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May 22.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.

CHATARBHUJ (DEFENDANT) *v.* DWARKA PRASAD AND ANOTHER (PLAINTIFFS).*

Interpretation of documents Insensible clause "Fasli year"—"Agricultural year"—Act No. XIX of 1873 *(North-Western Provinces Land Revenue Act) section* 3, *clause* 8.

The practice adopted by patwáris in some parts of the North-Western Provinces of applying the term "Fasli year" to the "agricultural year" as defined in Act No. XIX of 1873, section 3, clause 8, is erroneous. Where parties to a deed describe a date as being in such and such a "Fasli" year, they must be taken, in absence of evidence of mutual mistake, to refer to the calendar Fasli year.

In interpreting a document a clause which is inconsistent in any construction thereof with the remaining provisions of the document must be rejected.

Yad Ram v. *Amir Singh* (1) and *Sheobaran Singh* v. *Bisheshar Dayal Singh* (2) referred to.

THE facts of this case sufficiently appear from the judgment of Edge, C. J.

Maulvi *Ghulam Mujtaba* for the appellant.

Munshi *Ram Prasad* for the respondent.

EDGE, C. J.—This suit arose out of a sale-deed. The sale-deed was executed on the 9th of July 1890, the date being so described, and not being described as a Fasli year or a Sambat year or a Hijri year. According to the terms of the sale-deed the purchaser was entitled to possession on the execution of the deed, and was on the execution of the deed entitled to mutation of names. If it had not been for the clause upon which this suit was founded, there could not be the slightest doubt as to what the parties meant. The passage to which I refer is, as translated, as follows:—"The operation of this sale-deed shall be counted from the commencement of Asarh 1298 Fasli." Now the 9th of July 1890, was in the Fasli calendar year 1297. The suit has been brought for rents which accrued due subsequently to the 9th of July 1890, and prior to the beginning of Asarh in that year. The other provisions

* Second Appeal No. 254 of 1894, from a decree of Syed Siraj-ud-din, Additional Subordinate Judge of Mainpuri, dated the 22nd February 1894, reversing a decree of Pandit Alopi Prasad, Munsif of Phaphund, dated the 18th September 1893.

(1) Weekly Notes, 1882, p. 174. (2) Weekly Notes, 1892, p. 236.

of the deed would show that the vendor was entitled to any rents which accrued due before execution of the deed, and that the vendee became entitled to any rents which accrued due subsequently to the execution of the deed. The plaintiff took his stand on the sentence in the deed the translation of which I have just given. The defendant by his written statement suggests that the scribe of the deed inserted 1298 Fasli in the particular clause, as in 1298 Fasli the crops sown in Asarh of 1297 Fasli would be reaped. He said in the written statement that the crops sown in Asarh 1297 Fasli are called the crops of 1298 Fasli because they are reaped in Kuar and Kartik 1298 Fasli. That written statement, so far as it is intelligible, would represent that 1298 Fasli was inserted by mistake for 1297 Fasli. Neither side gave any evidence of any mistake. The patwári was called as a witness, and he stated that the sale-deed was executed in 1298 Fasli. The 9th of July 1890 was in fact in 1297 Fasli. The calendar year 1298 Fasli began on the 29th of September 1890. It may be that the parties, not being aware of the calendar Fasli year and when it commenced, considered that the Asarh of the Christian year 1890 was in 1298 Fasli, and that mistake, if it was one, may have originated in what we are told has become the custom amongst patwáris of treating the Fasli year as commencing on the 1st of July of one year and terminating on the 30th of June in the following year. It is true that under the orders of the Board of Revenue the patwáris' accounts are kept from the 1st of July one year to the 30th of June in the next. For the purposes of the Board of Revenue the agricultural year is not conterminous with any calendar year. Neither the Board of Revenue nor the High Court, nor any other authority except the Legislature, has power to alter the date of the commencement of any calendar year. The Legislature has of course power to enact, if it so thought right, that the Fasli year should be taken as commencing on the 1st of April, or of May or of December, or on any other day it chose; but presumably the Legislature, bearing in mind the frightful confusion that any such arbitrary change in a calendar year would cause in the

