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the question of jurisdiction decided after the lower Court has considered whether in fact any part of the cause of action in a suit which the Bombay firm might have instituted arising out of the subject-matter of the reference to arbitration arose at Delhi. The parties have been directed to appear in the lower Court on the 14th of October, 1957. There will be no order as to costs in this revision petition.

D. K. M.

APPELLATE CIVIL.

Before Chopra and Gosain, JJ.

BRAHAM DUTT,—*Plaintiff-Appellant*

versus

EAST PUNJAB PROVINCE AND OTHERS,—*Defendants-Respondents.*

Regular First Appeal No. 191 of 1949.

1957

Sept., 16th

Civil Procedure Code (V of 1908)—Section 80—Notice under, object of—Larger amount claimed in notice—Reduction of the amount in suit, effect of—Notice as to future cause of action, whether permissible—Intention to file suit, whether must be stated in the notice.

East Punjab Evacuee's (Administration of Property) Act (XIV of 1947)—Section 19—Exemption under, when permissible—Mere allegation if sufficient.

Limitation Act (IX of 1908)—Schedule 1, Article 2—Scope of—Applicability of, if act not done in good faith.

Held, that the object and requirement of a notice under section 80 Civil Procedure Code is to afford the defendant an opportunity to reconsider his position with regard to the claim and to make amends or settle the claim, if so advised, without recourse to the trouble and cost of litigation. The object is sufficiently satisfied if the notice informs the defendant generally of the nature of the suit intended to be filed and the relief sought to be claimed. A claim for a

larger amount in the notice and its reduction in the suit does not change the cause of action or invalidate the notice.

So long as the cause of action, which has to be expressly mentioned in the notice, has not actually arisen, the notice cannot possibly be regarded as sufficient compliance with the mandatory provisions of the section. Statement of the fear of something happening in future or the possibility of something having happened in the past does not amount to informing the defendant of the "cause of action" and the "relief" claimed by the plaintiff. So long as nothing regarding it was definitely stated the defendants could not know what the position actually was and decide upon the action they ought to take. A notice which does not state the intention to file a suit will not constitute a valid notice under section 80, Code of Civil Procedure.

Held, that mere allegation by the defendants that the act was done in pursuance of the enactment will not attract the application of section 19 of Act XIV of 1947. In order to claim protection under it the defendants had to prove that they acted *bona fide* in the belief that the act was required or permitted by the enactment.

Held also, that Article 2 of the Limitation Act purposely provides a shorter period of ninety days for suits for "compensation for doing or for omitting to do an act, alleged to be in pursuance of any enactment." The expression "alleged to be" does not mean "alleged by the plaintiff in his plaint or alleged by the defendant in his written statement." The Article would come into operation if the act complained of was done in good faith and under the honest belief that it was in pursuance of an enactment.

Regular First Appeal from the order of Sh. Sheo Parshad, Senior Sub-Judge, Karnal, dated the 25th June, 1949, dismissing the suit of the plaintiffs.

D. K. MAHAJAN and G. P. JAIN, for Appellant

S. M. SIKRI, Advocate-General and D. N. AWASTHY, for Respondents.

JUDGMENT

Chopra, J.

CHOPRA, J.—This is an appeal against the judgment and decree of the Senior Sub-Judge, Karnal, dis-

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missing the plaintiff-appellant's suit for recovery of Rs. 5,713-13-0, based on the following facts.

Braham Dutt was the owner of a Vauxhal car registered in his name at No. PBE 325. In September, 1947, he had lent the car temporarily to Iqbal Ahmad Khan, a resident of Shahbad, District Karnal. Shri Roshan Lal, defendant No. 2, was posted as the District Magistrate, and Mr. K. N. Sahni, defendant No. 3, as Magistrate 1st Class, Karnal, in those days. On 22nd September, 1947, defendant No. 3 took possession of the said car and removed it to the Police Station, Shahbad, falsely representing that the car had been requisitioned under orders of the District Magistrate defendant No. 2. The District Magistrate had no authority to requisition the car, nor was any notice of requisition served upon the plaintiff. The car was most carelessly used by defendants No. 2 and 3, till it was returned to the plaintiff on 7th May, 1948. At the time of delivery, the car was not only greatly damaged but a number of its parts were missing. The plaintiff thus claimed:—

(*i*) Rs. 3,435 as compensation for use of the car by the defendants at the rate of Rs. 15 per day;

(*ii*) Rs. 1,700 for the damage done to the car during this period; and

(*iii*) Rs. 578-13-0 as price of the missing parts.

