APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Curgenven.

SREE RAJAH PARTHASARATHY APPA RAO (PLAINTIFF), APPELLANT,

1926, September 24.

v.

SUBBA RAO AND THREE OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation Act (IX of 1908), arts. 89 and 120—Pleader and client—Several cases entrusted to same vakil—Agency in each case, separate and terminating at the end of each case—Suit for accounts against legal representatives of pleader—Limitation.

A pleader engaged by a client for several cases died without finishing some of them. In a suit by the client after the pleader's death against his sons for an account of the moneys received by their father in all the cases and for the balance due to the plaintiff,

Held that the pleader was not a general agent of the client so as to entitle the client to say that the agency terminated only on the death of the pleader, that the engagement in each case was separate, that the agency in respect of each case terminated at its end, that article 89 of the Limitation Act (IX of 1908) was applicable and that no new cause of action arose as against the sons on the death of their father so as to entitle the client to say that article 120 was applicable. *Arunachalam Chetty* v. *Raman Chetty*, (1914) 16 M.L.T., 614, followed. *Bindraban Behari* v. *Jamuna Kunwar*, (1903) I.L.R., 25 All., 55, dissented from.

APPEAL under clause 15 of the Letters Patent against the judgment of Mr. Justice PHILLIPS in Second Appeal No. 96 of 1923 preferred against the decree of Subordinate Judge's Court of Kistna at Ellore in Appeal Suit No. 65 of 1922 preferred against the decree of the Additional District Munsif of Ellore in Original Suit No. 204 of 1921.

The facts are given in the judgment.

* Letters Patent Appeal No. 124 of 1924.

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P. Chenchiah for *P. Venkataramana Rao* for appellant.

S. Varadachari and *V. Suryanarayana* for respondent.

JUDGMENT.

ODGERS, J. ODGERS, J.—In this case the plaintiff, a zamindar, sued the legal representatives of a pleader who was employed to conduct certain summary suits, etc., in Bhimavaram for the plaintiff, asking for a decree for about Rs. 1,800 being the amount due from the deceased pleader to the zamindar on account of money received and not accounted for by him. Now the Subordinate Judge after calling for findings as to what suits the pleader had appeared in and when those were disposed of, held that only 22 suits were disposed of before the institution of this suit; and the most important point perhaps urged by Mr. Chenchiah for the appellant in Letters Patent Appeal from the judgment of my brother PHILLIPS (who dismissed the Second Appeal) is the point of limitation. Mr. Chenchiah urges the following points: Firstly that there was a general agency that is to say, that the pleader was what is sometimes called a "standing vakil" to the zamindar and therefore his agency must be taken to have extended from 1916 when he was first engaged, to his death in March 1918. Now this contention was not only negatived by my brother PHILLIPS but by the Subordinate Judge also, chiefly on the authority of the case *Saffron Walden Second Benefit Building Society* v. *Rayner*(1) where the Lords Justices held that there was no such thing as an office of a Solicitor and Lord Justice JAMES points out that a solicitor is a man's solicitor when he chooses to employ him and in the matter in which he is so employed. Lord Justice BRAMWELL says that

(1) (1880) 14 Ch. D., 406.

"a man is solicitor for a another when that other has occasion to employ him as such."

It is of course not disputed that in our practice the pleader has to file a separate vakalat for every suit that he institutes on behalf of his client. And that was so in the present course of employment; a separate vakalat being also filed by the pleader in each execution proceedings. So that in my opinion this contention must be negatived.

Then it was contended that even if his agency was not general his accounts were; that is to say, that the pleader maintained an open current account with the client and that the account instead of being closed as each suit was disposed of, simply ran on in the ordinary way, familiar to us, as payments by the employer and drawings against those payments by the pleader. Now that really is a pure matter of surmise because the only accounts that we have in evidence are contained in Exhibit R which in my opinion negatives any such idea. There, the suits are kept separate, the expenses for each execution petition are set out and there is no ground for saying on such accounts as we have, that there was anything in the nature of an open running account between the client and his pleader.

