

**(1913) 02 AHC CK 0015****Allahabad High Court****Case No:** None

Gajdhar Sahai

APPELLANT

Vs

Indarjit and Others and Dhanat

RESPONDENT

Rai and Others

**Date of Decision:** Feb. 26, 1913**Citation:** (1913) ILR (All) 270**Hon'ble Judges:** Tudball, J; Banerji, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

Banerji and Tudball, JJ.

This appeal arises out of a suit for sale upon a mortgage of the 26th of January, 1850. The question to be decided is whether the suit is barred by limitation. The mortgage deed provided that the mortgagee was to take possession and appropriate the rents and profits in lieu of interest. It has been found by the court below that in pursuance of this clause in the mortgage deed the mortgagee was in possession till the year 1889, when he was dispossessed. It is argued that the claim had become time-barred before Act XV of 1877 came into operation, and, therefore, the plaintiff was not entitled to the benefit of Section 31 of the Limitation Act of 1908. Section 21 of Act IX of 1871 gave a fresh start for the computation of limitation from the date of payment of interest as such. The realization of rents and profits in lieu of interest was equivalent to the receipt of interest as such under the terms of the mortgage and, therefore, u/s 21 of Act IX of 1871, the plaintiff was entitled to compute limitation from the year 1889, up to which year he has been found to have received interest. Before that date Act XV of 1877 had come into operation. Therefore in accordance with the provisions of Section 31 of Act IX of 1908 the plaintiff was entitled to bring his suit within two years of the date on which that Act came into force. The suit having been brought on the 10th January, 1910, was well within time. The only point raised therefore fails. We dismiss the appeal with costs.