The State Government was impleaded as defendant No. 1 and the amount was claimed from defendant No. 1 in case it was found that the other two defendants acted in their official capacity and on behalf of and for the purposes of the Government.

The defendants, besides denying the allegations, raised a number of legal objections which gave rise to the following preliminary issues:—

1. Whether the plaintiff gave a notice under Section 80 of the C.P.C. and if so then is the notice valid?

2. Whether the suit is barred by the provisions of law mentioned in the written statements?
3. Whether defendants 2 and 3 are protected under the provisions of the Judicial Officers Protection Act?
4. Whether the suit is in time?

The learned trial Judge decided issue No. 3 in favour of the plaintiff. As regards the other issues, he found that no valid notice under s. 80 C.P.C. was served upon the defendants, that the suit was barred under sections 17 and 19 of the East Punjab Evacuees' (Administration of Property) Act, XIV of 1947, and that the suit having been instituted more than three months after the alleged seizure of the car was barred by time under Article 2 of the Limitation Act. Consequently, he dismissed the suit but left the parties to bear their own costs. The plaintiff has now come in appeal.

Notice under s. 80 C.P.C. was given by the plaintiff to the three defendants on 27th January, 1948, i.e., some months before the car was delivered back to him. The notice recited the above facts regarding the seizure of the car and its unwarranted and careless use by defendants 2 and 3, and informed the defendants that the plaintiff would hold them responsible to pay compensation at the rate of Rs. 30 per day from 22nd September, 1947, till the car was returned. As regards the other claim put forth in the plaint the notice stated—

> "In case my client discovers any accessories, spare parts, tools or other parts of the machinery removed or any other damage caused to the car, which defects my client is unable to discover at this stage, my client reserves his right to claim the damages for the same."

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So far as the first item of the claim is concerned, the notice gives all the necessary particulars. The mere fact that it did not, and in fact it could not, give the exect amount estimated as compensation by the plaintiff is of no consequence. The object of the requirement of a notice under s. 88 C.P.C. is to afford the defendant an opportunity to reconsider his position with regard to the claim and to make amends or settle the claim, if so advised, without recourse to the trouble and cost of litigation. The object is sufficiently satisfied if the notice informs the defendant generally of the nature of the suit intended to be filed and the relief sought to be claimed. The plaintiff apprised the defendants of the facts relating to the seizure of his car and further told them of his intention to file a suit for the return of the car and to claim compensation at the stated rate for the entire period of deprivation. It was a continuing wrong for which compensation was claimed, the defendants were unambiguously informed of the same. The total amount payable to the plaintiff could not be determined till the car was actually returned, and for that the defendants were themselves responsible. Nothing more was thus required to be known by the defendants with respect to this part of the plaintiff's claim. A claim for a larger amount in the notice and its reduction in the suit does not change the cause of action or invalidate the notice

I do not see force in Mr. Awasthy, learned counsel for the respondents' contention that the notice is bad because it is at variance with the plaint, inasmuch as while in the former defendants 2 and 3 were stated to have acted in their official capacity in the latter they are said to have done the act complained of in their individual and personal capacity. As will be presently seen, there is no such variance in the two documents, there may be some dissimilarity in the language but the substance is the same.

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As regards the other two items of the claim, Mr. Mahajan, learned counsel for the appellant, contends (i) that the notice narrated all the particulars which the plaintiff could possibly give at the time and, therefore, the notice was a sufficient compliance with the provisions of section 80, C.P.C., and (ii) that, in any case, since defendants 2 and 3 did not purport to act as public officers in the matter of seizing the car and putting it to their own use, no notice under section 80, C.P.C., was necessary and the suit against them with respect to these items also could proceed.

