

a party and a fresh trial ordered. It is next urged in support of this appeal that though the first and second defendants may, in a certain event, be ulterior male heirs, they have no present interest, and that under the Hindu Law women, whether widows or daughters, represent the inheritance. But it must be observed that although they represent the inheritance for certain purposes, still they take but a qualified heritage. In comparing the widow's power to alienate the reversion in a certain exigency with the restrictions on the father's power to alienate ancestral property, it should be remembered that the restrictions in the one case are the incidents of coparcenary, while the right to sell in the other is not an incident of inheritance, but a qualified power given for specified purposes over the reversion created by law in favour of the ulterior male heirs. If the daughter's son is but a contingent reversioner by virtue of this power and has no *locus standi*, because one of the daughters is alive and she represents the inheritance, it may be contended, with equal force, that even the daughter had no vested interest during her mother's life, inasmuch as the mother then represented the inheritance. The fallacy in the contention consists in comparing a power over the reversion vesting in the next male heir under Hindu Law with the restriction on the alienation by a male owner of his own property. The first and second defendants are therefore entitled to object to the sale to their father in their own right and not simply by virtue of their aunt's title. In this view it is unnecessary to decide for the purpose of this suit whether it is open to the first and second defendants to rely on their aunt's title in answer to the claim. The only question then which remains to be considered is whether the first and second defendants are estopped by their conduct from denying their father's title. Though certain proceedings are referred to in the memorandum of appeal filed in the Lower Appellate Court as creating his estoppel, and the Subordinate Judge has failed to notice them in his judgment, this ground of objection was not relied upon at the hearing of this appeal.

We think, therefore, that this appeal fails, and that it must be dismissed with costs.

[155] APPELLATE CIVIL.

The 13th September, 1881.

PRESENT:

SIR CHARLES A. TURNER, K.T., CHIEF JUSTICE, AND MR. JUSTICE
MUTTUSAMI AYYAR.

Appaya and another.....Appellants

and

The Collector of Vizagapatam.....Respondent.*

*Application for recovery of amount of Court fees under Section 411 of the
Code of Civil Procedure—Limitation.*

Government is not entitled to any exemption from the provisions of the Indian Limitation Act, 1877, relating to applications.

* C. M. A. No. 412 of 1881 against the order of A. L. Lister, Acting District Judge of Vizagapatam, dated 18th March 1881.

Held, therefore, that an application by Government under Section 411* of the Code of Civil Procedure to recover the amount of Court fees from a party ordered by the decree to pay the same was subject to the provisions of Article 178† of the Indian Limitation Act, 1877.

IN 1873 one Darisette Buchanna filed a suit *in forma pauperis* in the District Court of Vizagapatam to recover lands of considerable value. On 25th November 1875 the two defendants in the suit entered into a compromise with him, and on 28th March, 1876 a decree was passed in the terms of the compromise filed by the parties. The plaintiff's costs were entered in one lump sum in the decree, but by the terms of the compromise the stamp-duty payable to Government was to be paid by the plaintiff and defendants in equal shares.

On 17th July 1878, the plaintiff paid his one-third share of the amount of the stamp-duty.

In March 1881 the Collector applied to the Court under Section 411 of the Code of Civil Procedure to recover from the defendants the remaining two-thirds of the amount of the stamp-duty.

The District Judge considered that the payment by the plaintiff on 17th July 1878 was a payment on account of the specific debt of which the Collector was seeking to recover the balance, and ordered a warrant to issue for recovery of the amount claimed from the defendants.

The defendants appealed to the High Court.

Ramachandra Rau Sahib for Appellants.

[156] The application by the Collector is clearly barred by Article 179, Schedule II, of the Limitation Act. The *razinama* and the decree must be read together. They create no joint liability (Explanation I) and payment by the plaintiff cannot save the statute. The fact that the stamp-duty payable by plaintiff is entered in the decree in one lump sum imposed no liability upon the defendants to pay and does not bear on the question of Limitation.

Mr. *Wedderburn*, for the Government Pleader, for the Respondent.

The application by the Collector does not come within the provisions of the Indian Limitation Act, 1877. The general rule is that the Crown's rights are not affected unless specifically mentioned (*Dwarris*, p. 523). Bengal Regulation II of 1805 provides a 60 years' term generally for all claims of Government not otherwise provided for. All public claims are exempted from

* [Sec. 411 :—If the plaintiff succeed in the suit, the Court shall calculate the amount of Court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.]

