

Before Mr. Justice Bayley and Mr. Justice Mitter.

KHASRO MANDAR AND ANOTHER (PLAINTIFFS) v. PREMLAL AND OTHERS
(DEFENDANTS).*

1872
Aug. 24.

*Limitation—Act VIII of 1869 B. C.—Computation of the Period of
Limitation—English Calendar.*

THIS was a suit brought by Khasro Mandar and others, on the 3rd Asar 1278 Fasli (6th June 1871), to recover possession of 7 *bighās* of land in Hafez-pore, on the allegation that they had acquired a right of occupancy over the land in dispute, and that they had been dispossessed by the *mustājir* of the village on the 15th Asar 1277 Fasli (18th June 1870).

The defence set up was (*inter alia*) that the suit was barred by lapse of time.

The Moonsiff found on the evidence that the plaintiffs had been dispossessed on the 10th of Asar 1277 Fasli (13th June 1870), and held that, as the suit had been brought within one year from the date of dispossession, it was not barred by lapse of time. On the merits he held that the defendants had no right to eject the plaintiffs. He accordingly passed a decree in favor of the plaintiffs.

On appeal, the Subordinate Judge held that "it was a known fact that in Suba Behar the settlement and ploughing of the land commenced from the month of Asar. Besides, according to Act VIII of 1869, in Suba Behar, where the Fasli year is in use, the account of the new year commences from the month of Asar. Under these circumstances the date of the plaintiffs' dispossession ought to be calculated from the 1st of Asar; that the suit was brought after the month of Asar 1278, Fasli,—that is, after one year." Consequently the suit was barred by lapse of time. He accordingly dismissed the plaintiffs' suit.

The plaintiffs appealed to the High Court.

Baboo *Budh Sen Sing*, for the appellant, contended that the suit was not barred, as the calculation was to be made by the English calendar—*Maharaja Jai Mangal Sing Bahadur v. Lal Rang Pal Sing* (1). According to such calculation the suit was within time.

Munshi *Mahomed Yusaff*, for the respondent, contended that there was nothing in s. 27, Act VIII of 1869 (B. C.) to shew that the calculation was

* Special Appeal, No. 488 of 1872, from a decree of the Subordinate Judge of Bhaugulpore, dated the 8th December 1871, reversing a decree of the Moonsiff of that district, dated the 15th August 1872.

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to be made according to the English calendar, and there being nothing express in the Act, the custom of the district must be followed.

The Judgment of the Court was delivered by—

BAYLEY, J.—We think this case must be remanded to the Lower Appellate Court for trial on the merits.

It is found by the Lower Appellate Court as a fact that the cause of action arose from the 1st Asar, when it is the custom of the people of that part of the country to begin cultivation. S. 27, Act VIII of 1869, B. C., merely says that the suit is to be instituted within one year of the cause of action. It does not provide according to what calendar that year is to be calculated. On the contrary, cl. 2, s. 2. Act I of 1868, provides that “years” and “months” are to be calculated according to the British calendar, unless the contrary be expressed. Now, although that is an Act expressly referring to Acts passed by the Governor-General in Council, we think that, in the absence of any provision in the Bengal Council Act, the interpretation given in Act I of 1868 must be followed, and following that interpretation, the present suit is in time.

The judgment of the Lower Appellate Court is accordingly reversed, and the case remanded for trial on the merits.

The costs of this appeal and of the Lower Appellate Court will abide the ultimate result.

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Sept. 21.

Before Mr. Justice Macpherson.

THE QUEEN v. TARINICHARAN DEY AND OTHERS.

Evidence Act (I of 1872), s. 32, cl. 2—Letter of Advice.

THE prisoner, Tarinicharan, was charged with forging for the purpose of cheating and using as genuine a forged railway receipt or bill of lading, for the purpose of obtaining from the East Indian Railway Company certain goods which had been entrusted to the Company to be carried from Delhi to Calcutta. The *Standing Counsel* for the prosecution sought to prove the delivery of the goods to the Railway Company by putting in a letter from the consignor at Delhi to his partner in Calcutta, advising the despatch of the goods. He submitted that the letter was a “document used in commerce, written or signed” by a person “whose attendance could not be procured without an amount of delay and expense which, under the circumstances of the case,” would be unreasonable, and therefore that it was relevant under s. 32, cl. 2 of the Indian Evidence Act (I of 1872). The Court refused to receive the evidence, and intimated a doubt whether such a letter would, under any circumstances, be receivable, since it was beyond the instances specified in the section.