It is correct that so long as the car was in possession of the defendants and it had not been inspected by the plaintiff, he could not say anything about the damage done to it or the missing parts. But the difficulty in the way of the plaintiff is that even at the time of the suit the plaintiff could not, and in fact did not, state that the damage for which the two items are claimed was done to the car prior to the issuance of the notice. So long as the cause of action, which has to be expressly mentioned in the notice, has not actually arisen, the notice cannot possibly be regarded as sufficient compliance with the mandatory provisions of the section. Statement of the fear of something happening in future or the possibility of something having happened in the past does not amount to informing the defendant of the "cause of action" and the "relief" claimed by the plaintiff. So long as nothing regarding it was definitely stated, the defendants could not know what the position actually was and decide upon the action they ought to take. They were not informed if any parts were actually missing or any damage was caused to the car, nor about the amount the plaintiff intended to claim in respect of them. Supposing the plaintiff claimed only an insignificant amount, the defendants might have, simply with a view to avoid harassment of

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litigation, gladly accepted to pay it. The plaintiff ought to have given another notice to the defendants, intimating his claim for the other two items, after the car was delivered and when he became apprised of the facts.

The facts in the decisions relied upon by Mr. Mahajan were somewhat different and they are of no help to him. In *Chandulal Vadilal* v. *Government of the Province of Bombay* (1), the plaintiff in the notice undel section 80, C.P.C., alleged that he proposed to file a suit for a declaration that the assessment of rent fixed by the Collector was illegal and for refund of any amount that the Collector will levy from the plaintiff. In the suit filed, the plaintiff claimed refund of the amount which was paid by him under protest, subsequent to the date of the notice. Dealing with the objection under section 80, C.P.C., Beaumont, C.J., observes—

> "I agree with the learned trial Judge in thinking that to state a future cause of action would not be a compliance with the section, but as at present advised I am not prepared to say that where a cause of action exists of which notice is given, the notice is rendered bad, because it refers to a possible further claim which may arise before a suit can be brought * * * * *
>
> * * * * * *
>
> I do not myself think that the notice is invalidated because it refers to a possible additional claim, consequential upon the cause of action specified therein and states that if such additional claim arises, the plaintiff will sue also in respect of it."

(1) A.I.R. 1943 Bom. 138.

The facts in the other case, *Mahant Janki Prasad* v. *Government of United Provinces* (A.I.R. 1941 Oudh 355), were almost similar to those in the Bombay case. There, the plaintiff had informed the defendant that the amount of Rs. 450 had been wrongly realised from him and also that he was not liable to pay Rs. 225 which had been assessed. In the suit filed by him, the plaintiff also prayed for the recovery of Rs. 225 which he was subsequently made to pay. In both these cases the additional claim was merely consequential, which flowed from the cause of action specified in the notice. In the case before us, the cause of action for the additional claim was the alleged removal of the parts and the damage done to the car, which possibly might not have arisen at the time of the notice (at least the plaintiff was not sure about it) and which did not necessarily flow from the alleged wrongful seizure of the car.

Moreover, the notice did not express a clear intention on the part of the plaintiff to file a suit with respect to these items. The notice simply stated that the plaintiff "reserves his right to claim the damages", the right which he might or might not have exercised. A notice which does not state the intention to file a suit will not constitute a valid notice under section 80, C.P.C.

The second submission of Mr. Mahajan is inter-connected with the point involved in the other issues decided against the plaintiff. Notice to defendants 2 and 3, under section 80, C.P.C., would be necessary only if the claim were in respect of an act purporting to be done by the defendants in their official capacity. The suit of the plaintiff would be barred under section 19 of the East Punjab Evacuees' (Administration of Property) Act, XIV of 1947, if the claim were in respect of something done or purported to have been done by the defendants in

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pursuance of that Act. This is the subject-matter of issue No. 2. Similarly, the suit would be barred by time under Article 2 of the Limitation Act, if the claim were in respect of "compensation for doing or omitting to do an act alleged to be in pursuance of any enactment in force for the time being in India." For the decision of all these points it is necessary to find out whether the defendants, in doing the act or acts complained of, acted in their individual or private capacity or as public officers in pursuance of the provisions of some enactment. The acts complained of are (i) seizure of the car on 22nd September, 1947, (ii) user of the car up to the date of its return to the plaintiff, and (iii) removal of some of its parts and causing damage to the car. For a proper appreciation of their respective submissions, I shall first scan the pleadings of the parties in order to find out what they had to say on the point.

