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the family house." The above law is quoted as a law locally prevalent in Malabar. We are shewn no authority against the view taken by the lower Appellate Court, and we therefore dismiss this special appeal with costs.

Appeal dismissed.

[ORIGINAL CIVIL.]

1871
March 15.

Before Mr. Justice Norman (Offg. C. J.) and Mr. Justice Phear.

TARACHAND GHOSE (DEFENDANT) *v.* MUNSHI ABDUL ALI (PLAINTIFF).

Limitation—Act XIV of 1859, *s.* 1, *cl.* 9—*Cause of Action—Mode of Computing Period of Limitation.*

The plaintiff sued on a promissory note payable on demand, dated 14th November 1867. The plaint was filed on 14th November 1870. *Held*, that the period of limitation was to be computed from the expiration of the day on which the note was made, and therefore the suit was not barred under clause 9, section 1 of Act XIV of 1859.

THIS was an appeal from a decision of Mr. Justice Paul, dated 6th February 1871. The judgment appealed from will be found reported in 6 B. L. R., page 292. The suit was brought on a promissory note dated 14th November 1867; the plaint was filed on 14th November 1870. The question raised was whether the suit was barred by clause 9, section 1 of the limitation Act, as having been brought more than three years from the date when the cause of action arose. The whole question turned on the point whether the day of the making of the note was to be included or excluded in calculating the period of limitation.

Mr. *Graham* and Mr. *Lowe* for the appellant.

Mr. *Hyde* for the respondent.

Mr. *Graham* contended that the suit was barred. The note being one payable on demand, the cause of action arose on the day the note was made, and that day is therefore to be included, in computing the period of limitation—*Norton* v. *Ellam* (1)

(1) 2 E. & W., 461.

Hempaummal v. *Hanuman* (1). An action could have been brought on the note on the day it was made, and if the cause of action arose at any time on that day the whole of the day must be included. [PHEAR, J., referred to *Wright* v. *Mills* (2), *Edwards* v. *Reg* (3), and *Freeman* v. *Read* (4)]. *Rajkisto Roy* v. *Dinobandhu Surmah* (5), *Castle* v. *Burditt* (6). [PHEAR, J., refers to *Webb* v. *Fairmanner* (7). The time before the defendant was liable on the note ought not to be counted, so that as fractions of a day are not recognized, it would appear more reasonable to count from the end of the day.]

Mr. *Lowe* on the same side.—The day of the making of the note is to be included. A person is said to be 21 on the day before his 21st birthday. In the case of a contingency the statute runs from the date of the happening of the contingency—*Rex* v. *Adderley* (8), *Norton* v. *Ellam* (9). If it were otherwise, a note payable on demand would be really one payable one day after date.

Mr. *Hyde* for the respondent was not called upon.

The following judgments were delivered :—

PHEAR, J.—This appeal turns upon a very small point. The question for us to determine is shortly this,—namely, what is the precise meaning of the words of clause 9 of section 1, Act XIV of 1859, "the period of three years from the time when the debt became due." Mr. Graham argued that these words must have regard at least to the exact minute when the promissory note payable on demand was made by the defendant, so that a portion of the day upon which the note was made must be reckoned in the period of the three years. I think that this is not so. It seems to me that the word "time," as there used, is equivalent to "date" or to "day of date," and it has been decided in very many cases that when the period is limited from the date

(1) 2 Mad. H. C. Rep., 472.
(2) 5 Jur., N.S., 771 ; S. C., 28 L.J. Exch., 223.
(3) 9 Exch., 628.
(4) 4 B. & S., 174.
(5) Reference from the Judge of the Small Cause Courts of Hooghly and Serampore : 14th June 1865.
(6) 3 T. R., 623.
(7) 3 M. & W., 473.
(8) 2 Douglas, 463.
(9) 2 M. & W., 461.

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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.

1871
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.