fore, that the defendant has failed to prove that he has any occupancy rights in the lands claimed as *mal*.

The appeal must therefore be dismissed with costs.

The cross appeal is dismissed without costs.

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RADHA GOBIND KOER v. RAKHAL DAS MUKHERJI.

Appeal dismissed.

Cross appeal dismissed without costs.

Before Mr. Justice Wilson and Mr. Justice Beverley.

BIDHUMUKHI DABEA CHOWDHRAIN AND ANOTHER (PLAINTIFFS) v. KEFYUTULLAH (DEFENDANT.)*

1885 *July* 31.

Landlord and Tenant—Ejectment—Notice to quit, what is reasonable—Second appeal, what constitutes a question of law open upon.

It is not necessary that the period allowed in a notice to quit by a landlord to his tenant should terminate at the end of the year, but the notice must be in respect of the date of determination of the tenancy as well as in other respects a reasonable notice.

A notice to quit served on the 26th of Pous, and allowing two months to the tenant to vacate his holding, such period thus expiring on the 26th Falgun, when it appeared that cultivation began in the months of Magh and Falgun, and that they were the months for letting out land in the district, *held* not to be a reasonable notice.

It is a question of law for the Court to decide on second appeal, whether there is evidence before the Court, on which a Court could properly arrive at any given conclusion of fact.

IN this case the plaintiff sought to eject the defendant, who was a tenant-at-will, from his holding after service on him of a notice to quit.

The notice was served on the 26th Pous (9th January), and allowed the defendant two months' time in which to give up his jote. The defendant pleaded that the notice was illegal and served at an improper time, and that it was the practice in that part of the country to commence the work of cultivation from the month of Falgun.

The first Court found that the notice was served, but inasmuch as the time fixed by it did not expire at the end of the year, it was not served according to law, and that the defendant

* Appeal from Appellate Decree No. 2126 of 1884, against the decree of Baboo Ram Coomar Pal, Rai Bahadur, Subordinate Judge of Sylhet, dated the 21st of July 1884, affirming the decree of Baboo Kalipada Mukherji, Munsiff of Habigunge, dated the 21st of January 1884.

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could not therefore be evicted under it. It therefore dismissed the suit.

The lower Appellate Court confirmed that decision, upon the ground that the notice being dated the 26th Pous, and being one for two months expiring on the 26th Falgun. (9th March), was illegal because section 106, Act IV of 1882, required such a notice to be for a period of six months expiring on the last day of the year.

The plaintiffs now preferred a special appeal to the High Court.

Baboo *Rasbehari Ghose* and Baboo *Kasi Kant Sen* for the appellants.

Mr. *Sandel* for the respondent.

The judgment of the High Court (WILSON and BEVERLEY, JJ.) was as follows :—

This is an appeal from a decision of the Subordinate Judge of Sylhet, affirming the decision of the Munsiff of Habigunge. The suit was to eject a tenant from his holding. Various questions arose in the case. Ultimately it was held as a matter of fact in both Courts that the defendant was a tenant not entitled to occupancy right, but a tenant liable to be ejected on proper notice.

One of the issues raised was, whether notice had been served upon the defendant, sufficient to determine the tenancy of a tenant not having occupancy right.

The notice given was a two months' notice served on the 26th of the month of Pous. It therefore expired on the 26th Falgun. The first Court held that the notice was insufficient on this ground. "Notices were indeed served, but their terms did not expire at the end of the year, I therefore find that the notices were not served according to law, and therefore the tenants cannot be evicted under such a notice."

The lower Appellate Court held that the notice was insufficient because it said: "On going through the notice served by the plaintiffs, I find that it was a notice for two months served; it was given on the 26th day of Pous, hence the time allowed by the notice expired on the 26th day of Falgun. On a perusal of section 106, Act IV of 1882 (that is, the Transfer of Property Act) I find that the notice to eject a tenant

holding for one year should be for a term of six months, and that the last day of that term should correspond with the last day of the year. That being so, the notice under consideration being contrary to the above section, was in my opinion illegal."

