

CALCUTTA HIGH COURT

Jogeswar Narain Deo

Vs

Ram Chandra Dutt

(O'Kinealy and Ameer Ali, JJ.)

25.06.1893

JUDGMENT

O'Kinealy and Ameer Ali, JJ.

1. The plaintiff asserts that he was born on the 10th March 1867, corresponding to the 27th of Falgun 1274 B.S. This suit was filed on the 7th March 1891, and as he would have three years to bring it after he had attained his majority, he was according to his own showing within time. The defendants on the other hand assert that the plaintiff was not born in 1274, but in 1272, and that consequently his suit was out of time. Both the parties fix the time of birth with reference to a famine which took place in that part of the country in 1273. In the discussion which arose on the point of limitation, it was strongly urged for the appellant that the statements of deceased persons in regard to the date of the plaintiff's birth were not admissible as evidence under Section 32 of the Indian Evidence Act; and in support of that contention the case of *Haines v. Guthrie*¹ was referred to. It was further asserted that the law of England in this respect is the same as the law of India, but in dealing with the point we must bear in mind that when the Evidence Act was passed in this country, this question of hearsay evidence was not then so definitely settled as it is now. Some of the text-books supported the contention, that hearsay evidence was admissible to prove the date of birth, and looking at illustrations (k to m) of Section 32, we think that view was adopted by the Legislature, and that such a statement is admissible in evidence.

Cases Referred.

¹L.R. 13 Q.B.D. 818