(1870) 01 CAL CK 0007

Calcutta High Court

Case No: Special Appeal No. 1836 of 1869

Maharaja Jay Mangal Sing Bahadur		APPELLANT
	Vs	
Lal Bang Pal Sing		RESPONDENT

Date of Decision: Jan. 16, 1870

Judgement

Norman, Officiating C.J.

1. I am clearly of opinion that this suit must be dismissed, upon the ground that it is barred by limitation. The plaintiff seeks to recover the price of an elephant sold in the early part of the year 1863. The suit was brought on the 3rd of July 1866. In order to rebut the defence of limitation, the plaintiff put in as an acknowledgment in writing, signed by the defendant, a letter dated the 8th of Asar 1270, or in other words, the 9th of June 1863, which contains these expressions:--"About the price of the elephant, the price shall be paid "after a short time-" More than three years elapsed between the date of that letter and the commencement of this suit which was instituted on the 3rd of July 1866. The plaintiff, however, points out that, according to the Fasli calendar, the letter was dated on the 8th of Asar 1270; and as the suit was instituted on the 5th Asar 1273 (the 3rd July 1866), he says that, if time is computed according to the Fasli calendar, the suit was brought within three years. The reason why the month of Asar in the Fasli year 1273 fell later than in 1270 is that in the Fasli year 1273 there are two months of Jaishta (there is a first and a second Jaishta); whereas in the Fasli year 1270, there are two months of Sraban. According to the English calendar, and according to the actual number of days (1,120), which elapsed between the date of the writing and the institution of the suit, the suit was brought more than three years after the date of the admission contained in the letter. We are of opinion that, the Law of Limitation being a law of procedure, in order to see by what computation the time must be reckoned, we must look to the calendar and the mode of computing time according to the law by which the proceedings of the Court in which the demand is to be enforced are regulated, and that must be, as we apprehend, the English calendar. In one instance under Act XIV of 1859, namely, u/s 8, provision is made for reckoning the time otherwise than according to the English calendar. The

enactment of that section of a special provision as to how the year is to be reckoned in suits for balances of accounts where there are mutual accounts between traders, namely, as the same is reckoned in the accounts, shows that, in cases where any other era, except the English era, is to be referred to in computing the period of limitation, the Legislature has expressly provided for it. The intercalation of a month in the Fasli calendar cannot in our opinion extend the period of limitation beyond that which is allowed by the law. Now three years would be 1,095 days, or, at most if one of the three years be a leap year, 1,096 days. In the present case the suit is brought after the expiration of 1,120 days from the date of the written acknowledgment. The suit is therefore barred by limitation.

E. Jackson, J.

2. I also think that this suit is barred by limitation for the reasons stated above, and I concur with my learned colleague in dismissing the plaintiff"s claim.