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making of contracts and the determining of the rights of parties to contracts, would not interfere with any of the calendar years. Anyhow a patwári, or all the patwáris in these Provinces, have no power to alter the date for the commencement of any calendar year. If there is one thing more than another as to which no doubt should be cast by the Legislature or by a Court of Justice, it is the commencement of old and well-known calendar years, whether the year be the Christian year, the Hijri year, the Sambat year or the Fasli year. To raise a doubt in men's minds as to whether there may not be two totally different dates separated by nearly three months interval at which the same calendar year may commence, would be to create disastrous confusion in all contracts depending on such calendar years. For example, if we were to hold that 1298 Fasli, which did in fact commence on the 29th of September 1890, might be the patwári's Fasli year commencing on the 1st of July 1890, we should have this result that it would be open to either party to a contract which was to be performed in the July, August or September of a named Fasli year to say that he understood that the contract was to be performed a year earlier than the year appearing in the written document, whilst the other party might say that in making the contract he believed he was contracting according to the well-known calendar Fasli year. The result would be, if each side was found to tell the truth, that when they thought they had arrived at a contract, they had in fact arrived at no contract at all. There would in that case be no mutual mistake. Each man believed that the Fasli year was different from what the other man believed it to be. The result would be that a Court of law would be bound to hold the contract to be void. That is a state of things to which patwáris, if they think of these things, ought to pay attention, and not to persist in a course, if they have followed it, of attempting to alter the calendar Fasli year. If patwáris or any other persons wish to keep accounts for twelve months, the twelve months not being conterminous with the commencement or ending of any recognised calendar year, it would be very easy for them to keep

their accounts, which related, for example, partly to 1297 Fasli and partly to 1297, under a heading such as this—"Fasli 1297-98." It is to be hoped that confusion will not be raised in the minds of the commercial and trading population as to when the Fasli year, for example, commences. Merchants in Calcutta make contracts with growers of produce in these Provinces: money is advanced on those contracts: it is not advisable that the people of these Provinces should be under the impression that the Fasli year in the North-Western Provinces commences at a date different from that at which it commences throughout the rest of India.

In the passage which I have quoted from the sale-deed it is obvious that there is no patent ambiguity: there could only be a latent ambiguity if there were in fact two Fasli years, 1298, which commenced on different days. However, it may be that the parties to this contract believed that the Asarh of 1297 Fasli according to the calendar was in fact the Asarh of 1298 Fasli, and made their contract accordingly. If they did so, there was a mutual mistake as to the particular Fasli year about which they intended to contract, and it was competent to either side to show that a mutual mistake had been made, and that they mutually believed that the Asarh to which they were referring was properly described as the Asarh of 1298 Fasli. I use the word "mistake" in this sense, because I am not aware that it is possible for the Asarh of 1297 Fasli to be described as the Asarh of 1298 Fasli with any correctness either in law or in fact. On proof of a mutual mistake the contract could be rectified, or, without rectification of the contract, effect could be given to it according to the intention of the parties just in the same way as if rectification had formally been decreed. If a mistake does exist in these Provinces amongst certain classes of agriculturists as to when the calendar Fasli year begins, that mistake is not the result of any action on the part of the Legislature. The Legislature when defining, in section 3 of Act No. XIX of 1873, clause 8, what the term "agricultural year" for the purposes of that Act, and not for purposes outside that Act, meant, defined it as meaning a year commencing on the

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first day of July and ending on the thirtieth day of June. That is a definition which could mislead no one. The Legislature did not purport to alter the date of the commencement of any calendar year, any more than the Legislature would intend to alter the commencement of any calendar year if it enacted that the "financial year" should commence on the first of April and end on the thirty-first of March. No one would think of contending that the Legislature by prescribing when the financial year should commence and terminate intended that for the future the Christian year, the Jewish year, the Hijri year, the Fasli year or the Sambat year should commence on the first of April and terminate on the thirty-first of March. Beyond this, Government was careful when publishing the Urdu translation of Act No. XIX of 1873 not to create confusion by using, as a translation of "agricultural year" in clause 8, section 3 of Act No. XIX of 1873, any term appropriated to a well-recognised calendar year. They did not use as synonymous with "agricultural year" the term "Fasli year." Government was careful to translate the English expression "agricultural" by the Urdu "*zara'ati.*"