† [Art. 178 :—

Description of application.	Period of limitation.	Time from which period begins to run.
Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, Sec. 280.	Three years ...	When the right to apply accrues.]

the operation of Act XIV of 1859 by Section 17.* Act IX of 1871 and XV of 1877 provide 60 years in the cases of suit by or on behalf of the Secretary of State for India, but no Limitation is provided for the case of an application on behalf of the Government. The power given to the Collector by Section 411 of the Code of Civil Procedure is exceptional and is analogous to a right of summary suit. If considered as a suit, the claim is not barred.

Ramachandra Rau Sahib in reply :--

The Limitation Act applies to all claims. Articles 149† and 157‡ of Schedule II deal with suits and appeals on behalf of Government, and Article 178 includes every application not otherwise provided for.

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

Judgment :-- We are of opinion that the Government is not entitled to any exemption from the provisions of the Limitation Act relating to applications. If the maxim on which the Counsel for the Crown relies applies to this country—and the Crown is not bound by the provisions of any Act unless they are expressly declared binding on the Crown—it may be inferred from the circumstance that this Act contains provisions prescribing Limitation to the Government for the institution of suits and presentation of [157] criminal appeals that the Legislature contemplated that the Crown should be subject to the provisions of the Act and should enjoy a privilege to the extent expressed and no further—*expressum facit cessare tacitum*.

The decree incorporates the compromise and declares in what proportion the Court fees are to be borne by the parties severally, and no objection has been taken by the Crown to the arrangement made by the parties. No step having been taken by the Crown to enforce the direction against the defendants for three years from the date of the decree, the application is beyond time, and the payment by the plaintiff of his share of the costs will not prevent Limitation from running against the other persons severally liable.

The appeal is decreed and the order of the Court below reversed, and the application dismissed with costs.

* Act not to extend to public property nor to suits for the recovery of Public claims. * [Sec. 17 :—This Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force.]

† [Art. 149, Sch. II, Act XV of 1877 :—

Description of suit.	Period of limitation.	Time from which period begins to run.
Any suit by or on behalf of the Secretary of State for India in Council.	Sixty years	When the period of limitation would begin to run under this Act against a like suit by a private person.]

‡ [Art. 157 :—

Description of appeal.	Period of limitation.	Time from which period begins to run.
Under the Code of Criminal Procedure from a Judgment of acquittal.	Six months	The date of the Judgment appealed against.]

NOTES.

[I. APPLICABILITY OF THE MAXIM "CROWN IS NOT BOUND BY A STATUTE UNLESS EXPRESSLY NAMED" TO INDIAN STATUTES—

This point is exhaustively treated by BHASHYAM AYYANGAR, J. in 25 Mad. 457 where he comes to the conclusion that such statutes bind Government although Government is not named in them, unless the very nature of the duty or tax is such as to be inapplicable to Government.

In 9 Mad. 175 the question as to how far Crown is bound by laws of Limitation prior to IX of 1871, not decided.

II. EXTENSION OF THE PRINCIPLE OF THIS CASE—

The inference which forms the ground of decision in this case cannot be extended to Sec. 26 of the Limitation Act of 1871 which relates to an entirely different matter from the limitation of suits, viz., to a branch of substantive law and the creation of rights by the enjoyment of them. Hence no right of easement can be acquired against Crown under Sec. 26 of Act XV of 1877 :—14 Bom. 213.

See 7 Bom. 552 footnote for the same view as in this case.]

[4 Mad. 157.]

APPELLATE CIVIL.

The 4th March and 15th September, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE KINDERSLEY.

Mahalinga Rau.....(Plaintiff). Appellant

and

Vencoba Ghosami and others.....(First to third and fifth Defendants),
Respondents.*

Religious Endowment Act, Section 14—Special jurisdiction, Suit to recover land for temple, not within.

The provisions of Section 14† of Act XX of 1863 (Religious Endowments Act) do not oust the jurisdiction of the ordinary Courts except in the cases specified therein.

* Appeal No. 130 of 1880 against the decree of G. A. Parker, Acting District Judge of South Tanjore, dated 21st September 1880.

† [Sec. 14 :—Any person or persons interested in any Mosque, Temple, or religious establishment, or in the performance of the worship or of the service thereof, or the Trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, Manager, or Superintendent of such Mosque, Temple, or religious establishment, or the member of any Committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such Trustee, Manager, Superintendent, or member of such Committee, in respect of the trusts vested in, or confided to, them respectively, and the Civil Court may direct the specific performance of any act by such Trustee, Manager, Superintendent, or member of a Committee, and may decree damages and costs against such Trustee, Manager, Superintendent, or Member of a Committee, and may also direct the removal of such Trustee, Manager, Superintendent, or Member of a Committee.]