

The Weekly Reporter:

APPELLATE HIGH COURT.

The 1st June 1869.

Present :

The Hon'ble H. V. Bayley and C. Hobhouse, *Judges.*

Possession—Limitation—Section 11, Act XIV., 1859.

Case No. 179 of 1869.

Special Appeal from a decision passed by the Subordinate Judge of Chittagong, dated the 2nd December 1868, reversing a decision of the Moonsiff of Fultick-cherry, dated the 8th February 1868.

Mohabut Ali and another (Plaintiffs),
Appellants,

versus

Ali Mahomed Koolal (Defendant),
Respondent.

Mr. G. A. Twidale for Appellants.

Baboo Okhil Chunder Sein for Respondent.

In a suit to establish a right derived from plaintiff's father as purchaser of certain property which the latter ceased to possess 5 years before his death, it was held that plaintiff's cause of action arose from the time of his father ceasing to possess; and as that was more than 20 years previously, his suit was barred by limitation under Section 11, Act XIV. of 1859.

Bayley, J.—WE think this special appeal should be dismissed with costs.

The plaintiff sued to establish his right derived from his father as the original purchaser of the property.

The defendant claimed through one Shahmut Ali, who, he alleged, was a co-proprietor of the lands. Defendant also pleaded limitation.

The first Court gave the plaintiff a decree, holding that the defendant's kobalah was false, and that his possession was not proved.

The Lower Appellate Court has clearly found as a fact on the evidence that, from five years before the plaintiff's father's death in 1213, that is, from the year 1209, the possession was with the defendant and those through whom he claimed, and that this was shown by several acts of ownership such as the receipts of rent and the direct evidence in the case; and further that the title, under which the defendant claimed, that is, the kobalah, was a good and a valid title.

In special appeal, it is urged that the law of limitation has not been properly applied in this case, and that, whereas the first Court has given several reasons for its decision, the Lower Appellate Court has not given sufficient reasons to meet those of the first Court.

Now, the law of limitation that is applicable to this case is Section 11, Act XIV. of 1859, and that Section says: "If, at the time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him."

Here it is quite clear, that the cause of action arose to the plaintiff from the cessation

of possession on the part of his father from whom he derived; and as it has been clearly found as a fact that from more than 20 years before suit, *i. e.*, five years before the plaintiff's father's death, neither the plaintiff nor his father had been in possession, the cause of action actually accrued to the plaintiff under the provisions of Section 11, so as to bar the suit.

The appeal is therefore dismissed with costs.

The 1st June 1869.

Present:

The Hon'ble H. V. Bayley and C. Hobhouse,
Judges.

**Procedure—Appeals under Section 84, Act XX.
of 1866.**

In the Matter of Jugun Patnee, *Petitioner.*

Baboo Rajendernath Bose for Petitioner.

A petition under Section 84, Act XX. of 1866, need not be in English, unless the party presenting it understands that language sufficiently for the purposes of verification.

When an appeal is filed under that Section, a notice, in accordance with Clause 4 thereof, ought to be issued on the registering officer and on the other persons interested.

The Deputy Registrar is competent to fix the time for hearing, and to require the appellants to insert the names of persons interested; as also to serve them with notices.

The document, the registration of which is refused, should be put in with the petition, and the presentation should be in the office.

Note by the Deputy Registrar.—This is the first appeal filed in this Court under Section 84, Act XX. of 1866.

I beg to refer it for the Court's orders on the following points:—

1st.—Whether the grounds of this petition ought not to have been stated in the English language?

2nd.—Whether, in accordance with the terms of Clause 4, Section 84 of the Act above adverted to, "a copy of the petition with a notice at the foot thereof" of the day fixed for the hearing of the appeal is to be issued as in other appeals, by the Deputy Registrar for service on the registering officer and such other persons as may be concerned in the case. The law provides for the service of the copy of the petition, &c., "on the registering officer and such

other persons (if any) as the Court shall think fit?"

3rd.—If it should be held that the Deputy Registrar shall deal with such appeals in the preparatory stage, as he does with other appeals, is he—

(1)—To fix the time for the hearing as in other appeals; and

(2)—To require the appellant to insert at the head of the petition of appeal the names of all such persons as may be concerned, and who should be served with the notice.

The document refused registration need not, I presume, be filed with the petition of appeal, as, according to Clause 3 of the Section and law above adverted to, it "is admissible in evidence on the presentation and hearing of the petition."

And it is also a question for consideration, whether, under the terms of the last-named Clause, the "*presentation and hearing*," being mentioned as acts simultaneously performed, the *presentation* should not be before the Court *instead of*, as in other appeals, in the office.

Bayley, J.—With reference to the first point referred by the Deputy Registrar, we think that it is only when a party understands English sufficiently for the purposes of verification, that the petition should be in English. When this is not the case, a translation accompanying the vernacular petition will be proper and sufficient.

With regard to the *second* point submitted, we think that a notice in accordance with the provisions of Clause 4, Section 84, Act XX. of 1866, ought to be issued on both the registering officer and on the other persons interested in the matter.

With regard to the *third* point, we think that the Deputy Registrar is competent to fix the time for the hearing of the case, and to require the appellant to insert at the head of the petition of appeal the names of such persons as are interested in the matter, as also to serve them with notice.

We also think that the document should be always put in with the petition of appeal, and that the presentation should be in the office in the same way as in the case of Miscellaneous Appeals.

Let the petition be received subject to the above remarks.