In the result it is apparently to the patwâri that we must look, if we want to find the author of the confusion which has arisen. This question is not a new one. It has been twice before this Court, once in 1882 and again in 1892. In the case of *Yad Ram* v. *Amir Singh* (1), which was a case in which a bond had been made with instalments payable at the end of every Fasli year, Brodhurst and Mahmood, JJ., held that the Fasli year in the bond was the calendar year and had no reference to the agricultural year. They pointed out that the Courts below in that case had confounded the Fasli year with the agricultural year. Mahmood, J., was a native of this country and of these Provinces. Brodhurst, J., had filled the office of Magistrate and Collector before coming to the judicial branch of the service. Their opinion on a question of this kind was certainly entitled to weight. The other case in which the question arose came before two Judges who were neither natives of

(1) Weekly Notes, 1882, p. 174.

India nor had had the advantage of having served as Collectors in these provinces. What small knowledge they brought to this subject was the knowledge they had acquired in the training of the law. The two Judges were my brother Blair and myself. In that case—*Sheobaran Singh* v. *Bisheshar Dayal Singh* (1)—we were guided by general principles of law and the experience which a knowledge of the law and its application had taught us of the danger of recognising two different calendar years of the same denomination and not coincident in commencement and conclusion. So that practically, so far as this Court is concerned, the question is concluded. Unless a case of mutual mistake is shown, the parties must be held to have contracted according to the calendar year.

This question does not, however, determine the fate of this appeal. In either view of what the parties may have meant when they referred to the Fasli year, the sentence of which I have given the translation cannot be reconciled with the other terms of the sale-deed. It would be as inconsistent with the other terms of the deed to read the clause in question as 1297 Fasli as it would be to read it as 1298 Fasli. The result in my opinion is that, the other terms in the deed being plain and unambiguous and this clause being consistent with nothing, it must be rejected. Rejecting the clause, the plaintiff's suit must fail. I would allow this appeal, and, setting aside the decree of the lower appellate Court, would restore the decree of the first Court, though for different reasons.

BLENNERHASSETT, J.—I concur generally in the judgment of the learned Chief Justice. There can be no doubt that the patwáris of these Provinces consider that the Fasli year commences on the 1st of July and ends on the 30th of June. The whole of their official training compels them to adopt this view. This year does not correspond with the Fasli year introduced by the Emperor Akbar for the purposes of Revenue administration, and it is therefore possible that persons who accept the assistance of patwáris in

(1) Weekly Notes, 1892, p. 236.

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drawing up their documents may make use of ambiguous terms and that a certain amount of confusion may be caused thereby. In my opinion extrinsic evidence has always been admitted to explain a latent ambiguity in a document, that is, where the language used is unambiguous, though it might fit several conditions of fact equally well. In this connection I would quote the words of Wigram, V. C., in his book on extrinsic evidence in the interpretation of wills, paragraph 200:—"Words cannot be ambiguous because they are unintelligible to a man who cannot read, nor can they be ambiguous merely because the Court which is called upon to explain them may be ignorant of a particular fact, art or science which was familiar to the person who used the words, and the knowledge of which is therefore necessary to a right understanding of the words as used. If this be not a just conclusion, it must follow that the question whether a will is ambiguous might be dependent, not upon the propriety of the language which a testator has used, but upon the degree of knowledge, general, or even local, which a particular Judge might happen to possess." These principles are now embodied in sections 96 and 98 of the Indian Evidence Act. The appellant in this case urges that the document should be read as a whole and that no one condition of it should be read independently of the others. Both the Courts below have found, and I think rightly, that, read as a whole, the document is in favor of the appellant's case. In my opinion the clause in question by itself is insensible and it is repugnant to the other clauses in the deed. I concur in the order proposed.

By the Court.

The appeal is allowed. The decree of the lower appellate Court is set aside with costs here and in the Court below, and the decree of the first Court is restored.

Appeal decreed.