

that as representative of that son, who was the legal heir of Thakurdas, she is entitled to the certificate.

The Judge has rejected the application, holding that, after the lapse of so many years, it is preposterous to ask the Court to declare, on a summary enquiry, that the applicant is entitled to oust from possession the person whose rights she has hitherto not disputed.

An appeal has been preferred, on the ground that the Judge was wrong in refusing the application for certificate on the ground of lapse of time, and a decision of a Division Bench of the High Court, in *Pulash Monee Dosse v. Anund Moyee Dossee* (1), is quoted in support; and it is prayed that the Judge may be directed to take the evidence of the appellant's witnesses to prove the truth of her statement that she was pregnant when her brother died, and that she subsequently gave birth to a son.

The relationship between the appellant and deceased is admitted; and as the reason assigned by the Judge for refusing to give the appellant a certificate under Act XXVII. of 1860 does not appear to the Court to be sufficient, we remand the case to the Judge, with directions to him to allow the appellant to produce evidence in support of her allegation; and should that, in his opinion, be sufficient to prove the fact asserted by her, he will then apply the law to the case and pass orders accordingly. The costs to follow the result of the enquiry.

1869

SRIMATI
DURGADASI
DEBI
v.
JADUNATH
MOOKERJEE.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

LACHMAN PRASAD (PLAINTIFF) v. HOLAS MAHTOON AND OTHERS
(DEFENDANTS.)

1868
Feb'y 12.

Bhooli Rent—Valuation of Crop.

A landlord sued his tenant, paying rent in kind, for the share of the crop due to him, or rent, or for its money equivalent.

Held, that the prices at which the landlord was entitled to have the crop valued were those which prevailed at the time the crop was cut, and when it should have been made over to him

Baboos *Debendra Narayan Bose* and *Kali Krishna Sen* for appellant.

Baboo *Mohini Mohan Roy* for respondent.

The judgment of the Court was delivered by—

NORMAN, J.—This is a suit to recover bhooli rent, or a sum equivalent to the value of the proportion of the crop which the defendant ought to have handed over to the plaintiff, his landlord. The Deputy Collector, after ascertaining what was the quantity of each species of grain which should have

Special Appeal, No. 1498 of 1868, from the decree of the Judge of Bhagulpore, dated the 4th March 1868, modifying a decree of the Deputy Collector of Monghyr, dated the 27th December 1866.

(1) A. W. B., 390.

1869

LACHMAN
PRASAD
v.
HOLAS
MAHTOON.

been set apart as the share of the plaintiff, calculated the sum payable to the plaintiff by taking the price of the several sorts of grain at the rates prevalent at the time when it was cut. From that decision the plaintiff appeals, and contends that he is entitled to the prices which prevailed at the end of the year, which the Deputy Collector says were famine prices. The Judge on appeal affirmed the decision of the Deputy Collector. We think it quite clear that the Judge was right. The damage sustained by the plaintiff was equal to the value of the crop at the time when it was the duty of the defendant to have handed it over to the plaintiff. If, after that time, prices had fallen, it is clear that the defendant would have had no right to inflict on the plaintiff a loss by giving him anything less than the equivalent of that which he would have received, if the defendant had done his duty and handed the bhooli rent when it became due. On the other hand, the plaintiff has no right to make the defendant responsible for the possible profit which he might have made by the rise of the market price if he had kept the grain. The decision of the lower Appellate Court appears to us perfectly correct.

The appeal is dismissed with costs.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

THE QUEEN v. CHOWDHRY AND OTHERS.*

1869
Feb'y 22.

Criminal Procedure Code (Act XXV. of 1861) s. 283—Recognizance to Keep Peace.

A charge of criminal trespass and mischief was dismissed. Thereupon the Magistrate recorded an order in the presence of both parties, calling on them to show cause, on a day fixed, why they should not enter into recognizances to keep the peace.

Held, it was not necessary also to issue a summons to them under section 283 of the Criminal Procedure Code.

Bhikari Rai, on behalf of Chowdhry Jagamohan Prasad and two others, complained against Mr. Crowdy, a planter, that he had forcibly uprooted tobacco and other crops belonging to his master's ryots, and forcibly sown indigo on their land. A local enquiry was ordered, and the case heard, when the Joint-Magistrate came to the conclusion that the charge was false and vexatious. He then recorded an order in the presence of both the parties, to the effect that, on a certain day then fixed, they should appear and show cause why they should not enter into security of Rs. 2,000 to keep the peace. On the day fixed, the Joint Magistrate took up the case, and without hearing any further evidence, ordered the Chowdhry and other two prosecutors in the first case to give security as above. The Judge, on application made, held that as no summons had issued under section 283, Criminal Procedure Code, the order should be set aside. He referred the case to the High Court.

* Reference under section 434 of the Code of Criminal Procedure.