APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Seshagiri Ayyar.

1920, July, 14.

MUTHUVEERAPPA CHETTY (FIRST DEFENDANT), APPELLANT,

v.

ADAIKAPPA CHETTY AND ELEVEN OTHERS (PLAINTIFFS AND DEFENDANTS NOS. 3 TO 10), RESPONDENTS.*

Limitation—Accord and satisfaction—Annulment of satisfaction on the ground of coercion, effect of—Fresh cause of action for original claim, on annulment.

A debtor who satisfied, by payment, his creditor's claim for balance of money due, sued to annul the satisfaction on the ground of coercion and obtained a decree for refund.

Held, that the annulment gave the creditor a fresh cause of action upon the original claim, and time began to run from the date of annulment.

Ranee Surnomoyee v. *Shoshee Mookhee Burmonia*, (1868) 12 M.I.A., 244 and *Huro Pershad Roy* v. *Gopal Das Dutt*, (1883) I.L.R., 9 Calc., 255, at 259 (P.C.), followed.

APPEAL from the decree of A. NARAYAN NAMBIYAR, Temporary Subordinate Judge, Sivaganga, in Original Suit No. 74 of 1916.

The plaintiff in this case is the principal and the defendant his agent who was managing plaintiff's shop at Rangoon till 1905. The plaintiff having a claim against the defendant in respect of the agency preferred a complaint against him in 1907 of misappropriating bangles and had him arrested, and he was afterwards let out on bail. Then the defendant was induced to appoint an arbitrator and the plaintiff appointed another arbitrator to settle their differences, and the award of the arbitrators was that the defendant should pay the plaintiff Rs. 10,000 in full satisfaction of all the plaintiff's claims and that the prosecution should be dropped. On 30th November 1907, the defendant paid Rs. 7,000 and gave a hundi for Rs. 3,000. Then he refused to pay the balance of Rs. 3,000 and successfully sued to recover

* Appeal No. 80 of 1919.

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the Rs. 7,000 which he had paid on the ground that it was obtained by coercion. The plaintiff's suit for recovery of Rs. 3,000 on the hundi was dismissed for the same reason. All this took place on 8th December 1915. Thereupon, the plaintiff filed this suit on 7th November 1916 for an account of the agency and for recovery of the amount that might be found due. The defendant pleaded *inter alia* that nothing was due under the agency, and that the suit which was based on the original cause of action was barred by limitation. The Subordinate Judge holding that a fresh cause of action arose on 8th December 1915 passed a preliminary decree for accounts against the defendant.

The defendant preferred this appeal.

R. Kuppuswami Ayyar (with *V. Pattabhirama Ayyar*) for appellant.—The suit which is based on the original cause of action is barred by limitation, as more than three years have elapsed, and no circumstances are alleged which suspend or postpone the period of limitation, as provided by the Limitation Act. The plaintiff cannot claim any exemption which is not provided for by the Limitation Act.

K. Balasubrahmanya Ayyar for *A. Krishnaswami Ayyar* for respondent.—The claim is not barred by limitation. As soon as the High Court set aside the result of the award, a new cause of action arose; for so long as I had the benefit of the Rs. 10,000, I could not have sued and if I had sued I would have been met by the plea of satisfaction, however irregularly it might have been procured; *Mussumat Rance Surno Moyee* v. *Shooshee Mokhee Burmonia*(1), *Kangayya Appa Rao* v. *Bobba Sriramulu*(2), *Baijnath Sahai* v. *Ramgut Singh*(3), *Muthu Korakkai Chetty* v. *Madar Ammal*(4), *Surjiram Marwari* v. *Barhamdeo Persad*(5), *Doraisami Padayachi* v. *Vaidyalinga Padayachi*(6) and *Huro Pershad Roy* v. *Gopal Das Dutt*(7).

R. Kuppuswami Ayyar in reply. A new cause of action will arise only if the remedy by which satisfaction was obtained was *lawfully* open to the party. This is what is laid

(1) (1868) 12 M.I.A., 244. (2) (1904) I.L.R., 27 Mad., 143 (P.C.).
(3) (1896) I.L.R., 23 Calc., 775 (P.C.). (4) (1920) I.L.R., 43 Mad., 185 (F.B.).
(5) (1905) 1 C.L.J., 337 at p. 347. (6) (1917) 33 M.L.J., 46.
(7) (1883) I.L.R., 9 Calc., 255 (P.C.) at 259.

down in *Mussumat Ranee Surno Moyee* v. *Shooshee Mokhee Burmonia*(1). The creditor cannot take the law into his own hands. For an accord and satisfaction it is the debtor's voluntary act of satisfaction that constitutes the plea. If the debtor does not consent to the satisfaction, there is no satisfaction.

WALLIS, C.J.

