1900 DEC. 13.

APPELLATE CIVIL.

28 C. 303.

supported, and it must be set aside so fa as it holds that the defendant No. 2 is bound by the award.

We are then asked to remand the case for an enquiry into the question whether, although the acts and conduct referred to in the judgment of the learned District Judge may not be sufficient to amount to such an acquiescence as would make the arbitrator's award binding upon the defendant No. 2, there were any other acts and conduct which would support the inference that there was acquiescence on the part of the defendant No. 2, and to allow the respondents to adduce further evidence on the point. We are unable to accede to this prayer, because no foundation is laid for an application of this sort in the proceedings in the Courts below. When the defendant No. 2 submitted his petition of objections to the award in the first Court, he distinctly stated that there was no notice served upon him, that he never appeared before arbitrators, and that he was not bound by the award. If the respondents thought it necessary to adduce evidence to show that the defendant No. 2 was bound by the award by reason of acquiescence, they ought to have asked the First Court to allow them to adduce such evidence ; and even **[308]** if it could be said that they had no sufficient opportunity of offering evidence before that Court by reason of the extreme view which it took on the question of law, they ought to have asked the Lower Appellate Court (before which they were appellants) to take evidence on the point. Even this they omitted to do. That being so, we think they are not entitled to ask us to remand the case for a further enquiry into the question.

The result then is that this appeal must be allowed and the case as against the defendant No. 2 will be remanded to the First Court for trial.

The costs of this appeal will abide the result.

Appeal allowed ; *case remanded.*

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28 C. 308.

Before Mr. Justice Ghose and Mr. Justice Pratt.

DWARKA NATH SANTRA AND ANOTHER (*Defendants*) *v.* RANI DASSI AND OTHERS (*Plaintiffs*).* [19th and 20th December 1900.]

Bengal Tenancy Act (VIII of 1885), s. 49, cl. (b)—Under-raiyat—Ejectment—Notice to quit—Period of notice—Transfer of Property Act (IV of 1882), s. 106.

It is not necessary that a notice under s. 49, cl. (*b*), of the Bengal Tenancy Act should mention any particular period within which the under-raiyat is to quit the land.

***Naharullah Patwari* v. *Madan Gazi* (1) followed.**

THE plaintiffs, who are the landlords, served a notice to quit on the father of the defendants, an under-raiyat, in Bhadra 1302 B. E. A second notice was then served on the defendants in Joistha 1305 B. E. The earlier notice required the tenant to quit the land from the 1st Baisak 1303 B. E. The present suit for ejectment against the defendants was instituted on the 26th June 1897, almost immediately after the date of the second notice.

[309] The Munsif held that the first notice was not in accordance with the provisions of the Bengal Tenancy Act, that even if it was a good

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*** Appeal from Appellate Decree No. 1367 of 1899, against the decree of E. G. Drake-Brockman, Esq., District Judge of Midnapur, dated the 1st of June 1899, reversing the decree of Babu Charu Chunder Mitter, Munsiff of Garbetta, dated the 10th of September 1898.**

(1) (1896) 1 C. W. N. 133.

1900 DEC. 19 & 20.

APPELLATE CIVIL.

28 C. 308.

notice, the fact of the second notice having been served proved that the plaintiffs had waived their right under the first notice, and that the second notice was not adequate, and accordingly he dismissed the suit as premature.

On appeal, the District Judge held that the earlier notice of Bhadra 1302 was duly served, and that under it the defendants were liable to vacate the holding at the end of Chaitra 1303. He accordingly decreed the suit for ejectment and awarded mesne profits from Baisak 1304.

The defendants appealed to the High Court. The appeal came on for hearing on the 19th December 1900.

1900, DEC. 19 and 20. Babu *Joy Gopal Ghose* for the appellants.

Babu *Boidanath Dutt* for the respondents.

1900, DEC. 20. The judgment of the High Court (GHOSE and PRATT, JJ.) was as follows :—

The real question that has been raised on behalf of the appellants in this case is, whether the notice which was served upon the appellants in Bhadro 1302, calling upon them to vacate the land in suit in Baisak 1303, is a good notice, having regard to the provisions of s. 49 of the Bengal Tenancy Act. The defendants have been found to be under-raiyats to whom the provisions of that section are applicable. The contention on behalf of the appellants is that, inasmuch as they were required to vacate the land in the early part of the year, and not at the end of the year, it is a bad notice, and therefore the suit based upon such a notice is not maintainable. S. 49 provides :—

"An under-raiyat shall not be liable to be ejected by his landlord, except (*a*) on the expiration of a term of a written lease ; (*b*) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord."

