had no interest. It follows that the twenty-third defendant was a person interested in the whole suit as well as in the particular subject matter of the reference and that, as he was not a party to the reference, the order referring the matter to the arbitrators was *ultra vires* and without jurisdiction. In this view all subsequent proceedings must be regarded as infructuous and must be set aside. The decree of the lower Court must be reversed and the Subordinate Judge must be directed to deal with the suit on the merits. Costs will abide the result.

K.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.*

RANGASWAMI CHETTI (PLAINTIFF), APPELLANT,

*v.*

THANGAVELU CHETTI (DEFENDANT), RESPONDENT.*

1919, January 29, 30 and February 10.

*Indian Limitation Act (IX of 1908), ss. 6, 14, 15 and 19—Assignee of a debt due to a minor—Suit by assignee—Limitation for such suit, whether saved in right of minor assignor—Attachment of debt prior to sale—Time till sale, whether can be deducted in computation—Causes of action for attachment and suit, whether same—Acknowledgment in a deposition—Denial of a subsisting debt—Sufficiency of acknowledgment.*

Where a decree-holder, having attached in 1913 a book-debt due in 1911 to a minor judgment-debtor, sold it in auction and purchased it himself in February 1915, sued in March 1915 to recover it from the defendant who pleaded the bar of limitation:

*Held*, (1) that the assignee of a debt due to a minor could not avail himself of the privilege of the extension of limitation given by section 6 of the Limitation Act;

*Rudra Kant Surma Sircar* v. *Nobo Kishore Surma Biswas* (1883) I.L.R., 9 Calc., 663, followed;

(2) that section 15 of the Act did not operate to save limitation during the time the attachment was in force;

*Shib Singh* v. *Sita Ram* (1881) I.L.R., 13 All., 76, followed and *Beti Maharani* v. *The Collector of Etawah* (1895) I.L.R., 17 All., 198 (P.C.), referred to.

(3) that section 14 of the same Act was also inapplicable as the attachment proceedings were not based on the same cause of action as the suit to recover the debt;

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* Second Appeal No. 1116 of 1918.

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(4) that, on its appearing that the defendant stated in a deposition that there was once a debt but that he had discharged it, the statement did not amount to an acknowledgment within section 19, explanation 1 of the Act; *Bollaprogada Ramamurty* v. *Thamana Gopayya* (1916), 31 M.L.J., 21, followed; and (5) that the suit was consequently barred by limitation.

SECOND APPEAL against the decree of R. ANNASWAMI AYYAR, the Temporary Subordinate Judge of Cuddalore, in Appeal Suit No. 153 of 1916, preferred against the decree of K. SOURIRAJULU NAYUDU Garu, the District Munsif of Tirukkōyilūr, in Original Suit No. 148 of 1915.

The plaintiff was the assignee of a decree for money from one *D* who obtained the decree in Original Suit No. 138 of 1912 against two persons, one of whom was a minor. As the assignee of the decree, the plaintiff applied in execution to attach a book-debt due to the minor judgment-debtor; and the attachment was made in 1913, the debt being due in 1911; he subsequently brought it to sale and purchased it in Court auction and obtained a sale-certificate in February 1915. As the purchaser of the debt, he sued in March 1915 to recover it from the defendant who was the debtor. The plaintiff pleaded in bar of limitation that he was entitled to extension of time under section 6 of the Limitation Act; he also contended that the time during which the debt remained under attachment from 1913 to 1915 should be deducted in computing limitation for the suit on the debt under section 15 of the Act, and also relied on section 14 of the same Act as entitling him to exclude the time taken up by the attachment proceedings and objections thereto; he further relied on an acknowledgment said to be furnished by the statement contained in a deposition of the defendant, dated 3rd February 1914, which was in these terms:

"About one month after his (minor's father's) death, the stock that was in his shop was sold to me by his widow Soubhagyam Ammal for Rs. 180 and odd. There was a notebook kept by me. It was in the nature of a day book. It is missing. I have discharged the debt . . . "

The lower Courts dismissed the suit as barred by limitation. The plaintiff preferred this Second Appeal.