WALLIS, C.J.—The plaintiff in this case is a principal and the defendant an agent. The plaintiff having a claim against the defendant preferred a complaint against him of misappropriating bangles and had him arrested, and he was afterwards bailed. Then the defendant was induced to appoint an arbitrator and the plaintiff appointed another arbitrator to settle their differences, and the award of the arbitrators was that the defendant should pay the plaintiff Rs. 10,000 in full satisfaction of all the plaintiff's claims and that the prosecution should be dropped. The defendant paid Rs. 7,000 and gave a hundi for Rs. 3,000 at the time. Then he refused to pay the balance of Rs. 3,000 and successfully sued to recover the Rs. 7,000 which he had paid on the ground that it was obtained by coercion. It was held by this Court reversing the decision of the Subordinate Judge that he had been induced to consent to this arbitration by coercion and that the money so obtained from him in the circumstances which I have mentioned must be refunded. Now, the plaintiff-principal accepting that state of things brings this suit and alleges that, the agreement evidencing the settlement of the first defendant's agency accounts having been annulled, the cause of action with respect to delivery by the first defendant of accounts has accrued to the plaintiff afresh. That is the plaintiff's case.

The defendant pleaded that there had been no arbitration and no award at all. The Subordinate Judge finds that there was no binding agreement to refer to arbitration which is not questioned, but he mentions that the findings of fact of this Court in the other suit were accepted by both the parties, and included findings that there had in fact been an arbitration and a payment by the defendant pursuant to it. The result of the previous suit was that the present plaintiff had to pay back the

(1) (1868) 12 M.I.A., 244.

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sum which he had accepted pursuant to the arbitration from the defendant in full satisfaction of all his claims against the defendant. The question then is whether as the result of the previous suit he has not acquired a fresh cause of action in the nature of his original cause of action for an account which was satisfied so long as the adjustment to which I have referred stood. In my opinion he has.

It is unnecessary to refer to all the cases which were cited before us. There is *Mussumat Ranee Surno Moyee* v. *Shooshee Mokhee Burmonia*(1), a decision of the Privy Council which has been explained by their Lordships in *Huro Pershad Roy* v. *Gopal Das Dutt*(2). The latter case contains, at page 259, a clear statement of the principle which is applicable to this case. Their Lordships say:

"The effect of that case [*Mussumat Ranee Surno Moyee* v. *Shooshee Mokhee Burmonia*(1)] may be shortly stated. The zamindar brought a certain patni taluk to sale, and sold it to a purchaser who was put in possession of it, and out of the purchase money the arrears of rent were paid. Subsequently this sale was set aside for irregularity; the zamindar had to refund the purchase money received by her, and the patnidar, who succeeded in setting it aside, obtained also the mesne profits for the time during which he was ousted. Under those circumstances this Committee, whose judgment was delivered by Sir JAMES COLVILE, observe: 'It is clear that until the sale had been finally set aside, she'—that is the plaintiff—'was in the position of a person whose claim had been satisfied, and that her suit might have been successfully met by a plea to that effect.' In other words, the effect of the judgment of this Board is, that under the peculiar circumstances, the patnidar having recovered possession, together with mesne profits, it was equitable that he should pay the amount of rent that was in arrear; but that amount of rent did not accrue until the sale of the patni had been set aside, and, therefore, until that time the statute could not run."

Applying those observations to the present case, it is equitable that the plaintiff should be allowed to prefer a fresh claim seeing that he has been deprived of the satisfaction which he had originally obtained. The fact that satisfaction was obtained by coercion was good reason for ordering the money to be

(1) (1868) 12 M.I.A., 244. (2) (1882) I.L.R., 9 Calc., 255 (P.C.).

refunded but is no reason for depriving the plaintiff of all remedy on his original claim. In the case cited, the Privy Council say that a fresh claim for the arrears of rent accrued when the patni sale was set aside, and that until the patni sale had been set aside the statute could not run. That, in my opinion, amounts to saying that a fresh cause of action arose. Both in that case and in this, the statute ran as against the original claim. But when the original claim was satisfied there was an end of the statute running in respect of that cause of action, and on the annulment of that satisfaction a fresh cause of action arose and the statute began to run again. If there was a fresh cause of action, this suit is in time whatever article is applicable. The appeal therefore fails and is dismissed with costs.

WALLIS, C.J.

SESHAGIRI AYYAR, J.—I agree.

SESHAGIRI AYYAR, J.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

ALAMELU AMMAL AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

BALU AMMAL AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1914, October 15.

Hindu Law—Widow—Will by widow bequeathing husband's estate absolutely to her three daughters—Oral partition by daughters—Share taken absolutely by each—Death of one of the daughters, leaving her daughter as heir—Suit by surviving daughters to recover deceased's share as heirs of their father—Estoppel—Oral partition whether valid—Survivorship, whether extinguished—Rights of reversioners.

A Hindu widow, inheriting her husband's estate, treated it as her absolute property and bequeathed it absolutely to her three daughters, who divided it into three equal shares by an oral partition and took each one share purporting to take it absolutely under their mother's will. One of the daughters died leaving a daughter as her heir who took possession of the deceased's share. The two surviving daughters sued, as heirs of their father, to recover the share of the deceased daughter from her daughter who was in possession:

Held, that the plaintiffs were not estopped from claiming to recover the property as heirs of their father.

* Second Appeal No. 119 of 1913.