In the notice, the plaintiff stated that on being told that defendant No. 3 had removed his car to police station, Shahbad, the plaintiff met defendant No. 3 at the police station and requested him for return of the car. The plaintiff was informed that the car had been requisitioned under orders of the District Magistrate, Karnal, that it could be returned to the plaintiff only if ordered by the District Magistrate, and that the plaintiff would be paid compensation at the rate fixed by the Government. The notice goes on to state that the representation made by defendant No. 3 was totally false, since no order for requisitioning the car was in fact made and no notice of it was ever given to the plaintiff. He described the action as wholly illegal and without authority. It was further stated that the car was subsequently seen in possession of the District Magistrate

and that it was being carelessly used by the latter.

The same or similar facts are narrated in the plaint, with the addition of para 9 which reads—

> "That in case the court finds that the act of taking possession of the said car and its use was as District Magistrate and Magistrate, 1st Class, in pursuance of their authority and on behalf of and for the purposes of defendant No. 1 and also that defendant No. 2 had power to requisition movable property, then defendant No. 1 is liable for all the damages suffered by the plaintiff, because defendant No. 1 also could not requisition without payment of compensation to be decided beforehand."

It is thus clear that the plaintiffs own case was that the defendants 2 and 3 had all along acted in their personal capacity and not as public officers or in pursuance of any enactment. The above para was added with a view to meet a possible defence of the other side. What the para means to say is that in case the representation made to the plaintiff that the car had been requisitioned for and on behalf of the State was pleaded in defence and proved to be true, defendant No. 1 would be liable to pay compensation to the plaintiff. This cannot be regarded as his own case or an admission on his part.

Defendant No. 1, in his written statement, denied all knowledge of the facts stated in the plaint and also its responsibility for anything done

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by the other defendants. The position that defendant No. 1 took was that the car was never requisitioned by, or used for and on behalf of, the State Government.

Defendant No. 3 who was alleged to have seized and used the car in the first instance, controverted the allegation by stating that he never took possession of the car or used it and that he did never represent that the car was requisitioned under orders of the District Magistrate, nor had it in fact been requisitioned. In reply to para (11) of the plaint regarding the claim for the missing parts and the damage caused to the car, defendant No. 3 stated that the car was in a worn out condition when "the police acquired it as evacuee property with a view to saving it from being destroyed" and that "it lawfully remained in the possession of the State."

Defendant No. 2, the District Magistrate, also denied to have had anything to do in the matter of seizure or use of the car. To quote him in his own words, he averred—

> "He did not seize the car, he did not use the car, he did not possess the car, he did not requisition the car and he did not damage the car."

Defending the action ascribed to defendant No. 3 he stated—

> "If he (defendant No. 3) took possession of the car he did it as Muslim evacuee property on the evacuation of Iqbal Ahmad Khan from the dominion of India into Pakistan after 15th August, 1947, on account of post-partition communal disturbances."

As regards his own responsibility, defendant No. 2 stated—

> "He was not only the Deputy Custodian under the relevant law but was the District Magistrate responsible for the protection and due administration of the District, and anything that he may be deemed to have done in this connection was done in those official capacities."

It is evident that the defendants took up somewhat contradictory positions and each of them tried to shake off his own responsibility in the matter. There can be no manner of doubt that none of them took up the position that the car was requisitioned or that it was taken possession of by defendants 2 and 3 in their capacity of or purporting to act as custodians under the relevant provisions of the East Punjab Evacuees' (Administration of Property) Act, XIV of 1947. The mere fact that pleas with respect to the suit being barred by limitation or under section 19 of Act XIV of 1947 were raised by each of the defendants would be of no avail, in the absence of a clear statement of facts on which these pleas could be based. I have quoted from the written statements *in extenso* with a view to impress that as a matter of fact it was nowhere the case of the defendants that defendants 2 and 3 took possession of the car, or made use of the car or caused damage to it, as Custodians under the said Act or that the car was requisitioned. Whether defendants 2 and 3 did or did not do any of these acts is a matter of proof and one that has yet to be gone into. The suggestion that it might be the police who alone were responsible and therefore the defendants are absolved of their responsibility is again a matter of evidence that could, or still may, be gone into. However, I cannot fail to observe that the police or its officers do not figure anywhere in

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the enactment in question, except for the help that they may be called upon to render in carrying out the orders of competent authorities.

