APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

VENKATARAMAYYAR (PLAINTIFF), APPELLANT,

v.

KOTHANDARAMAYYAR AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1889. July 17. Oct. 25.

Limitation Act—Act XV of 1877, ss. 7, 9, 19—Minority of plaintiff—General Clauses Act—Act I of 1868, s. 3, cl. 2.

Suit to recover principal and interest due on a registered bond executed by defendants in favor of the plaintiff's father. The date of the bond was 20th June 1870; the principal sum was payable on 20th June 1872; the plaintiff's father died in 1875; the defendants made acknowledgments of their liability in June 1877; the plaintiff came of age in 1885, and this suit was brought on 11th August 1887:

Held, the suit was not barred by limitation.

APPEAL against the decree of Shephard, J., sitting on the Original Side of the High Court in civil suit No. 173 of 1887, dismissing the suit.

Suit to recover principal and interest due on a registered bond executed by defendants in favor of the plaintiff's father.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the Appellate Court.

The defendants set up the plea of limitation, and the learned Judge held that it afforded a defence to the suit. He delivered judgment as follows:—

SHEPHARD, J., (after reciting the allegations in the plaint proceeded:—) "On these facts, as stated in the plaint, it was contended on the defendants' behalf that the suit was on the face of it barred by limitation, more than six years having elapsed since the date of the alleged acknowledgments. For the plaintiff it was urged that inasmuch as he was a minor when the acknowledgments were made he was entitled to the benefit of section 7 of the Limitation Act. The section is so worded as to give colour to this argument; for it provides not, that if a person entitled to sue is a

* Appeal No. 41 of 1888.

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minor when his right to sue accrues he shall be allowed a fresh period wherein to sue, but that he shall be allowed such fresh period if he was a minor at the time from which the period of limitation is to be reckoned, and it was argued that the date from which the period had to be reckoned was the date of the acknowledgment. The point thus raised could not have arisen on the Acts of Limitation prior to that of 1877, for the corresponding section of the Acts of 1859 and 1871 are differently worded. No authorities were cited, and as far as I can ascertain there are none exactly in point. But the vakil for the defendants called attention to section 9 as showing that no allowance was to be made for a disability arising after the accrual of the right of action.

"I am of opinion that the plaintiff is not saved by the provision of section 7. The plaintiff is suing as representative of his father against whom time was running at the date of his death in 1875. The effect of the acknowledgments no doubt was to give the plaintiff a fresh period which apart from any question of disability expired in 1882 or 1883. His contention must be that during that interval and until 1885, when he is said to have come of age, time did not run against him. Time was running against him before the acknowledgments were made, but afterwards ceased to run. This contention, as it appears to me, involves a complete disregard of the provision of section 9, which says that when once time has begun to run, subsequent disability shall stop it. An acknowledgment does not give a new cause of action, and the fact that it has been made does not make it the less true that time had previously begun to run. Section 9, therefore, becomes applicable, and reading it with section 7, I must hold that the plaintiff, though he was a minor at the time from which the fresh period should be completed, cannot claim the protection of that section. It may be well to mention with reference to the change of language used in section 7, that it may be accounted for without supposing that any change of the law was intended. The object, I think, must have been to fix a definite *terminus a quo* and to avoid the difficulties surrounding the question when the cause of action arises, for the date of the accrual of a cause of action does not always give the starting point for the purpose of limitation. However this may be, I do not think it can have been intended to alter the previous rule according to which section 7 conferring a personal privilege on the minor avails only when the right to sue accrued, and time

would otherwise have begun to run, during the minority of the person claiming the privilege. I must dismiss the suit with costs."

The plaintiff preferred this appeal.

Rama Rau for appellant.

Sundaram Sastri and *Seshagiri Ayyar* for respondents.

The arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment.

JUDGMENT :—The plaintiff sues on a registered bond, repayable within two years, executed to his late father on 20th June 1870. Plaintiff's father died in 1875, leaving plaintiff, a minor. Plaintiff is said to have attained his majority in 1885. It is further alleged that defendants made acknowledgments of their liability in 1876 and 1877, so as to give a new period of limitation under section 19 of the Limitation Act. Time had begun to run against plaintiff's father and therefore against plaintiff before the dates of these acknowledgments, and the question is whether plaintiff is entitled to the benefit of section 7, these acknowledgments in his favor having been given and the new period of limitation having arisen during his minority, when time was already running against him.

The learned Judge who tried the suit on the Original Side held that plaintiff was not saved by the provisions of section 7, notwithstanding the alteration made in that section by the Limitation Act of 1877. He considered that the object of the alteration was only to fix a definite *terminus a quo* since the date of the accrual of a cause of action does not always give the starting point for the purpose of limitation. He held, therefore, that section 9 was applicable, and that the suit was barred.

If this be so, the only effect of the acknowledgment would be to give to the minor plaintiff, against whom time was already running, an extension of six years (calculated under article 116 according to the nature of the original liability) within which to bring his suit, such extension being computed from the date of the acknowledgment. In this opinion we are not able to concur. We observe that section 19 speaks of a new period of limitation, not an extension of the old period.

Under section 3, clause 2 of the General Clauses Act, the word " from " is sufficient to exclude the first in a series of days or any other period of time. As, therefore, under section 19 of the Limitation Act the date of acknowledgment will have to be

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included in computing the new period of limitation, it is evident that the former period, already running, was not extended, but terminated, and that an entirely new period runs from the date of acknowledgment.

The plaintiff was a minor at the date from which that new period is to be reckoned, and he therefore falls under the strict wording of section 7. We do not think that section 9 will take away this privilege since it is not subsequent disability which stops the time already running but the operation of law consequent upon the giving of the acknowledgment.

Taking this view, we must reverse the decree and remand the suit to be heard on the merits. The appellant is entitled to the costs of this appeal, and the costs on the Original Side will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Wilkinson.

1889. March 15. April 8. October 8.

BRAHMAPPA (DEFENDANT), APPELLANT,

v.

PAPANNA (PLAINTIFF), RESPONDENT.*

Hindu law—Inheritance to stridhanam—Right of stepson to inherit.

A Hindu widow having stridhanam acquired from her husband, died leaving no issue. The defendant who was the son of her elder sister took possession. The stepson of the deceased now sued to recover the stridhanam property. It was found that the marriage of the deceased had been celebrated in the *brahma* form.

Held, that the plaintiff was entitled to succeed.

SECOND APPEAL against the decree of D. Venkatarangayyar, Subordinate Judge of Tadpatri, in appeal suit No. 83 of 1888, reversing the decree of V. Subramanya Ayyar, District Munsif of Penukonda, in original suit No. 327 of 1887.

Suit for possession of certain jewels, the property of a Hindu widow, being stridhanam acquired by her from her late husband. The plaintiff was the stepson of the deceased: the defendant who was the son of her elder sister, had possession of the jewels, and his

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* Second Appeal No. 1512 of 1888.