*S. Subrahmanya Ayyar* for the appellant.

*Thangavelu Chetti* for the respondent.

OLDFIELD, J. OLDFIELD, J.—I have had the advantage of reading the judgment, which my learned brother is about to deliver, and

as I agree with his conclusion, I deal only with the one important question we have to decide, whether the appellant is entitled to the extension of time he claims as transferee from a minor. It does not appear material that his transfer was not voluntary, but was effected by attachment followed by a sale of the debt and an order vesting it in him as purchaser; and I assume that time did not begin to run before the minor's acquisition of the cause of action. Appellant's contention is that he is entitled to the full extension of time, which the minor would have had, if the cause of action had remained his property or, in the alternative, to three years from the date, when his own ownership began.

This alternative contention can be dealt with shortly. It cannot be justified by any provision of the Limitation Act; for section 6 (3) is, as will be shown, the only one extending time for a person other than the one disabled and it is inapplicable to appellant, a transferee during the latter's lifetime. In fact, the argument in this form must rest solely on the tentative reasoning of WILSON, J., in *Rudra Kant Surma Sircar* v. *Nobo Kishore Surma Biswas*(1) that an alienation of the cause of action terminates the existing disability and on general principles carries with it the right to sue thereon, which the alienor on such termination would acquire. But, with all due deference, although on general principles the transferor's right to sue may pass with the cause of action, that goes no way towards answering the question whether it does so, when the operation of those principles has been interrupted by the special law, with which we are dealing, and special considerations have been introduced; and it is still necessary to meet the argument of the majority of the Court that the disabled person's right to an extension is personal and does not necessarily remain alive after an alienation by him.

Turning to appellant's argument in its wider form, I need not repeat my learned brother's references to the cases. For, although the actual current of authority, whatever its tendency here and in Bombay, is in respondent's favour, it is not strong enough to conclude the question. To turn then to the relevant

(1) (1883) I.L.R., 9 Calc., 663.

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provisions of the Limitation Act, their wording does not authorize appellant's contention and their intention, so far as it can be deduced, is against it.

Firstly as to the wording, section 6 (1) throughout refers to one person only, the person entitled to sue or apply for execution, and does not admit of the violent construction proposed by appellant, that, one person being referred to as disabled, that person or in the alternative his transferee, are referred to later in the clause as eligible for indulgence; and in my opinion the possibility of such construction is further negatived by the specification in clause (3) of one person, for whose benefit the right to indulgence inheres in a qualified form, the legal representative, to the exclusion of the transferees from the disabled person during his lifetime. Next section 8 can, it is argued, be regarded as extending time in favour not only of the minor or idiot concerned, but also of the person indirectly disabled from suing the transferee. But this interpretation of the reference to the person "affected by the disability" is inconsistent with the meaning of disability in sections 6 and 7, which are explicitly referred to and in which "disability" is used of the particular disabilities mentioned in the former, not of the disability to sue; and in any case section 8 is statedly ancillary to and restrictive of the concession granted in those sections and does not confer any substantive privilege. It has been suggested that the definition of 'plaintiff' in section 2, as including a person from or through whom the right to sue is derived, is relevant to the discussion. But it plainly is not so, since this part of the Act is throughout expressed, no doubt advisedly, with reference to the person entitled to sue.

We are on even firmer ground, when the intention of these provisions is considered. I respectfully concur in the opinion of the majority of the Court in *Rudra Kant Surma Sircar* v. *Nobo Kishore Surma Biswas*(1) that the privilege is personal and cannot be transferred with property or a right of action. I add only that, if the contrary were the case, section 6 (3) would be superfluous and section 7 an exception to the principle, for which no reason has been shown, since, if the privilege of one of the

(1) (1883) I.L.R., 9 Calc., 663.

persons jointly interested attaches to the cause of action, it must attach to it as a whole and the ability of one of such persons to give a discharge will be immaterial.

