Act until the expiration of the fasli, yet, under section 2, limitation runs from the date when the rent (or instalment of rent) sought to be recovered became an arrear under section 14.

We may add that no real hardship results from these provisions of the law as instalments do not in practice fall due during the first few months of the fasli, and the landlord has therefore a reasonably sufficient time after the end of the fasli to take proceedings even in regard to the earliest instalment in arrear.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar and Mr. Justice Russell.

1903. August 12, 13. December 7.

PERIASAMI MUDALIAR AND ANOTHER (DEFENDANTS NOS. 3 AND 4), APPELLANTS,

v.

SEETHARAMA CHETTIAR AND TWO OTHERS (PLAINTIFFS), RESPONDENTS.*

Hindu Law—Money due by and decree against father—Execution proceedings after death of judgment-debtor against family property in possession of sons refused—Suit by creditor against sons—Decree obtained—Effect of decree against father as creating debt binding on sons—Limitation Act XV of 1877, *sched. II, arts.* 52, 120—*Limitation for suit against son on original debt or on decree.*

Plaintiffs, in 1896, obtained a decree against the father of the present defendants, who died in 1897. Execution of that decree was refused as against the family property in the possession of the defendants. Plaintiffs, in 1899, instituted the present suit against defendants and obtained a decree. Questions having been referred to the Full Bench:

Held, (1) that independently of the debt arising from the original transaction, the decree against the father, by its own force created a debt as against him which his sons, according to the Hindu law, were under an obligation to discharge, unless they showed that the debt was illegal or immoral;

(2) that if the suit had been brought on the original cause of action the article of limitation applicable would have been the same as against the father, namely, article 52; but as the suit had been brought on the cause of action arising from the decree against the father the article applicable was 120.

Observations by Bhashyam Ayyangar, J., on the obligation of a son, under the Hindu law, to discharge debts incurred by his father.

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* Second Appeal No. 49 of 1902, presented against the decree of W. Gopalachariar, Subordinate Judge of Bellary and Salem at Salem, in Appeal Suit No. 186 of 1901, presented against the decree of K. Ramanathayyar, District Munsif of Salem, in Original Suit No. 700 of 1899.

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SUIT for money. The facts are sufficiently set out (by Subrahmania Ayyar and Boddam, JJ.) in the following

ORDER OF REFERENCE TO A FULL BENCH.—The present suit is for the recovery of money which in the first instance became due in respect of the purchase of certain goods. The purchases were made (speaking generally for the purposes of this case) in September 1894.

On the 12th November 1896 the plaintiffs obtained a decree against the father of the appellants alone. He died in 1897.

On proceeding to execute the decree against the family property in the possession of the appellants and other members of the family execution was refused.

The plaintiffs thereupon instituted the present suit on the 25th September 1899 against the undivided brothers of the deceased and his sons the appellants. As against the former the suit was dismissed, but the claim was decreed against the appellants in the lower Appellate Court.

The main question is whether the suit is in time.

The plaint, after referring to the original purchase and the subsequent proceedings, including the obtaining of the decree, treats the cause of action as having arisen on the date of the decree.

If in a case like the present the cause of action is to be taken as having arisen on the date of the original purchase, the question of limitation will depend upon which article of the Limitation Act applies to the case. In a suit as against the father, undoubtedly article 52 would have applied. It is contended that that article would not apply here and that article 120 is the only article applicable. *Natasayyan* v. *Ponnusami*(1), *Ramayya* v. *Venkataratnam*(2), and *Narsingh Misra* v. *Lalji Misra*(3), lay down that the latter article applies.

The case of *Abboyi Naidu* v. *Punrengammal*(4) decides the contrary and lays down in effect that the article applicable is that which would have applied to the suit against the father himself.

A further question which arises with reference to the question of limitation is whether exhibit R, which was a petition put in on behalf of the defendants by their vakil (one of the major defendants being described therein as the appellant's guardian, he,

(1) I.L.R., 16 Mad., 99.
(2) I.L.R., 17 Mad., 122.
(3) I.L.R., 23 All., 206.
(4) C.M.A., No. 14 of 1900 (unreported).

however, not having been appointed under the Guardians and Wards Act) in the course of the execution proceedings on the decree against the father after his death operates as an acknowledgment within section 19 of the Limitation Act as against the appellants who are minors.

