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or from the day of date it does not commence to run until the day has expired. I think, therefore, that in the present case the period of limitation did not commence to run until midnight between the 14th and 15th of November 1867. The suit was brought on the 14th November 1870, and was therefore brought on the last day of the period of three years which commenced at midnight between the 14th and 15th of November 1867 ; in other words it was brought within the period of three years prescribed by the clause of the Limitation Act to which I have referred.

I think therefore that the appeal should be dismissed with costs on scale No. 2.

While I say on these grounds that the appeal should be dismissed, I desire to abstain from expressing my concurrence in the judgment of the learned Judge below, so far as regards the value of Sunday in reckoning the period of limitation.

NORMAN, J.—I gave Judgment on a former occasion to the same effect in a case argued by Mr. Macrae before me—*Madan Mohan Das v. Gour Mohan Sirkar* (1),—and I have not heard anything to induce me to change my opinion.

Appeal dismissed.

Attorneys for the appellant : Messrs. *Trotman and Co.*

Attorney for the respondent : Mr. *Mackertich.*

[APPELLATE CIVIL.]

Before Mr. Justice Mitter and Mr. Justice Paul.

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 April 24

MAHOMED AIZADDI SHAHA (PLAINTIFF) v. SHAFFI MULLA
 AND ANOTHER (DEFENDANTS).*

Special Appeal—Finding of Fact.

A finding of fact arrived at upon reasons purely speculative amounts to a mistrial, which can be set aside by the High Court in special appeal.

THE plaintiff in this case sued for the recovery of 16 plots of land. He alleged that he purchased these lands from the

(1) 6 B. L. R., 293.

* Special Appeal, No. 2279 of 1870, from a decree of the first Subordinate Judge of the 24-Pergunnas, dated the 23rd August 1870, reversing a decree of the Additional Moonsiff of that district, dated the 17th January 1870.

heirs of one Asiruddi Mandal, who had obtained them as a gift from one Ujan Mulla ; that Asiruddi, his vendors, and he, had been successively in continuous possession of them till disposed by the defendants about a year before the institution of this suit. This Ujan Mulla was the grandfather of Asiruddi. The defendants contended (*inter alia*) that the suit was barred by the law of limitation ; denied the genuineness of the alleged deed of gift from Ujan Mulla, and disputed its validity under the Mahomedan law.

The Moonsiff fixed nine issues, among which were one, whether the suit was barred, and another whether the alleged deed of gift from Ujan Mulla to Asiruddi was genuine. He found the plaintiff's claim to be barred by limitation, except as regards plots 1 and 8 ; and that the deed of gift was a genuine and valid document ; and gave the plaintiff a decree for possession of plots 1 and 8. On the question of the genuineness of this deed, the Moonsiff observed ; " That the deed was " actually executed by Ujan Mulla has been clearly proved by " the testimony of Gopal Munshi and Abdus Summod. The " deed is a very old one, and bears no marks of suspicion. The " reason for marking the gift is not wanting. The father of " Asiruddi had predeceased Ujan Mulla, and it is not at all " unlikely that the latter actuated by affection might have made " this gift to his grandson, who would otherwise have been " totally debarred from inheriting any property, and been cast " on the world utterly destitute and begging in the streets for " his daily bread."

Against this decree both parties appealed. In appeal the Subordinate Judge dismissed the plaintiff's suit altogether. He observed : " The plaintiff has filed a deed of partition purporting " to have been executed on the 26th Aswin 1242 B. S. (October " 11th, 1835) mentioned above. The said document was neither " registered nor bore the seal of the local Cazi or law officer. The " stamp of the said document was neither purchased in the name " of the said Ujan, nor in that of any member of his family. It " appears very clearly that the several things written therein " were written with different pen and ink. From this circum- " stance it appears that those things were gathered and written on

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“ at different times. It is true that thirty years have expired from the date put in, still from this circumstance alone it would not be legally proper to hold this document to be a genuine one. It is necessary that the document should bear marks to show that it was really executed on the date which it bears, but it does not bear any such mark; on the contrary it bears the marks afore alluded to which would prove otherwise. There is no proof on the record to show that the said document had been always in some safe custody, and that it has come therefrom.”

The plaintiff appealed specially to the High Court.

Mr. J. S. *Rockfort* and Baboo *Swinath Banerjee* for the appellant.

Baboo *Nalit Chandra Sein* and *Krishna Sakha Mookerjee* for the respondents.

The judgment of the High Court was delivered by

PAUL, J.—In this case it appears to us that the decision of the Subordinate Judge in an appeal from the decision of the Moon-siff amounts to a mistrial. The first Court found the document on which the plaintiff rests his case to be genuine by the light of the surrounding circumstances, and especially having regard to the motive which might well have induced the grandfather, in his old age, to make some provision for his grandson (the plaintiff), who, upon his demise, would, in this case, be no heir at all. That judgment has been, as it appears to us, very erroneously cancelled by the lower Appellate Court on considerations set forth in the decision under appeal, which principally consist of certain inconsequent and irrelevant remarks respecting the colour of the ink, the character of the writing observable on the face of the document on which the plaintiff relies, and the want of sufficient proof regarding the safe custody of the same document. These considerations appear to us to be of a purely speculative character and not to be warrantable in the face of the observations made by the Judicial Committee of the Privy Council in the case of *Kali Prasad Tewari v. Bajah Sahib Prahlad*

Sen (1), which expressly point out to our Courts the error of "substituting speculations for proof." There can be no doubt whatever that the document in question in this case came from proper custody, because it was filed by the person who is entitled to the property conveyed by it. There can be no doubt that this document is presumably thirty years old, and would ordinarily prove itself unless there are real grounds to suspect its genuineness. Now the grounds of suspicion in this case are, as already observed, purely of a speculative character. It appears to us that any difference of pen and ink would rather be an argument in favour of than against the genuineness of the deed, for if the theory of the lower Court be correct, that this apparently old document has been lately fabricated, the ingenious individual who fabricated the deed would have taken good care to have written with the same pen and ink the whole documents; but it is unnecessary to dwell further on this judgment, for it appears to us to be a judgment that cannot at all be affirmed. The case must therefore be remanded to the Subordinate Judge to try, firstly, the question of limitation which was raised on the cross-appeal of the plaintiff upon the question of possession, making a distinct finding as to that possession; and, 2ndly, if limitation should be found not to bar the whole or any portion of the plaintiff's claim, to try the genuineness of the deed in question by applying to it the ordinary presumption of law which follows from its apparently old date, and by the light of surrounding circumstances, and more especially having regard to the motive which might well have induced the grandfather to make some provision for his grandson in this case, and which fact would sufficiently account for the deed in this case.

The costs will abide the ultimate result.

Case remanded.