

## APPELLATE CIVIL.

(*Mr. Justice Turner and Mr. Justice Spankie*).

JAGAN NATH (DEFENDANT) v. LALMAN (PLAINTIFF).\*

*Act VIII of 1859, s. 336—Appeal when Instituted—Memorandum of Appeal—Limitation.*

Where, under the provisions of s. 336, Act VIII of 1859, a memorandum of appeal is returned for the purpose of being corrected, the appellate Court should specify a time for such correction.

Where an appellant presented an appeal within the period of limitation prescribed therefor, and the appellate Court returned the memorandum of appeal for correction without specifying a time for such correction, the appeal again presented some days after the period of limitation was presented within time, the date of its presentation being the date it was first presented.

The period for presenting an appeal in this suit against the decree of the Court of first instance expired on the 18th December, 1875. The defendant presented an appeal on the 16th December. The lower appellate Court returned the memorandum of appeal for the purpose of being corrected without specifying any time within which the appeal should be again presented. It was again presented on the 22nd December and admitted. At the hearing the plaintiff objected that it was presented after time. The lower appellate Court admitted the validity of the objection, deciding that the date on which it was presented the second time must be taken to be the date of its presentation, for the purpose of computing the period of limitation, and holding that the defendant had shown no sufficient cause for not presenting it within time, dismissed it as barred by limitation.

Against this decision the defendant appealed to the High Court.

Pandit *Ajndhia Nath*, for the appellant.

Pandit *Bishambar Nath* and Lala *Harkishen Das*, for the respondent.

The judgment of the Court was as follows :—

We are unable to hold that the appeal was presented after the proper time, for the date of its presentation is the date on which it is first presented to the officer. In returning the application that

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\* Special Appeal, No. 561 of 1876, from a decree of the Judge of Farukhābad, dated the 29th February, 1876, rejecting an appeal against a decree of the Subordinate Judge, dated the 15th November, 1875.

the grounds of appeal might be amended, the Judge should have prescribed a time within which it should have been again presented in an amended form. The case of *Ismail Sahib v. Arumuga Chetti* (1) appears to be in point. The decree of the lower appellate Court is set aside and the case remanded under s. 351 for trial by the lower appellate Court.

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JAGAN NATH  
v.  
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APPELLATE CIVIL.

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(*Mr. Justice Turner and Mr. Justice Spankie*).

TOTA RAM (DEFENDANT) v. SHER SINGH AND OTHERS (PLAINTIFFS).\*

*Act XVIII of 1873, s. 93, cl. (h)—Suit for Profits—Interest.*

A Court of Revenue is competent, in a suit for profits, under s. 93, cl. (h), of Act XVIII of 1873, to award the interest claimed on such profits.

This was a suit under cl. (h), s. 93, Act XVIII of 1873, by five co-sharers to recover from the remaining co-sharer five-sixths of the profits, together with interest, of a certain mahál for 1280 fasli. The Court of first instance gave them a decree for the whole sum claimed. The lower appellate Court affirmed that decree.

On special appeal by the defendant to the High Court it was contended that the Court of first instance was not competent to give a decree for the interest claimed, the defendant not being liable under any provisions of Act XVIII of 1873 to pay interest.

Munshi *Hanuman Parshad* and Pandit *Bishambar Nath*, for the appellants.

Babu *Jogendro Nath*, for the respondents.

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\* Special Appeal, No. 559 of 1876, against a decree of the Judge of Meerut, dated the 29th February, 1876, affirming a decree of the Assistant Collector, dated the 27th August, 1875.

(1) 1 Mad. H. C. R. 427; see also *Hidayat Ali v. Maeraj Begum* H. C. R., N.-W. P., 1871, p. 202; *Begeo Begum v. Yusuf Ali*, H. C. R., N.-W. P., 1874, p. 139; *Sham Chand Koondo v. Kally Kanth Roy*, Marsh 336; *Ram Coomar Shahz v. Dwarkanath Hazra*, 5 W. R.

207; *Husrutoollah v. Abdool Kadir*, 6 W. R. 39; *Greesh Chunder Singh v. Ram Kishen Bhuttacharjee*, 7 W. R. 157; *Mengur Mander v. Huree Mohun*, 23 W. R. 447; and see also the Indian Limitation Act, s. 4, Explanation.