In *Sobhanadri Appa Rau* v. *Sriramulu*(1), it was held that it was competent to a mother not appointed under any Act as guardian of her minor child to bind her child by acknowledging a debt on the part of the minor, provided that it is not barred by limitation at the date of such acknowledgment.

In *Annapagauda* v. *Sangadiggapa*(2), it was held that a guardian appointed under the Guardians and Wards Act can sign an acknowledgment of liability in respect of, or pay part of the principal of, a debt, so as to extend the period of limitation against his ward in accordance with sections 19 and 20 of the Limitation Act, provided it be shown in each case that the Guardian's Act was for the protection or benefit of the ward's property. Whether in the case of a person not appointed as a guardian under the Guardians and Wards Act the *proviso* in the Bombay case would be held necessary does not appear to have been decided.

On the other hand it has been held in *Wajibun* v. *Kadir Buksh*(3), that a mother as natural guardian of her child has no authority to make an acknowledgment on behalf of the minor so as to give a fresh start for limitation.

As to the contention that the cause of action is to be taken as arising on the date of the decree—that is to say, if the right sued upon is not the original sale but a right created by the decree—it was urged that in circumstances like the present it is not open to the plaintiffs to found a cause of action on the decree. This has not been definitely considered and decided so far as we are aware although the case of *Ramayya* v. *Venkataratnam*(4) would seem to support this view.

Having regard to the importance of the questions involved and the conflict of authorities we refer for the consideration of the Full Bench the following questions:—

Whether independently of the alleged debt arising from the original transaction, the decree against the father by its own force

(1) I.L.R., 17 Mad., 221. (2) I.L.R., 26 Bom., 221.
(3) I.L.R., 13 Calc., 292. (4) I.L.R., 17 Mad., 122.

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creates a debt as against him, which his sons, according to the Hindu law, are under an obligation to discharge, unless they show that such debt was illegal or immoral?

What is the article of the Indian Limitation Act applicable to the suit against the son either upon the original debt or on the debt, if any, arising from the decree?

Whether a petition presented and signed by a vakil appointed on behalf of a minor representative of a deceased judgment-debtor by his natural guardian, in which there is an acknowledgment of the debt, is, within the meaning of section 19 of the Indian Limitation Act, an acknowledgment which would give a starting point against the minor?

The case came on for hearing in due course before the Full Bench constituted as above.

Mr. *Joseph Satya Nadar* for appellants.

R. Subrahmania Ayyar for respondents.

The Court expressed the following opinion:—

BENSON, J.—With regard to the first question referred for our decision, it is difficult to see on what principle a judgment-debt due by a father should be less the subject of a pious obligation on the part of his son than any other debt due by the father. That the debt is not the same as the original debt seems clear. It may, in fact, be more, or it may be less. Even though it be more than the original debt, the father, by virtue of the judgment is bound to discharge it. A judgment of a competent Court creates a duty on the part of the father to discharge the sum decreed, and there is no reason why such a debt should be excepted from the rule of Hindu law which imposes a pious obligation on the son to discharge his father's debts, provided they were not incurred for what are technically described as immoral or illegal purposes.

I would, therefore, answer the first question in the affirmative.

As regards the second question, if the suit had been brought on the original cause of action the article of limitation applicable would have been the same as against the father, *i.e.*, article 52; but as the suit has been brought on the cause of action arising from the decree against the father the article applicable is 120. Article 122 has, in my opinion, no application, for the suit is not, in any view, "a suit upon a judgment." It is a suit to enforce a son's pious obligation under the Hindu law to discharge his fathers

debt. There is therefore no bar by limitation and there is no necessity to answer the third question in the reference.

