

fit as well as hers; and the costs which were decreed against her were costs incurred by the plaintiff, not in prosecuting the claim against her personally, but also against the reversioner, whose rights she was bound to defend, and did defend, in resisting Woomamoyee's claim to the inheritance.

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We have had rather more doubt with regard to the decree for mesne profits; but we think that this portion of the decree necessarily followed the other; and that Woomamoyee must be considered as having recovered the mesne profits in the same right and upon the same principle as she recovered the rest of her claim.

The appeal will, therefore, be decreed, and the plaintiff's suit will be dismissed with costs in both Courts.

Appeal allowed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

RAJENDRO KISHORE SINGH (PLAINTIFF) v. BULAKY MAHTON
 AND OTHERS (DEFENDANTS).*

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Limitation—Exclusion of Time—Limitation Act (XV of 1877), s. 14.

The defendants cut down and carried away some trees which had been growing on the plaintiff's land. The plaintiff's manager brought a suit in his own name against the defendants for the value of the trees so cut and carried away. This suit was dismissed on the ground that the manager had no cause of action against the defendants. In a subsequent suit brought by the plaintiff against the defendants for the value of the same trees, he contended that the time occupied in the former suit ought to be excluded in computing the period of limitation prescribed for the second suit.

Held, that the provisions of Act XV of 1877, s. 14, did not apply, and that the time could not be excluded, as the reason why the previous suit was dismissed, was, because it was brought in the name of the wrong person, not from defect of jurisdiction, or from any cause of a like nature.

THIS was a suit brought by the Maharajah of Bettia for (*inter alia*) the value of certain trees which had been cut down

Appeal from Appellate Decree, No. 2624 of 1879, against the decree of Baboo Kallyprosonno Mookerjee, Second Subordinate Judge of Sarun, dated the 12th August 1879, affirming the decree of Baboo Taraprosonno Bauerjee, Munsif of Chupra, dated the 17th September 1878.

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and illegally appropriated by the defendants. The cutting of the trees was alleged to have taken place on or about the 11th May 1873. Shortly after that date the plaintiff's manager instituted a suit for the value of the same trees; and this suit was, on the 31st of May 1877, finally dismissed, on the ground that the manager, as such, had no cause of action. The present suit was instituted on the 26th of November 1877, and at the hearing, the plaintiff argued that, in computing limitation, he was entitled to exclude the time occupied in the former suit under the provisions of the Limitation Act, XV of 1877, s. 14. This contention was overruled in the Court of first instance, and the suit was dismissed with costs. This decision was upheld on appeal.

The plaintiff then brought this second appeal to the High Court.

Mr. Collinson and Baboo Sreenoth Bannerjee for the appellant.

No one appeared for the respondents.

The judgment of the Court (GARTH, C. J., and McDONELL, J.), so far as is material for the purposes of this report, is as follows:—

GARTH, C. J.—It has been contended before us, that as regards the claim for the value of the trees, the plaintiff's rights are saved by s. 14 of the last Limitation Act.

That section enacts, "that, in computing the period of limitation, the time during which the plaintiff has been prosecuting with due diligence another suit against the defendants shall be excluded, when the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

Now it seems that the plaintiff, some time ago, brought a suit for the value of these trees in the name of a person who sued as his manager; and the suit was dismissed by the High Court, on the ground that as manager he had no right to sue on behalf of the plaintiff. It is argued that this was a suit prosecuted by the plaintiff (within the meaning of s. 14) in good