The ground taken by the first Court, *viz.*, that the notice must necessarily, and as matter of law, terminate with the year, is opposed to the most recent authorities. It is enough to refer to the case of *Jagut Chunder Rai* v. *Rupchand Chango* (1) and to *Radha Gobind Koer* v. *Rakhal Das Mukherji* (2). In this latter case the law on the subject is discussed in some detail, and the judgment negatives the view that it is absolutely necessary that a notice should terminate at the end of the year. The notice must be in respect of the date of determination of the tenancy, as well as in all other respects a reasonable notice.

Then again the ground taken by the lower Appellate Court is not correct for an obvious reason. Notice was given on the 26th Pous in the year 1288 B.S. (1881-82), and it expired on the 26th Falgun in the same Bengali year, and the Transfer of Property Act did not come into operation until a subsequent date. The Act, therefore, cannot affect the case, even assuming that the section referred to, *viz.*, section 106 of the Transfer of Property Act, could apply to such a holding as the one in question. But we think that the decree should be sustained on another ground. A notice must be a reasonable notice. *Primâ facie*, no doubt, it is a question of fact whether a notice under the circumstances of a particular case is reasonable, and one to be dealt with by a Court dealing with facts and not by this Court on second appeal. But, on the other hand, it is a question of law for this Court to determine on second appeal whether there is evidence before the Court on which a Court could properly arrive at any given conclusion of fact. If there be no evidence which can properly support a finding, we ought not to send the case back in order that the lower Court may consider the question. In the present case notice was served on the 26th Pous to quit on the 26th Falgun. The plaint alleged that cultivation begins in the month of Falgun. The written statement denied that in terms,

(1) I. L. R., 9 Calc., 48; 11 C. L. R., 143.
(2) *Ante* p. 82.

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and stated substantially that cultivation begins in the month of Pous. In the grounds of appeal filed in the lower Appellate Court, the plaintiff admitted that cultivation begins in the months of Magh and Falgun, and that those are the months for letting out. It is admitted that there is no evidence on the record to throw further light on the question. Under those circumstances, we think that it would be impossible to hold that a two months' notice given on the 26th Pous, and ending the 26th Falgun, could be a reasonable notice to the defendant for him to turn out of that holding in time to allow somebody else to come in, and cultivate in the month of Magh, or in time to enable the defendant to have a reasonable chance of obtaining some other holding before cultivation begins. We think, therefore, that on this ground, although not on the grounds stated by the lower Courts (in which we are unable to agree) the notice is not a reasonable notice.

The appeal will be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Wilson and Mr. Justice Beverley.

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June 15.

TEJ PROTAP SINGH (DEFENDANT) *v.* CHAMPA KALEE KOER, WIDOW OF AMAR PERTAP SINGH (PLAINTIFF.)*

Hindu Law, Joint family—Mitakshara law—Separation of joint-family, how effected—Agreement for partition, Effect of—Right of survivorship.

Two brothers, members of a joint Mitakshara family, executed an *ikrarnama* (agreement) whereby, after reciting that the declarants had remained joint and undivided, and in commensality up to a certain date, and that portions of their properties, both moveable and immoveable, had been partitioned between them, they provided for the partition of the remaining joint properties by certain arbitrators appointed in that behalf.

Held, that this agreement of itself amounted to a separation of the brothers as a joint family, and extinguished all rights of survivorship between them.

Sheo Doyal Tewaree v. *Judoonath Tewaree* (1), and *Babaji Parshram* v. *Kashibai* (2) distinguished.

Ambika Dat v. *Sukhmani Kuar* (3) commented upon.

* Appeal from Original Decree No. 89 of 1884, against the decree of Baboo Abinash Chunder Mitter, Rai Bahadur, Second Subordinate Judge of Mozufferpore, dated the 29th of March 1884.

(1) 9 W. R., 61. (2) I. L. R., 4 Bom., 157.
(3) I. L. R., 1 All., 437.