BHASHYAM AYYANGAR, J.—Before answering the first and second questions referred to the Full Bench for its opinion it is desirable to state succinctly the substance of the course of judicial decisions defining the obligation of a son, under the Hindu law, to discharge debts incurred by his father. It has now been clearly established that though the son is not personally liable for such debts—either during or after the life-time of the father—yet his interest and share in the joint family property belonging to himself and his father is, equally with the father's share and interest in such property, liable for the father's debts during his life-time; and after his death the entire joint family property in the hands of the son is liable for the same. Such liability, however, does not attach to the son's share in the joint family property during the father's life-time or to any portion of the joint family property in the hands of the son, after the father's death, if the father's debt be one of the specified classes excepted by the Hindu law, such exceptions being generally referred to in judicial decisions—though not very accurately—as illegal or immoral debts. If the father alienates joint family property for the discharge of a debt—not illegal or immoral—due by him, or if such property is sold in discharge of such debt in execution of a decree passed against the father, the voluntary alienation or execution sale will bind the son's interest also in the property alienated or sold though he was not a party to the alienation or decree. If, however, the son has not joined in an alienation by the father or if a sale takes place in execution of a decree passed against the father only, it will be open to the son to contend that the alienation or sale does not affect his interest in the joint family property by showing that the debt in question of his father was one contracted or incurred by him for an illegal or immoral purpose and as such is not binding upon him.

Though during the father's life-time the suit could not be brought against the son only, for recovery of a debt due by the father, yet the son may be joined as a party defendant in a suit brought against the father and if the plaintiff succeeds in the suit against both the father and the son, a sale of joint family property which takes place in execution of such decree will bind the son also—though such decree cannot be executed against him personally—and he will be precluded from bringing a suit to contest the

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sale on the ground that the debt was incurred for an illegal or immoral purpose—a plea which, if well founded, he ought to have advanced and established in the original suit, in which case the decree would have been passed against the father only and the suit would have been dismissed as against the son.

If the decree was obtained against the father only and the father dies before the decree is executed or fully executed, the decree can of course be executed against the son (under section 234 of the Civil Procedure Code) in his character as "legal representative" of the deceased judgment-debtor; and in that case only the separate or self-acquired property of the deceased father can be attached and sold as the property of the deceased which has come to the hands of the legal representative, but according to the course of decisions in this Presidency, the joint family property in the hands of the son could not be attached and sold either in whole or in part, the *ratio decidendi* of these decisions being that in executing the decree against the son on the death of the father, the question whether the debt is an illegal or immoral one cannot be raised in execution proceedings and that the decree can be executed against the son under section 234, Civil Procedure Code, only as the legal representative of his deceased father, who, equally with the father, will be bound by the decree, whatever may have been the character of the debt but who will be liable to satisfy the decree only to the extent of the "assets" of the deceased father, *i.e.*, his separate or self-acquired property, which have come to his hands.

In my opinion the result will be the same if, pending a suit brought against the father only, the father dies before decree and the plaintiff, instead of bringing a fresh suit against the son, as such, prosecutes the suit against him as the legal representative of his deceased father and obtains a decree against him in that character.

It has also been established by judicial decisions that notwithstanding that a decree has been obtained against the father, the creditor may after the father's death sue the son, subject of course to the law of limitation, upon the original cause of action—which, so far as the father was concerned has merged in the decree against him—and obtain a decree against the son for the debt due by the father or for so much thereof as has not been paid or recovered in execution of the former decree against the father himself, or (after his death) against the son in his character as legal representative, and that the period of limitation in respect of such a suit against

the son begins to run, not from the date of the death of the father but from the date from which limitation commenced to run against the father himself (*Mallesam Naidu* v. *Jugala Panda* (1)). In such a suit against the son, he can of course plead the illegal or immoral character of the fathers's debt, but if he fails to establish that defence and a decree is obtained against him it cannot be executed against him personally but only by attachment and sale of the whole or any portion of the joint family property in his hands.