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In fact however the appellant's contention has been supported here, as it commended itself to WILSON, J., and might perhaps have commended itself in *Subramanya Pandya Chokka Talavar* v. *Siva Subramanya Pillai*(1) if a decision had been necessary on grounds of convenience or in order to avoid anomaly. It is a sufficient answer that inconvenience and anomaly are almost inevitable, where the general law is overridden by personal privilege and natural expectations founded on the former are disappointed. It may be added that, where, as in England, the law is as appellant contends that it should be construed here, anomaly and inconvenience are none the less to be apprehended. Darby and Bosanquet, Statutes of Limitation, Second Edition, page 399.

The Appeal fails and is dismissed.

SESHAGIRI AYYAR, J.—Plaintiff's assignor obtained a decree against two persons. It was assigned to the plaintiff. In execution of the decree, he attached a book debt due to his judgment-debtors from the present defendant. That debt became due in August 1911. The attachment was made in November 1913. Plaintiff himself became the purchaser of the debt and a certificate was issued to him on the 22nd February 1915. The present suit was brought on the 15th of March 1915. The question is whether the suit is in time.

SESHAGIRI AYYAR, J.

The first contention raised by the learned vakil for the appellant before us was that section 15 of the Limitation Act saved the bar because the attachment was pending between November 1913 and February 1915. This contention must be overruled. There is the direct decision of the Allahabad High Court in *Shib Singh* v. *Sita Ram*(2) to the effect that an attachment is not covered by the expression 'an injunction or order' in section 15 of the Limitation Act. The Judicial Committee in *Beti Maharani* v. *The Collector of Etawah*(3) held that in the case of an attachment before judgment section 15 will not save the bar. In that decision they expressly approve of

(1) (1894) I.L.R., 17 Mad., 316.
(2) (1891) I.L.R., 13 All., 76. (3) (1895) I.L.R., 17 All., 198 (P.C.).

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the principle enunciated in *Shib Singh* v. *Sita Ram*(1). In *Shunmugam* v. *Moidin*(2) it seems to have been suggested that the prohibitory order issued during the attachment would come within the meaning of section 15. That dictum cannot be regarded as good law in the face of *Beti Maharani* v. *The Collector of Etawah*(3). Therefore the first contention fails.

As regards the applicability of section 14, it is enough to say that the attachment proceedings are not based on the same cause of action as the suit to recover money on the book debt.

Another contention was that there was an acknowledgment which saved the limitation. Exhibit B which is relied on as containing the acknowledgment does not acknowledge a subsisting liability. The deponent distinctly says: "I have discharged the debt." This is not covered by explanation 1 to section 19. Following *Bollaparagada Ramamurthy* v. *Tammana Gopayya*(4), I hold that there is no acknowledgment of any subsisting liability.

The more difficult question relates to the applicability of section 6 of the Limitation Act. It would have been better if the Subordinate Judge had given a decision on the facts as to whether the original creditor of the defendant was a major at the time of the suit. That would have saved the discussion of the question of limitation which was very elaborately argued by the learned vakil for the appellant. But as he has not done so, it is necessary to deal with the abstract question of law. The point is whether the assignee of a minor can avail himself of the privilege of the extension of the period of limitation given by section 6 of the Limitation Act. In *Rudra Kant Surma Sircar* v. *Nobo Kishore Surma Biswas*(5) the matter was considered very fully by a Bench of five Judges. GARTH, C.J., said:

"It seems to me that the provisions in the Limitation Acts, which relieve minors and others under disability . . . are purely personal exemptions".

MITTER, J., MCDONELL, J., and PRINSEP, J., were all of the same opinion. In the referring judgment no doubt, WILSON and FIELD, JJ., seemed inclined to take the opposite view. This Full Bench decision has been followed in Calcutta in a number of cases.

(1) (1891) I.L.R., 13 All., 76. (2) (1885) I.L.R., 8 Mad., 229.
(3) (1895) I.L.R., 17 All., 193 (P.C.). (4) (1916) 31 M.L.J., 231.
(5) (1883) I.L.R., 9 Calc., 663.

