1866. July 30. R. C. No. 5 of 1866.

We think that the only meaning which can be given to the word, is the popular one of loss or deterioration caused by a wrongful act. The phrase will then mean some damage directly caused by some wrongful act to some particular piece of property—not the diminution of the whole corpus of a man's property by abstracting or wrongfully detaining a portion of it. In this way only, as it seems to us, will the whole clause be consistent and none of it superfluous. In confirmation of this view we may allude to the improbability that the legislature would have included under the shortest period of limitation, all suits for the recovery of personal property or its value.

The result is, that, in our opinion, Clause 2 does not apply to the case put, and that the plaintiff is entitled to a period of six years under the general provision of Clause 16.

APPELLATE JURISDICTION (*a*)

Regular Appeal No. 49 *of* 1866.

KHÁDAR BHI..... *Appellant.*

RAHIMÁN BHI and another..... *Respondents.*

Under Sec. 45 of the Code of Civil Procedure, a defendant in a suit is entitled to "sufficient time to enable him to appear and answer in person or by pleader."

What may be "sufficient time" in a particular case can only be determined by considering the peculiar circumstances of the case. Where the time allowed is manifestly insufficient, an Appellate Court will interfere.

1866. July 30. R. A. No. 49 of 1866.

THIS was a regular appeal from the decree of J. W. Cherry, the Civil Judge of Ootacamund, in Original Suit, No. 6 of 1866.

The suit was brought for land and other property of the value of several thousand Rupees. The plaint was filed on the 26th of February, and the final disposal was fixed for the 28th of the same month. The Court gave judgment for the plaintiffs, in the following terms :—"The 2nd defendant, a minor, appears by his mother 1st defendant, who having refused to answer any questions put to

(*a*) Present Innes and Collett, J. J.

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her, the Court has no alternative but to give judgment against her.

The 1st defendant appealed.

O'Sullivan, for the appellant, the first defendant.

Mills for *Miller*, for the respondents, the plaintiffs.

The Court delivered the following

JUDGMENT :—Defendant, when interrogated at the hearing of the suit in the Court below, declined to answer the questions put to her, and judgment was in consequence passed against her.

She appeals on the ground that the date fixed for her appearance did not allow her sufficient time to prepare her defence. We find that the plaint was filed on the 26th February and the final disposal fixed for the 28th, on which date the suit was heard and judgment passed against defendant. Under the Code of Civil Procedure a defendant is entitled to " sufficient time to enable him to appear and answer in person or by pleader " (Section 45), and the date for defendant's appearance should have been fixed so as to admit of her having such " *sufficient time.* " What may be sufficient time in one case will in another be altogether insufficient, and the nature of the rights involved, the importance of the claim, the distance of the parties from the Court, and often various other circumstances will be elements essential to the determination of what time is reasonably allowable. In the present case the claim involved a right to landed and other property of the aggregate value of upwards of 6,000 Rupees, and as the parties are Muhammadans, and the claim is based apparently upon first plaintiff's status as wife and second plaintiff's status as son to the late husband of first defendant, it was not improbable that it might raise questions of Muhammadan Law. And, without saying what, in such a case, would have appeared to us a sufficient time to enable defendant to consider her rights, and engage the professional assistance to which she was entitled, we do not hesitate to say that the time allowed was insufficient for those purposes. The Civil Judge

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appears to have considered that he had, under the Civil Procedure Code, no alternative but to pass judgment against defendant. But in this we think that the terms of Section 126, under which judgment appears to have been passed, show that he was in error, as that section, while giving the Court a discretion to pass judgment against a party in the circumstances to which it relates, leaves it also discretionary with it to "make such other order in relation to the suit as it may deem proper in the circumstances of the case."

But independently of this consideration; we think that it cannot have been intended by the legislature that it should be lawful to compel the hasty appearance of a party before the Court, and to surprise him into answers upon questions connected with his rights, which he has not had time to consider, or, if he has the wisdom to decline to give answers, which in the embarrassment and confusion of his situation may be prejudicial to his rights, to pass judgment against him.

In the present case also, the difficulties of the defendant's situation were no doubt aggravated by her being a female, and belonging to a sect, the females of which are quite unaccustomed to appear in public.

We are of opinion that she had not sufficient time allowed her to answer the claim, and that therefore judgment could not be properly passed against her for declining to give, to the questions put to her, replies which would be taken down as her answers to the claim.

We therefore reverse the judgment of the Civil Judge, and under Section 351 remand the case with directions that the suit be replaced upon the Register, and that the case be then proceeded with *de novo* in regular course, due notice being given to the defendant, in the summons, of such a date for appearance as will allow her sufficient time to appear and answer in person or by pleader.

Suit remanded.
