jointly and I have no doubt that it was never considered necessary to make any such specific provision. The judgment in that case, as my learned brother pointed out, was founded on a previous judgment under the Code of Civil Procedure and I see no reason why it should be necessary to import into this Act anything arising out of the Code of Civil Procedure, even if such a contention could be justified on the true construction of the Code.

As for inconvenience, it seems to me that that question is practically resolved by the provision which says that where a creditor has actually applied in separate petitions against persons jointly liable the Court has power to consolidate the proceedings for the convenience of all parties. I quite agree that there must be a cause of action which is joint to all the persons who are sought to be adjudicated and that it would not be sufficient to allege that persons were joint debtors but had committed separate acts of insolvency, but where the debt and the acts of insolvency are joint, I have no doubt that a petition will lie against persons alleged to be jointly liable to the creditor.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Ramesam.

UMMATHU (PLAINTIFF), APPELLANT,

v.

PATHUMMA AND OTHERS (DEFENDANTS NOS. 1 TO 4), RESPONDENTS.*

1921, February 21.

Limitation Act (Indian) (IX of 1908), ss. 4 and 14—Suit for dower—Period of Limitation expiring during Christmas holidays—Suit filed in a Subordinate Judge's Court, on its Small Cause side on the re-opening day—Plaint, returned for want of jurisdiction on the Small Cause side—Plaint presented as an Original Suit in the same Court on its regular side—Limitation, bar of.

Where the period limited for the institution of a suit for dower expired on a day when the Court was closed for the Christmas holidays, and the suit was instituted on the re-opening day as a Small Cause suit in the Court of a Subordinate Judge on its Small Cause side and on the plaint being returned after some days for want of jurisdiction it was filed on the next day in the

* Second Appeal No. 1105 of 1920.

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same Court as an original suit and the defendant pleaded that the suit was barred by limitation,

Held, that the time during which the suit was pending on the Small Cause side of the Court and which the plaintiff was allowed to deduct under section 14 of the Limitation Act could not be tacked on to the period during which the Court was closed, under section 4 of the Act, so as to save the bar of limitation.

SECOND APPEAL against the decree of V. PANDRANG RAO, the District Judge of South Malabar, in Appeal Suit No. 503 of 1919, preferred against the decree of G. L. D'CRUZ, the Subordinate Judge of Cochin, in Original Suit No. 11 of 1918.

The material facts are set out in the Judgment.

P. G. Krishna Ayyar for appellant.

T. S. Viswanatha Ayyar and *P. R. Narayana Ayyar* for respondents.

SPENCER, J. SPENCER, J.—The plaintiff had three years from the death of her husband to institute this suit for dower. As he died on 30th December 1914, the last day for presenting the plaint was 30th December 1917.

She actually presented it on 3rd January 1918 in the Small Cause Court of Cochin, that being the day when that Court re-opened after the Christmas holidays. The plaint was returned for want of jurisdiction on 6th February, as suits by a Muhammadan for dower are excepted from the cognizance of a Court of Small Causes by section 15 (1) and article 36 of the second schedule of the Provincial Small Causes Courts Act. The plaintiff re-presented the plaint on the following day in the Court of the Subordinate Judge of Cochin.

The question is whether the suit was in time. It would have been in time if it had been instituted on 3rd January as the Subordinate Court of Cochin was closed on 30th December when the period of limitation prescribed by the first schedule of the Limitation Act for such suits expired and it re-opened on 3rd January. The explanation to section 3 shows that a suit can be said to be instituted when the plaint is presented to the proper officer. This also is the view taken in *Haridas Roy* v. *Sarat Chandra Dey*(1) by a Bench of the Calcutta High Court.

(1) (1913) 18 I.C., 121.

The proper officer in this case was the Subordinate Judge of Cochin sitting on the original side, or the chief ministerial officer of his Court authorized under rule 14 of the Civil Rules of Practice to receive plaints. The plaint was not so presented till 7th February when more than three years had elapsed from the cause of action arising. The plaintiff wishes to have the benefit of section 4 of the Act and she would be entitled to it if she had presented her plaint on 3rd January to the proper officer, seeing that both Courts were closed till 2nd January. But a presentation to the wrong officer is not an institution of a suit at all. It has been clearly established by *Mira Mohidin Rowther* v. *Nallaperumal Pillai*(1), *Seshagiri Row* v. *Vajra Velayudam Pillai*(2) and *Ramalingam Ayyar* v. *Subbier*(3) that for the purposes of section 4 account cannot be taken of the closing and re-opening of any other Court than that in which the suit was rightly instituted.

Such being the effect of section 4, it may next be considered whether section 14 will avail the plaintiff so as to bring her suit within the limitation period. Under section 14 it might, under certain circumstances, be possible to exclude the time between 3rd January and 6th February as being a time when the plaintiff was prosecuting with due diligence another civil proceeding against the same party for the same relief, but even if this were done, it could not operate to revive a claim which became time expired by the plaintiff's failure on 3rd January to institute a suit in a Court of competent jurisdiction. The period allowed by section 14 cannot be tacked on to the period during which the proper Court was closed [see *Ramalingam Aiyar* v. *Subbier*(3)] as the regular suit cannot be treated as a continuation of the Small Cause suit in which the plaint was returned [see *Seshagiri Row* v. *Vajra Velayudam Pillai*(2).]

