

Neither, on consideration of the terms of the gift, do we think that the Lower Appellate Court was wrong in holding that it was absolute, and the conditions effective to pass all Ameena's interest, which Ameena desired to impose in restraint of alienation, &c., do not indicate to us that she intended to reserve to herself any further or future interest in the land.

The appeal is dismissed with costs.

The 20th May 1865.

Present :

The Hon'ble W. Morgan and Shumbhoonath Pundit, *Judges.*

Limitation— Mesne-profits—Cause of action.

Case No. 269 of 1864.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Tirhoot, dated the 21st April 1864.

Maharaj Koer Ramaput Singh (Plaintiff),
Appellant,

versus

Mr. J. Furlong, general manager on behalf of the Rajah of Durbhanga (Defendant),
Respondent.

Moulvie Aftabooddeen Mahomed for Appellant.

Baboo Kishen Kishore Ghose for Respondent.

Suit laid at Rupees 14,965.

Under Act XIV. of 1859 mesne-profits can be decreed only for six years before institution of suit. The cause of action for the mesne-profits is the date on which they became annually due.

THE order of the Court below dismissing the suit of the appellant for mesne-profits, due more than twelve years preceding to the filing of his plaint, is correct. The plaint was filed after Act XIV. of 1859 came into operation, and under it the claim for mesne-profits can be decreed only within six years preceding the plaint. Accordingly, mesne-profits due for more than six years cannot be claimed in this case. The cause of action is neither the date of the roobakaree ordering restoration of possession as held by the lower Court; nor does it either shew the

date of the plaintiff's obtaining possession, nor the date of the final order of the Civil Courts in the regular case brought by the opposite party to set aside the said order for restoration of possession as argued by the plaintiff. The cause of action for the mesne-profits is the date on which they became annually due. The plaintiff cannot claim any deduction in this case for the period during which the previous litigation commenced by others was pending in different Courts. The appeal is accordingly rejected with costs.

The 22nd May 1865.

Present :

The Hon'ble H. V. Bayley and J. B. Phear,
Judges.

Vakeel (absence of).

Case No. 31 of 1865.

Regular Appeal from a decision passed by the Principal Sudder Ameen of West Burdwan, dated the 19th September 1864.

Koroona Moyee Dossee, Pauper (Plaintiff),
Appellant,

versus

Ali Nukee Merdha (Defendant), *Respondent.*
None for Appellant.

Boboo Bungsheedhur Sein for Respondent.
Suit laid at Rupees 9,150.

A case duly called on cannot be allowed to be postponed by reason of absence of the appellant or his vakeel.

THE pleader, Baboo Mohesh Chunder Bose, is not present. It is stated that he has leave to be absent. He has never received such leave from this Bench. If he had, it was his duty to provide that another vakeel should take his case, or to have seen that the printed Rule, that two vakeels should be appointed in each case, should be attended to. The appellant herself has been duly called, and has not appeared.

We distinctly are of opinion that there is no reason for allowing a case which has been dully called up in its turn to be postponed, because the vakeel and client have neglected to do their duty.

We accordingly dismiss this case with costs.