In Bombay in the earlier cases ending with *Mahadev* v. *Babi*(1), the same view was taken. But in *Arjun Ramji* v. *Ramabai*(2), the learned Chief Justice and Justice HEATON were apparently inclined to reconsider the question. In the case before them it was the personal representative, not an assignee, that brought the suit. There is no direct decision in Madras. In *Subramanya Pandya Chokka Talavar* v. *Siva Subramanya Pillai*(3) doubt seems to have been thrown upon *Rudra Kant Surma Sircar* v. *Nobo Kishore Surma Biswas*(4). But there is no decision of the question. In *Ramanuja Ayyangar* v. *Sadagopa Ayyangar*(5) it was held that where for a debt due to a minor a bond was executed *benami* to the mother, the mother cannot avail herself of the extended period of limitation on the ground that the real owner was an infant. In this state of authorities it is desirable to consider closely the history and the language of section 6. In 3 & 4 Will. IV, cap. 27, the disability section is section 16. This was amended by 37 and 38 Vict., cap. 57, s. 3, and the amended section 16 provides:

"If such person shall have been under any of the disabilities hereinafter mentioned (that is to say) infancy, coverture, idiotcy, lunacy or unsoundness of mind, then such person or *the person claiming through him, etc.*"

It must also be remembered that in both 3 & 4 Will. IV, cap. 27, and 37 & 38 Vict., cap. 57, there was a definition of the term '*person through whom another claimed*' and it clearly included the assignee. With those statutes before them the Indian Legislature advisedly omitted the words "or persons claiming through or under them." It may be mentioned that even under the English section it is considered doubtful whether the assignee can get the benefit of the extended period. See page 399 of Darby and Bosanquet. But apart from that, if we come to the Indian Act, we find in section 6, clause (1), it is only the minor, the insane or the idiot who are mentioned as entitled to the benefit. Clause (2) speaks of successive disabilities to such persons. Clause (3) says that, where the disability continues up to the death of such a person, his

(1) (1902) I.L.R., 26 Bom., 730. (2) (1916) I.L.R., 40 Bom., 564.
(3) (1894) I.L.R., 17 Mad., 316 at p. 342. (4) (1883) I.L.R., 9 Calc., 663.
(5) (1905) I.L.R., 28 Mad., 205.

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legal representative may institute the suit. The special provision in favour of legal representatives, and the provision that such a representative can institute the suit after the death of the person who was under disability, make it clear that an assignee was not within the contemplation of the legislature and that the suits by such assignees during the lifetime of the disabled person should not have the benefit of the extended period. Clause (4) makes a similar provision in favour of the legal representative when there have been successive disabilities. It seems to me that on the principle *expressio unis personæ vel rei, est exclusio alterius*, section 6 should be regarded as not applicable to assignees from a minor. These considerations show that the legislature regarded that exemptions granted to minors were in the nature of personal privileges, which should not enure for the benefit of a bare transferee. In my opinion, therefore, the Appeal fails and must be dismissed. I agree with the order of my learned brother.

K.R.

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## APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Kumaraswami Sastri.*

1919, February, 12.

THE RAJA OF PITTAPURAM (EIGHTH CLAIMANT), APPELLANT,*

*v.*

THE REVENUE DIVISIONAL OFFICER, COCANADA (REFERRING OFFICER), RESPONDENT.

*Land Acquisition Act (I of 1894)—Acquisition of lands for building purposes—Wet lands in a zamindari—Occupancy rights of tenants, included—Valuation of lands, mode of—Interests of zamindar and tenant, how valued—Apportionment of compensation—Land, whether to be valued merely as wet lands or as house-site.*

Where wet lands in a zamindari are acquired by the Government under the Land Acquisition Act for extension of the village-site, the lands have to be valued in the first instance including all interests in it, and the amount so

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*Appeal No. 171 of 1918.