It has been held that the period requisite for obtaining a copy of judgment for the purpose of appealing can be tacked on to the period during which the Court that passed the decree appealed against was closed if it was too late to apply for a copy on the date when the judgment was pronounced [see

(1) (1913) I.L.R., 36 Mad., 131. (2) (1913) I.L.R., 36 Mad., 482.
(3) (1918) 8 L.W., 256.

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Saminatha Ayyar v. *Venkatasubba Ayyar*(1)] thus showing that sections 12 and 4 may be combined, this being because section 4 applies to applications (for copies) as well as to suits. But it is necessary that the appellant should have a subsisting right to appeal when he applied for the copy [see *Tukaram Gopal* v. *Pandurang Sadaram*(2), *Venkata Row* v. *Venkatachella Chetty*(3) and *Siyadat-un-nissa* v. *Muhammad Mahmud*(4)], and that he should apply on the re-opening day [see *Subramanyam* v. *Narasimham*(5)].

But it has never been held that the period which may be excluded under section 14 can be tacked on to the period when the Court having jurisdiction was closed under section 4. The reason is that the Courts are different, and a plaintiff who fails to institute his suit in the Court having jurisdiction before the limitation period expires, or on the re-opening date if the period expires during the vacation of that Court, has no longer a valid and subsisting cause of action.

It makes no difference that the same Judge presides over both Courts or even that the same ministerial officer is deputed to receive plaints on the Original as well as the Small Cause side, for section 33 of the Provincial Small Cause Courts Act declares that they shall be deemed to be different Courts for the purposes of that Act and the Code of Civil Procedure. Sections 15 to 26 of the Code of Civil Procedure which deal with the institution of suits are thus affected with the consequence that a suit instituted on the Small Cause side cannot, for the purpose of section 4 of the Limitation Act, be regarded as a suit instituted in "the Court" having jurisdiction to hear original suits.

The Second Appeal is dismissed with costs.

RAMESAM, J.

RAMESAM, J.—I agree in holding that the Second Appeal should be dismissed with costs. The facts are stated in my learned brother's judgment and need not be repeated. In deciding that the suit was time barred, the Courts below relied on *Mira Mohidin Rowther* v. *Nallaperumal Pillai*(6) and *Seshagiri*

(1) (1904) I.L.R., 27 Mad., 21.
(2) (1901) I.L.R., 25 Bom., 584.
(3) (1905) I.L.R., 28 Mad., 452.
(4) (1897) I.L.R., 19 All., 342.
(5) (1920) I.L.R., 43 Mad., 640.
(6) (1913) I.L.R., 36 Mad., 181.

Row v. *Vajra Velayudam Pillai*(1). In the first of these cases, the proper Court was not closed on the day on which the plaint was first presented. The facts in the second case are not quite similar to the first. As ascertained from the printed papers, it appears that the proper Court was closed on the day of the first presentation but had re-opened some days before the re-presentation. It may be said that these cases are distinguishable on the ground that, in both of them, the proper Court had been opened for some days before the re-presentation which is not the case with the appeal before us. But this does not conclude the matter.

I may first clear the ground by observing that the days from 3rd January to 6th February ought to be obviously excluded from computation under section 14 of the Limitation Act. The only question for consideration is whether the days from 31st December to 2nd January can be excluded in favour of the appellant. It is conceded on all hands that the language of section 4 enables them to be so excluded, if the plaint is re-presented on the re-opening day where the period of limitation expires on a holiday, or, in other words if the holidays follow any other period that can be excluded from computation under another section, such as section 12 or section 15. But can the appellant get the benefit of section 4, if the holiday precedes such period? This being the real question it is necessary to consider only the cases involving the joint application of section 4 with some other section of the Act relating to computation. First, we have a group of cases relating to the joint applications of sections 4 and 12. The appellant relies on *Siyadat-un-nissa* v. *Muhammad Mahmud*(2), *Tukaram Gopal* v. *Pandurang Sadarm*(3), *Pandarinath* v. *Shankar*(4) and *Saminatha Ayyar* v. *Venkatasubba Ayyar*(5) and the respondent relies on *Venkata Row* v. *Venkatachella Chetty*(6), *Tanjore Palace Estate* v. *Andi Ramiahchetty*(7), *Subramanyam* v. *Narasimham*(8), and *Masilamani* v. *Arumuga Mudali*(9). *Saminatha Ayyar* v. *Venkatasubba Ayyar*(5) cannot help the appellant. In that case the judgment was

(1) (1913) I.L.R., 36 Mad., 482.
(2) (1897) I.L.R., 19 All., 342.
(3) (1901) I.L.R., 25 Bom., 584.
(4) (1901) I.L.R., 25 Bom., 586.
(5) (1904) I.L.R., 27 Mad., 21.
(6) (1905) I.L.R., 28 Mad., 452.
(7) (1911) 11 I.C., 389.
(8) (1920) I.L.R., 43 Mad., 640.
(9) (1920) 12 L.W., 460.

