

it may be that some portion of the moneys lent may not be barred by limitation and therefore is claimable from the defendant, and under the Judge's view of the case any such sum would still be due. The Subordinate Judge has suggested that Rs. 15 are within the period of limitation, if art. 64 does not apply to the claim, but this would not be sufficient to enable us to dispose of the appeal.

The Judge should ascertain and determine whether any and what sums included in the claim are within the period of limitation of three years from the dates of the loans of such sums, and return his finding on this issue. On receipt of the finding one week will be allowed for objections, and at the expiration thereof the appeal will be decided.

*Cause remanded.*

*Before Mr. Justice Pearson and Mr. Justice Straight.*

SHEO PARTAB NARAIN SINGH (DEBENDANT) v. SHEO GHOLAM SINGH (PLAINTIFF),\*

*Appeal when presented—Memorandum of Appeal insufficiently stamped—Act X of 1877 (Civil Procedure Code), s. 51 (b)—Limitation.*

For the purposes of limitation, an appeal is preferred when the memorandum of appeal is presented to the proper officer, and not when, where the memorandum of appeal is insufficiently stamped and is returned in order that the deficiency may be supplied, it is again presented (1).

When an appellate Court returns an insufficiently stamped memorandum of appeal in order that it may be sufficiently stamped, it should fix a time within which the deficiency is to be supplied (2).

THE defendant in this suit preferred an appeal from the decree of the Court of first instance on the 23rd June, 1879, within the period of limitation allowed by law. The lower appellate Court, on the 5th July, 1879, being of opinion that the memorandum of appeal was written upon paper insufficiently stamped, returned it to the defendant in order that the requisite stamp-paper might be supplied, without fixing any time within which the same should be supplied. On the 18th July, 1880, the defendant, having supplied the requisite stamp-paper, again presented the memorandum of

\* Second Appeal, No. 1322 of 1879, from an order of J. W. Power, Esq., Judge of Ghazipur, dated the 18th July, 1879, rejecting a memorandum of appeal from a decree of Munshi Manmohan Lal, Munsif of Ghazipur, dated the 26th May, 1879.

(1) See also *Jagan Nath v. Lalman*, I. L. R., 1 All., 260, and the Indian Limitation Act, s. 4, Explanation.

(2) See also *Jagan Nath v. Lalman*, I. L. R., 1 All., 260.

1880

THAKURYA  
v.  
SHEO SINGH  
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SHRI PARTAB  
ARAIN SINGH  
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SHRI GHULAM  
SINGH.

appeal to the lower appellate Court. The lower appellate Court rejected it on the ground that the time prescribed by law for the appeal had expired.

The defendant appealed to the High Court.

Pandit *Ajullia Nath* and Munshi *Sabli Ram*, for the appellant.

Munshi *Bannan Prasad* and Lala *Jatta Prasad*, for the respondent.

The portion of the judgment of the Court (PEARSON, J., and STRAIGHT, J.) material to the purposes of this report was as follows :—

PEARSON, J.—The memorandum of appeal to the lower appellate Court was presented on the 23rd June, 1879, admittedly within time. The lower appellate Court was therefore wrong in declaring on the 18th July following that the appeal was not within time. The orders passed by the lower appellate Court on the 23rd June and 5th July in the matter of the deficiency of the court-fee were not in accordance with the provisions of s. 54 (b), Act X of 1877. The Judge should have fixed a time within which the deficiency was to be paid up, and on the expiry of that period, in the event of its not being paid up, should have rejected the appeal.

Having regard to the irregularity of the lower appellate Court's procedure, we must allow the appeal, and, reversing the Judge's order, direct him to place the appeal on his file and proceed to dispose of it according to law. We make no order as to costs.

*Appeal allowed.*

1880  
May 5.

## FULL BENCH.

*Before Sir Robert Stowell, Kt., Chief Justice, Mr. Justice Fearson, Mr. Justice Sprankie, Mr. Justice Olfie d, and Mr. Justice Straight.*

ISRI SINGH (DEFENDANT) v. GANGA AND ANOTHER (PLAINTIFFS).

*Wajib-ul-arz—Pre-emption—Act XIX of 1873 (N.-W. P. Land-Revenue Act), ss. 61, 65, 91, 257—Record-of-Rights.*

A *wajib-ul-arz* prepared and attested according to law is *prima facie* evidence of the existence of any custom of pre-emption which it records, such evidence

\* Second Appeal, No. 720 of 1879, from a decree of G. E. Knox, Esq., Subordinate Judge of Allahabad, dated the 23rd March, 1879, reversing a decree of Babu Mitoujoy Mukarji, Munsif of Allahabad, dated the 20th November, 1878.