The difficulty arises in cases in which such an action against the son, upon the original cause of action, is barred at the time of the death of the father, though the execution of the decree obtained against the father is not barred. This difficulty was sought to be overcome in the case of *Mallesam Naidu* v. *Jugala Panda*(1) by attempting to treat the suit against the son as a suit upon the judgment which had been obtained against the father—in which case the period of limitation would, under article 122, be twelve years from the date of the judgment. In that case the Division Bench which referred it for the opinion of a Full Bench on another point, overruled this contention on the ground that the sons not being parties to the judgment it was not binding upon them and they could not therefore be sued upon a judgment obtained against the father. As against the *judgment-debtor* himself or against his *legal representative* (who, as such, is equally bound by the judgment) it has long been held that under the Indian processual law the remedy is only by way of execution of the decree and that no suit could be brought upon the judgment (*Merwanji Nowroji* v. *Ashabai*(2)), and section 94 of the Presidency Small Cause Courts Act XV of 1882 expressly provides that no suit shall lie on any decree of the Small Cause Court, and this provision is directly applicable to the present case in which the judgment against the father was passed by the Presidency Court of Small Causes at Madras.

The principal question which has been referred to the Full Bench in this case is whether a decree for money against the father by its own force creates a debt, binding on the father, which his sons are under an obligation to discharge, unless they show that such debt was illegal or immoral. This question does not appear to have been ever before directly raised or considered, though the numerous cases in which a sale of joint family property in

(1) I.L.R., 23 Mad., 292. (2) I.L.R., 8 Bom., 1.

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execution of a decree for money against the father has been held to bind the son's share and interest therein really proceed on the footing that the decree-debt, as a debt of record, is binding upon the son and that therefore the sale is binding upon him and the onus has not been cast on the purchaser at such sale to prove and establish as against the son, independently of the judgment, the original antecedent debt or obligation in justification of the sale, as he would have had to do if there had been no judgment against the father but the father had made a voluntary sale of joint family property for the discharge of an alleged antecedent debt. In my opinion the first question referred to the Full Bench must be answered in the affirmative for the following reasons. As the decree-debt cannot be recovered from the son (after the death of the father) by executing the decree against him personally or in respect of joint family property in his hands and as it is always open to him to contend that the decree-debt is illegal or immoral and therefore it does not bind him, the reason why no suit could be brought against the father himself for recovery of the judgment-debt is inapplicable to a suit being brought against the son for recovery of the decree-debt. No doubt, as held in the order of reference in the case of *Mallesam Naidu* v. *Jugala Panda*(1) already referred to, a suit would not lie against the son on a judgment obtained against the father to which the son was no party and which, therefore, as a judgment could not bind him. But I can see no reason why a suit could not be brought against the son to recover a debt of record due by the father, which debt the father was under an obligation to discharge, quite independently of the cause of action or the alleged original debt on which the suit had been brought against him. Under the English law a judgment that the plaintiff shall recover, against the defendant, a sum of money as debt or damage or costs of suit, creates a debt which is therefore a debt or contract of record and a judgment for the defendant that he shall recover a sum of money for his costs of defence also creates a debt of record. Judgments of Courts not of record and judgments of Foreign and Colonial Courts create simple contract debts. (Leake on 'Contracts,' page 133.) Payment of these debts can be enforced not only by 'execution of the ordinary process of the Court' but also by an action of debt upon the judgment except in

(1) I.L.R., 23 Mad., 292.

respect of judgments of the Statutory County Courts, in regard to which it has been held—as it has been held in India with reference to the judgments of all Courts governed by the Code of Civil Procedure—that an action upon the judgment would be inconsistent with the remedies on the judgment provided by the County Courts Acts. There is no reason whatever for holding that under the Hindu law judgments given by the Sovereign or by judicial tribunals established by him are less solemn or less obligatory by their own force than they are under the English Jurisprudence. A Hindu father, therefore, against whom a decree has been passed for a sum of money is under no less obligation—legal and religious—to obey the decree and discharge the debt thereby imposed upon him than to discharge debts 'contracted' by him; and the pious obligation of the son to discharge his father's debts extends as much to the one as to the other. The whole of the joint family property in the hands of the son must be held liable to satisfy the debt imposed upon the father by the judgment, as a solemn debt of record, quite independently of the original cause of action or alleged debt on which the suit against the father had been brought. In cases in which a cause of action against the father for a tort, may not survive him or, though surviving him, the tort committed by the father may be one in respect of which the son as such may not under the Hindu law be under a pious obligation to make good the damages out of joint family property, no suit could, on the death of the father, be brought against the son; but if a decree for damages had been obtained against the father in respect of such tort the amount awarded as damages would, subject to the exceptions under the Hindu law, be binding upon the son as a debt of record due by the father and on his death a suit could be brought against the son to enforce payment of the same out of joint family property in his hands though no suit could be brought against him on the original cause of action against the father. The decree against the father can of course, like any other decree against him, be executed against the son, in his character as legal representative to the extent of the separate or self-acquired property of the father which has come to his hands.