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delivered on the last day before the holidays, at a time when it was impossible to make an application for copies. The Court being closed for the vacation, the application was made on the re-opening day and their Lordships held that it being impossible for the appellant to make an application earlier, the whole time that elapsed between the date of judgment and the date of application must be regarded as time taken for obtaining copies within the meaning of section 12. They did not invoke the aid of section 4 (then section 5 of the Act of 1877) in arriving at their conclusion. If there was a similar disability in applying for copies (which does not appear from the facts) in *Tukaram Gopal* v. *Pandurang Sadaram*(1) and *Pandarinath* v. *Shankar*(2), I agree with these decisions also. The actual *ratio decidendi* of the judgments, however, depends on the use of section 5 of the Limitation Act of 1877. It was held that an application for copies may be made so long as the right of appeal was subsisting, a proposition with which I agree, and that not only the period following the application for copies but all the prior holidays can be excluded. I do not see any warrant for the latter proposition in the Limitation Act, unless section 4 can be construed liberally as a section generally enabling exclusion of holidays from computation. If such construction is permissible, the qualification that the right of appeal should be subsisting on the date of application is unnecessary. That such a construction cannot be made is clear from *Venkata Row* v. *Venkatachella Chetty*(3), *Tanjore Palace Estate* v. *Andi Ramiahchetty*(4), *Subramanyam* v. *Narasimham*(5), *Masilamani* v. *Arumuga Mudali*(6), from *Mira Mohidin Rowther* v. *Nallaperumal Pillai*(7), and *Seshagiri Row* v. *Vijra Velayudam Pillai*(8), from *Shevdas Daulatram* v. *Narayan*(9) and from other cases to be cited below. That being so I doubt the correctness of *Siyadat-un-nissa* v. *Muhammad Mahmud*(10), *Tukaram Gopal* v. *Pandurang Sadaram*(1) and *Pandarinath* v *Shankar*(2). In passing, I may observe that these cases relate to appeals

(1) (1901) I.L.R., 25 Bom., 584.
(2) (1901) I.L.R., 25 Bom., 586.
(3) (1905) I.L.R., 28 Mad., 452.
(4) (1911) 11 I.C., 339.
(5) (1920) I.L.R., 43 Mad., 640.
(6) (1920) 12 L.W., 460.
(7) (1913) I.L.R., 36 Mad., 131.
(8) (1913) I.L.R., 36 Mad., 482.
(9) (1912) I.L.R., 36 Bom., 268.
(10) (1897) I.L.R., 19 All., 342.

and in the circumstances of these cases, the delay might have been excused under section 5A of the Act of 1877 (section 5 of the present Act) a course not available for suits. I may also observe that no question relating to section 12 can arise in the case of suits. Passing on to the joint application of section 4 with other sections of the Act, I find that it was held in *Bai Hemkore* v. *Masamalli*(1) by JENKINS, C.J., and ASTON, J., that section 4 cannot be tacked on prior to the period of extension given by section 19. Again, *Makund Ram* v. *Ramraj*(2) and *Ramalingam Aiyar* v. *Subbier*(3) are on all fours with the present case and are authorities against the appellant. *Abhoya Churn Chuckerbutty* v. *Gour Mohun Dutt*(4) also supports the respondents' contention. I agree with them and hold that the suit is barred by limitation. K.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Ramesam.

1921, March 15.

TARACHAND (PLAINTIFF), PETITIONER,

v.

THE MADRAS AND SOUTHERN MAHRATTA RAILWAY COMPANY, LIMITED (DEFENDANTS), RESPONDENTS.*

Limitation Act (IX of 1908), arts. 31 and 62—Railways Act (Indian) (IX of 1890), sec. 56—Suit by consignor of goods for surplus sale-proceeds—Suit against the Company—Sale of goods under section 56 of the Railways Act—Suit for compensation, distinct from suit for surplus sale-proceeds—Money had and received—Applicability of art. 31 or 62, Limitation Act.

A suit by the consignor of goods by a Railway Company for the recovery of the surplus sale proceeds realized by the Company by sale of the goods under section 56 of the Indian Railways Act, is governed by article 62 and not article 31 of the Limitation Act.

M. & S.M. Ry. Co., Ltd. v. *Haridoss Bammalidoss* (1918) I.L.R., 41 Mad., 871, referred to.

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(1) (1902) I.L.R., 26 Bom., 782. (2) (1916) 14 A.L.J., 310.
(3) (1918) 8 L.W., 256. (4) (1875) 24 W.R., 26, 28.

* Referred Case No. 18 of 1920.