Now coming to the evidence, it may at the outset be observed that the defendants have not produced any evidence whatever that the car was requisitioned or that it was taken possession of or used because it was evacuee property. Mr. Sahni, defendant No. 3, appearing as his own witness, reiterated his plea that he never took possession of the car. All that he could say about the car was that he once saw it at the police station and then being used, for some time, by Capt. Anand, Assistant Commissioner. Three more witnesses from Shahbad were examined by the defendants. They stated that Iqbal Ahmad Khan of Shahbad left the village in the beginning of September, 1947, and that they saw the car standing in front of his house when he had left and sometimes later at the police station, Shahbad. None of the police officers is examined to state that the car was taken by him to the police station or that the car remained in his possession or under his charge.

No order requisitioning the car or declaring it an evacuee property has been produced. Nor there exists any order by which the car might have been taken possession of by the defendants or delivered back to the plaintiff. It is simply un understandable that no order would have been made and no record maintained, if the car were requisitioned or taken into possession as evacuee property. At the time of arguments, we particularly asked the learned counsel for the respondents if they could, even at this stage, produce any order or record in this connection. They expressed their inability to produce anything of the kind. No amount of evidence can be taken into consideration or regarded as sufficient in proof of any fact, if specific mention of it is not made in the pleadings. But in the present

case, as already observed, there is no evidence either, in support of the defendants' contention.

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The plea of requisition is now being totally given up. Section 19 of the East Punjab Evacuees' (Administration of Property) Act, XIV of 1947, on which reliance is placed, lays down—

> "No suit or prosecution or other legal proceedings shall lie against the Provincial Government or the Custodian, a Rehabilitation Authority or any person acting under their direction in respect of anything done or purported to have been done in pursuance of this Act."

The suit would be barred only if it is in respect of anything done or purported to have been done in pursuance of the said Act. At the particular time, it was the East Punjab Evacuee (Administration of Property) Ordinance, IV of 1947, that was in force. Act No. XIV of 1947 came into force on 13th December, 1947. The provisions of the Ordinance and those of the Act on the matters in question are almost identical. Section 2(c) of the Ordinance defines "evacuee property" for the purposes of the Ordinance. Section 7 lays down the mode of taking possesion of various kinds of evacuee property. Sub-section (1) of this section relates to immoveable property. With respect to movable property, sub-section (2) provides—

> "Where movable property (including the machinery or equipment of any factory or workshop) is to be taken into possession whether or not along with the immovable property, the Custodian shall prepare a list of such movable property and shall call upon two or more respectable inhabitants of the locality of which at least one shall, if possible, be a member of the same community as the owner of the property, to

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attend and witness the proceedings. The list shall be prepared in duplicate and each copy shall be signed by the Custodian and by each witness."

Subsection (3) of section 7 says—

"*Record of proceedings.*—Upon completion of proceedings under either of the preceding subsections the Custodian shall draw up and sign a record of his proceedings in duplicate and shall forward one copy thereof to the District Judge for permanent record. Where movable property is involved, the record shall include the list mentioned in subsection (2). If the address of the evacuee is known the Custodian shall send to him one copy of the record of his proceedings."

It has in no way been shown that the car was "evacuee property", that it was declared or regarded as evacuee property or that it was taken into possession as such. Assuming, but not holding, that the car was evacuee property and the defendants 2 and 3 were the Custodians under the Ordinance, they cannot be taken to have acted or purported to act in pursuance of the Ordinance or the Act, when nothing as aforesaid is alleged, much less proved, to have been done.

Mere allegation by the defendants (and there is no such clear allegation even in this case) that the act was done in pursuance of the enactment will not attract the application of section 19 of Act XIV of 1947. In order to claim protection under it, the defendants had to prove that they acted bona fide in the belief that the act was required or permitted by the enactment.