In cases, therefore, where a decree for money has been obtained against the father, but he dies before execution of the same, the creditor has, besides executing the same against the son as legal representative, the option of suing the son either on the original

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cause of action—if it be one in respect of which the son as such would be liable—or to enforce payment of the decree-amount as a debt of record due by the father. In the former case the judgment against the father cannot be relied upon by the creditor as binding the son and he must prove and establish the cause of action or the alleged debt just as if no such suit had been brought against the father and judgment obtained. In the latter case, the judgment as such would not bind the son and it will be admissible only to prove the existence of a judgment-debt due by the father at the date of the judgment; and the only defences open to the son will be either that the decree-debt is not one which is binding upon him—as being illegal or immoral under the Hindu law—or that the same has been discharged, whether such discharge (by payment or adjustment) has been recorded as certified (*vide* section 258, Civil Procedure Code) or not.

I need hardly add that it will not be open to the creditor, after the death of the father against whom he had obtained a judgment which has not been satisfied, to recover the amount twice over from the son both by suing him on the original cause of action and also on the judgment-debt, any more than he could at present recover the amount twice over by suing the son on the original cause of action and also by enforcing payment of the judgment-debt by executing the decree (obtained against the father) against the son in his character as legal representative. The same is the case under general law in respect of all joint and several liabilities in regard to which though judgment against one—which remains unsatisfied—is no bar to the recovery of judgment against any other or others of the debtors—there being a cause of action against each severally—yet the amount can be realized only once and the satisfaction in whole or in part of the decree against any one will in law operate as a satisfaction in whole or in part of the cause of action against each of the other debtors and, if any decree had been obtained against any of them, as a satisfaction, in whole or in part, of such judgment-debt also. (*Dhunput Sing* v. *Sham Soonder Mitter*(1). Leake on 'Contracts,' third edition, pages 377 and 780.)

Where the creditor sues the son on the original cause of action the law of limitation—including the article in the second schedule

(1) I.L.R., 5 Calc., 291.

to the Limitation Act—applicable to such suit will be just the same as that which would be applicable to it if it had been brought against the father himself. This is conclusively established by the principle of the decision of the Court of Appeal in *Beck* v. *Pierce*(1). It was there held that the cause of action in respect of which a husband is liable for his wife's ante-nuptial debts is his wife's contract, not his own, and the statute of limitations had always been regarded as beginning to run in his favour as well as in his wife's from the time when the cause of action accrued against her and any acknowledgment or part payment by her before marriage kept her debt alive both against her and her after-taken husband. In the case of a contract, no doubt, the only person who can under the general law be ordinarily sued on it is the contracting party or his legal representative or in some cases his assign. But if a son is under the Hindu law under an obligation to fulfil the father's contract of debt, as a husband is under the English law to fulfil his wife's ante-nuptial contract of debt, the suit against the son or the husband is a suit on the contract just as much as a suit against the legal representative of a contracting party. It may be that the liability of the contracting party himself is unlimited but that of the son or the husband or the legal representative on the same contract is limited, in the case of the son to the extent of the joint family property in his hands, in the case of the husband to the extent of his wife's property which he may have acquired, and in the case of the legal representative to the extent of the assets of the deceased which may have come to his hands. But in all these cases the cause of action on which the son, husband or legal representative is liable to be sued is that against the father, wife or person represented respectively, and the law of limitation applicable is therefore the same.