What we are really asked to do is to insert after the words "notice to quit" the words "expiring at the end of the said year ;" for cl. (*b*) of the section, as it stands, does not require that the **[310]** notice should mention any particular time within which the under-raiyat is to quit the land. Referring to the provisions of s. 106 of the Transfer of Property Act, we find that where the Legislature intends that a notice to quit should specify the precise time within which the person to whom it is given must quit, it uses words which indicate that intention. There, the words are "by six months' notice expiring with the end of a year of the tenancy," and again "by fifteen days' notice expiring with the end of a month of the tenancy." Similar words do not occur in s. 49 of the Bengal Tenancy Act, and we are therefore unable to say that the notice in question was bad in law. The view that we adopt is the same which was laid down by a Divisional Bench of this Court in the case of *Naharullah Patwari* v. *Madan Gazi* (1). Mr. Justice Macpherson, in delivering the judgment of the Court, made, amongst others, the following observations :—

"The Legislature advisedly seems to *have refrained* from fixing any period of notice, and the section was probably framed as it is framed with the view of doing away with all questions of the unreasonableness or otherwise of the notice, it being considered sufficient to intimate the landlord's intention of determining the tenancy and leaving the law to operate, so that the raiyat, if he chooses to remain on the land, shall not

(1) (1896) 1 C. W. N. 183.

1900
DEC. 19 & 20.

APPELLATE CIVIL.

28 C. 308

be ejected until a certain time had expired after the notice was served. The circumstance that the landlord has called upon the tenant to quit at a time when he could not compel him to do so does not, we think, vitiate the notice. A notice to quit without specifying any period would be open to the same objection on the ground that it was a notice to quit at once."

The suit for ejectment founded on the notice in question was not brought until two years after the expiry of the year 1303, and it is obvious therefore that the defendants could not have been prejudiced by reason of the notice not specifying the time at which they would be liable to ejectment under the provisions of s. 49 of the Act.

The appeal is dismissed with costs.

Appeal dismissed.

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28 C. 311.

[311] *Before Mr. Justice Banerjee and Mr. Justice Brett.*

GOPAL CHANDRA PAL *(Plaintiff)* *v.* RAM CHANDRA PRAMANIK AND ANOTHER *(Defendant).** [15th January, 1901.]

Hindu Law—Dayabhaga—Heir—Whether husband or brother is the preferential heir to moveable property obtained from her father, after her marriage, by a childless woman—Nuptial presents—Whether additions made to ornaments subsequent to marriage should be treated as part of the nuptial presents.

According to the Bengal School of Hindu Law the brother is the preferential heir to the husband to moveable property obtained from her father, after her marriage, by a woman who has died childless.

***Judoo Nath Sircar* v. *Bussunt Coomar Roy Chowdhry* (1) referred to.**

Additions made subsequent to her marriage to ornaments given by a father to his daughter at the time of her marriage must be treated as being in the nature of gifts subsequent to marriage, and as not being governed by the law applicable to nuptial gifts.

THIS appeal arose out of an action brought by the plaintiff to recover certain ornaments from the defendants. The allegations of the plaintiff were that the ornaments were presented to his wife, Tarangini, by her father at the time of her marriage; that subsequently her father made additions to these ornaments and got them made again; that his wife with these ornaments came to her brother's (defendant No. 1's) house and there she died on the 4th Aswin 1304 B. S., and that, although he made a demand of these ornaments from the defendant he did not deliver them to him, and hence the suit was brought. The defence mainly was, that the father of the deceased Tarangini did not give her any ornaments at the time of her marriage, that he did not subsequently make additions to the ornaments alleged to have been given and did not get them made again; that Tarangini brought certain ornaments with her, but *that* they were pledged by her before her death. The Court of First Instance having held that the husband was the preferential heir to the brother regarding the moveable properties given by the father to his daughter at the time of her **[312]** marriage gave a partial decree. But as regards the ornaments given by the father after marriage and as to the subsequent additions, he held that the brother was the preferential heir.

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* Appeal from Appellate Decree, No. 763 of 1899, against the decree of L. Palit, Esq., Officiating District Judge of Jessore, dated the 11th of February 1899, affirming the decree of Babu Sham Chand Roy, Subordinate Judge of that District, dated the 11th of June 1898.

(1) (1873) 19 W.R. 264.