilful default. It seems clear that, whatever case might have been made against the manager of the estate, there is nothing to show that the Defendant could be charged with anything more than was actually received by him. That disposes of the second question.

The remaining question was whether interest ought to have been allowed upon the mesne profits for the three years. It is not necessary to say anything upon the question whether in the present state of the law, having regard to the provision in the last Procedure Act, in which there is an explanation of mesne profits, interest was allowable. In the present case the claim cannot be put higher than that it is a matter for the Court to determine, under the circumstances, whether it is reasonable to allow interest. There is no rule obliging the Court to allow the interest. It is a matter in the discretion of the Court, upon the consideration of the facts of the case. In this case both the Courts have considered that it was not reasonable that interest should be allowed; and there are no facts proved

which would enable their Lordships to say that this is a wrong decision. Mr. Sykes argued that the interest ought to be allowed, because the present Defendant, in getting possession of the estate at an earlier period than he might otherwise have done, has had the benefit of the use of the money. But there is nothing in the evidence to support this, or to show that it was the fact. The question must be left as it has been decided.

Consequently the decision of the Lower Courts ought to be affirmed, and their Lordships will humbly advise Her Majesty to affirm it, and to dismiss the Appeal; and the Appellant will pay the costs of it.