

articles appear to have been taken by the defendant at various times, and not in the way of ordinary and private consumption, but evidently for the objects of a limited trade on his own account.

The cases quoted seem all on one side, and favor the contention of the plaintiff that he is entitled to six years. See Weekly Reporter, Vol. III, page 24, Small Cause Court Rulings; and the ruling of Mr. Justice Macpherson, quoted at page 57 of Mr. N. Thompson's Work on Limitation, and the Appendix of the same work, page 242, at the bottom of the page. No cases on the other side have been brought to our notice, for the case reported at page 68 of Vol. VII, Weekly Reporter, is not in point.

Under these circumstances, we think it right to follow the rulings above quoted, and we remand the case to the Principal Sudder Ameen for a decision on the merits, holding that the plaintiff is entitled to the limitation of six years.

Norman, J.—I entirely concur.

I think we ought to follow the cases which have been decided on this point, which are cited above, as I believe that the construction there put down on the 8th and 9th Sections, has been generally adopted and acted upon. Items beyond six years are of course barred.

The 4th June 1867.

Present :

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

Special Appeal—Issues.

Case No. 2743 of 1866.

Special Appeal from a decision passed by Mr. James Reilly, Principal Sudder Ameen of East Burdwan, dated the 7th July 1866, reversing a decision passed by the Moonsiff of that district, dated the 13th May 1865.

Shaikh Ahmed Mundul (Defendant),
Appellant,

versus

Shaikh Sonaollah (Plaintiff), and others
(Defendants), *Respondents.*

*Moulvie Syud Murhumut Hossein for
Appellant.*

*Baboo Mohesh Chunder Chowdhry for
Respondents.*

A party was not allowed on special appeal to go behind the issues by which he was content to abide in the Lower Courts.

Phear, J.—THIS was a suit to recover possession of a piece of land. The Court of first instance dismissed the plaintiff's claim, but the Lower Appellate Court upheld it. In both Courts the only issues tried were whether the plaintiff had purchased the land, and whether he had been dispossessed by the defendant. The issue in the first Court did not mention the name of any vendor, but in the Lower Appellate Court the question was specially "whether the plaintiff bought the land of Tufuzal Hossein."

The defendant now appeals specially on the ground that the Lower Appellate Court ought to have enquired into the title of the plaintiff's vendor, because it was denied in his, the defendant's, written statement. We are of opinion that this ground cannot now be taken. The defendant had ample opportunity in the Lower Courts of raising all the issues upon which his case depended. And if either of the Lower Courts had refused to entertain any material issue suggested by him, it would have afforded him good ground of complaint against their proceedings. But nothing of this kind is alleged here, no doubt because it could not be alleged with truth; and we cannot now allow him to go behind the issues by which he was content to abide in the Court below, and which were actually tried there with apparent propriety.

The 4th June 1867.

Present :

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

Presumption under Section 4, Act X of 1859.

Case No. 3030 of 1866 under Act X of
1859.

Special Appeal from a decision passed by Mr. F. B. Simson, Judge of Mymensingh, dated the 31st July 1866, affirming a decision passed by Mr. F. F. W. Smith, Deputy Collector of that district, dated the 16th March 1863.