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The same are the requirements for the application of Article 2 of the Limitation Act. The Article purposely porvides a shorter period of ninty days for suits for "compensation for doing or for omitting to do an act, alleged to be in pursuance of any enactment." The expression "alleged to be" does not mean "alleged by the plaintiff in his plaint or alleged by the defendant in his written statement." The Article would come into operation if the act complained of was done in good faith and under the honest belief that it was in pursuance of an enactment. In Punjab *Cotton Press Co. Ltd.* v. *Secretary of State* (1), the Article was not held to be applicable to a case where the canal authorities cut the bank of a canal to avoid accident to the adjoining railway and not to the canal, and plaintiff's adjacent mills were damaged. The case was remanded to the High Court to find out "if it is proved as a matter of fact that the operation was really for the protection of the canal and that, consequently, it falls within section 16 of the Canal Act." In *Pt. Shiam Lal* v. *Abdul Raof* (2), the following observations were pertinently made at page 541—

> "As in England, the expression 'in pursuance of any enactment' must be interpreted as meaning acting in conformity with an enactment and not merely pretending to act or acting under colour of such an enactment. Where a person honestly believes that he is acting under some enactment he is protected. But where a person pretends that he was so acting and knows that he should

(1) A.I.R. 1927 P.C. 72.
(2) A.I.R. 1935 All. 538.

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> not act under that enactment, he cannot be said to be acting in pursuance of any such enactment. * * * * *
> * * * * *
> It would, therefore, follow that where a defendant has done an act or omitted to do an act, knowing that he had no ground whatsoever for so acting or omiting to do an act, he does not come within the purview of Article 2. It is only defendants who have acted honestly, although they might have exceeded the actual power conferred upon them by an enactment, who would be protected."

In my view, Article 2 of the Limitation Act has no application to the facts of this case. It is common ground between the parties that if the case is not covered by this Article, the suit would fall under Article 49 of the Limitation Act and would be within time.

A similar provision for protection of public officers from unnecessary and scandalous litigation is made in section 197 of the Code of Criminal Procedure. The section lays down that previous sanction of the prescribed authority is necessary to prosecute a public officer for certain offences "alleged to have been committed by him while acting in the discharge of his official duty." In *Matajog Dobev* v. *H. C. Bhari* (1), their Lordships of the Supreme Court, while interpreting this phrase in section 197, Cr. P. C., observe—

> "The offence alleged to have been committed must have something to do, or must be related in some manner, with

(1) A.I.R. 1956 S.C. 44.

> the discharge of official duty. No question of sanction can arise under s. 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty as this question will arise only at a later stage when the trial proceeds on the merits.
>
> What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."

Reverting to s. 80, C.P.C., and applying this test to the facts of the case in context, it cannot be said that the alleged act of removal of parts from the car and causing damage to it was any of the official duties of the defendants Nos. 2 and 3. There is no reasonable connection between the alleged act and the official duty, nor are the two in any manner inter-related. In my opinion, therefore, no notice under s. 80, C.P.C., so far as these two defendants are concerned, was necessary with respect to the other two items of the claim sought for in the plaint. So far as defendant No. 1 is concerned, it is not disputed that notice under s. 80, C.P.C., with respect to these two items also was necessary.

I would, therefore, hold that the suit, except for the claim of Rs. 2,278/13 with respect to the

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last two items as against defendant No. 1, was validly instituted and also that the suit was neither barred under s. 19 of the East Punjab Evacuees' (Administration of Property) Act, XIV of 1947, nor by time under Article 2 of the Limitation Act.

In the result, the appeal is accepted, the decree of Senior Sub-Judge, Karnal, set aside and the case remitted to District Judge, Karnal, for fresh decision in accordance with law and in the light of the above observations. The appellant shall get his costs from the respondents. The parties have been directed, through their counsel, to appear in the said Court on 14th October, 1957. Court-fee paid on the Memo of Appeal shall be refunded to the Appellant.

Gosain, J.

GOSAIN, J.—I agree.

D. K. M.

SUPREME COURT

Before Bhuvaneshwar Prasad Sinha, P. Govinda Menon and J.L. Kapur, JJ.

BAKHSHISH SINGH,—*Appellant*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 205 of 1956.

1957

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Indian Evidence Act—(I of 1872)—Section 32—Dying declaration—Meaning and contents of—Authenticity and object of a dying declaration—Section 33—Statement of a witness recorded before the committing magistrate transferred to the record of the trial before the Sessions Judge on the ground of non-availability of the witness—Whether proper—Objection as to—Whether can be taken in appeal before the Supreme Court—Section 114—Witness given up as won over—Discretion of the prosecutor—Whether can be interfered with by Court—Adverse inference—Whether can be drawn against the State.