In *Narasinga* v. *Subba*(2), however, it was held by this Court that a suit on a bond against the executant thereof and his sons was not, with reference to the provisions of Act XI of 1865, a suit of a nature cognizable by a Court of Small Causes, so far as it sought relief against the son. No reasons are stated in the judgment, but if, as contended by the respondents' pleader, the inference to be drawn from the judgment is that the suit, as against the sons, cannot be regarded as founded upon a 'contract' within the

(1) L.R., 23 Q.B.D., 316. (2) I.L.R., 12 Mad., 139.

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meaning of section 6 of Act XI of 1865, I am, with all respect, unable to concur in that decision.

The decision in *Beck* v. *Pierce*(1) (already referred to) is also decisive on the question that the recovery of a judgment against the father—which has however not been satisfied—is no bar to a subsequent suit against the son on the same cause of action.

Where the creditor however sues the son, not upon the original cause of action, but to recover the debt created by the decree (against the father) as a debt of record, the article of the Limitation Act applicable to the suit would be the residuary article No. 120, which prescribes a period of six years commencing from the time when the cause of action accrued. The cause of action for such a suit being the contract of record which imposed the decree debt upon the father, time will begin to run from the date of the judgment against the father unless the decree itself provided for payment of the decree-debt at a future date, in which case time will run from such date. It should, however, be borne in mind that the son is not legally bound to discharge the father's debt if it was not a subsisting debt at the date of the father's death. If therefore the execution of the decree against the father was barred at the date of his death the creditor cannot bring a suit against the son to enforce payment of the debt of record though the period of six years from the date of the judgment has not expired.

The answer to the second question therefore is that if the suit against the son is upon the original cause of action, the law of limitation applicable thereto is the same as that which would have applied to the suit if it had been brought against the father himself; but if the suit is for the recovery of the debt of record arising from the decree against the father, the article of the law of limitation applicable to it is No. 120 of the second schedule to Act XV of 1877.

As regards the third question referred to the Full Bench, it is admitted by both sides that in the view which we have expressed on the first and the second questions this question becomes unnecessary and as the point is one of considerable difficulty involving a consideration of several English and Indian decisions cited before us, I prefer to express no opinion on it in a case in which the question does not really arise, beyond observing that, for purposes of giving

(1) L.R., 23 Q.B.D., 316.

a fresh starting point for computing the period of limitation, payment of interest or part payment of principal by a receiver or guardian may stand on a different footing than an acknowledgment of liability made by him.

RUSSELL, J.—I concur.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar and Mr. Justice Russell.

PONNUSAMI MUDALI (DEFENDANT), APPELLANT,

v.

MANDI SUNDARA MUDALI (PLAINTIFF), RESPONDENT.*

1903. August 4. October 15.

Civil Procedure Code—Act XIV of 1882, *ss.* 525, 540, 620—*Application to file an award—Registration as a suit—Award set aside—Application for revision—Maintainability—Right of appeal from order setting aside award.*

An application was made to file an award in a District Munsif's Court and was registered as a suit. The defendant appeared, and the District Munsif took evidence, whereupon, he refused to file the award and set it aside, being of opinion that the arbitrators had been guilty of misconduct in making the award. The applicant filed a civil revision petition in the High Court :

Held, (1) that the order refusing to file the award and setting it aside was a decree, and (2) that an appeal lay against that decree.

APPLICATION to file an award. Plaintiff had applied to the District Munsif of Vellore, under section 525 of the Code of Civil Procedure, to file an award made by two arbitrators, to whom plaintiff and defendant had referred certain differences. The application was registered as a suit, whereupon defendant appeared, upon notice, and opposed the filing of the award. The District Munsif took evidence and, being of opinion that the arbitrators had been guilty of misconduct in making the award, refused to file it and set it aside. The plaintiff then applied to the High Court for revision of the District Munsif's order.

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* Appeal No. 20 of 1903 under section 15 of the Letters Patent against the judgment of Sir Arnold White, Chief Justice, dated 2nd February 1903, in Civil Revision Petition No. 267 of 1902, presented under section 622 of the Code of Civil Procedure to revise the decree of S. Raghunathaiya, District Munsif of Vellore, in Original Suit No. 359 of 1900, dated 31st March 1902.