Now then with regard to limitation. Mr. Chenchiah strongly contended before us that there was a liability to account outstanding at the death of the pleader when the agency terminated and that therefore every item of account within 3 years from the date of the death of the pleader must be taken into account in this suit. He argued that a new cause of action arises as against the legal representatives and that therefore he is entitled to reckon 3 years, not from the date of the termination of each suit, but from the date of the death of the pleader when the agency terminated. Now in support of this

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proposition we have been referred to *Kumeda Charan Bala* v. *Asutosh Chattopadhyaya*(1), *Kali Krishna Pal Chowdhry* v. *Srimati Jagattara*(2) and *Bindraban Behari* v. *Jamuna Kunwar*(3). It is noteworthy that no Madras case has been cited, although one is to be found in *Natasayyan* v. *Ponnusami*(4) to this effect. In fact our law as laid down in Madras is in favour of the opposite view. *Natasayyan* v. *Ponnusami*(4) has been overruled in *Mallesam Naidu* v. *Jugala Panda*(5) the view which is also supported by *Periasami Mudaliar* v. *Seetharama Chettiar*(6) and there is direct authority in *Arunachalam Chetty* v. *Ruman Chetty*(7). Mr. Chenchiah tried to distinguish this case on the ground that there the suit was barred when instituted, being more than 3 years after the death of the agent, and that therefore it could not apply to the principle for which he was contending. But the judgments clearly show that the agent died in April 1919 and the suit was brought in December of the same year. The learned Judge held that there was no separate cause of action as against the sons, that is to say, the action against the sons is not different from that against the father, and as it was barred against the father after his life, it was also barred against the sons. Mr. Justice SPENCER in his judgment in that case distinctly says that *Natasayyan* v. *Ponnusami*(4) has been overruled by the two latter Madras cases referred to above and that the matter falls under article 89 of the Limitation Act. It was faintly suggested on the authority of the case in Calcutta Weekly Notes that as legal representatives are not mentioned in article 89, that article can have no application to a suit like the present. That in my view

(1) (1912) 17 C.W.N., 5.
(2) (1868) 2 B.L.R., 139.
(3) (1903) I.L.R., 25 All., 55.
(4) (1893) I.L.R., 16 Mad., 99.
(5) (1900) I.L.R., 23 Mad., 292 (F.B.).
(6) (1904) I.L.R., 27 Mad., 243 (F.B.).
(7) (1914) 16 M.L.T., 614.

is distinctly overruled by the case in *Arunachalam Chetty* v. *Raman Chetty*(1) and it is pointed out by Mr. Varadachariar that there are many articles which would be reduced to absurdity if this contention were applied to them, for instance, articles 78 and 79. The column under which these articles appear is headed "Description of suit." To my mind the omission of any mention of legal representatives in the words under "Description of suit" does not mean that the article is not intended to apply to a suit against the legal representatives in order to let in article 120. It seems to me that in this case we ought to follow the decisions in *Arunachalam Chetty* v. *Raman Chetty*(1) and *Mallesam Naidu* v. *Jugala Panda*(2) and *Periasami Mudaliar* v. *Seetharama Chettiar*(3) and no reason has been shown why any of these decisions should be held to be inapplicable to the present case. It seems to me therefore that the appeal fails on all the points put forward and must be dismissed with costs.

CURGENVEN, J.—The only issue we have to decide in this Letters Patent Appeal is that of limitation. The appeal is taken against the judgment of PHILLIPS, J., in second appeal affirming the appellate judgment that such claims as would be barred against the pleader himself are barred against his sons and legal representatives, the defendants.

I think there can be no doubt that a separate agency began and terminated with each suit or other proceeding. It is true that there is an order of appointment (Exhibit B-2) under which the pleader was to conduct the estate litigation, but it did not amount to a general power-of-attorney, and it has not even been suggested that it would of itself have given the pleader authority to conduct the suits. That was furnished by the

(1) (1914) 16 M.L.T., 614. (2) (1900) I.L.R., 23 Mad., 292.
(3) (1904) I.L.R., 27 Mad., 248.

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vakalat executed in each case, and it was the vakalat therefore that created the agency. It is then said that, granting so much, the agency did not come to an end with the suit, but continued until the pleader had accounted to his principal or had refused to account. Even assuming this to be so, it is acknowledged in the plaint that in some instances accounts had been rendered, and since there is no evidence on the record to show which cases these were, it is not possible to say, in any particular case, that account was not rendered. It must be taken, I think, that the agency in a given case came to an end with the case, and this assumption is the more permissible since we find that separate vakalats were executed for suits and for execution proceedings.

Thus, had the suit been against the pleader himself, each proceeding he had taken under a separate vakalat would have furnished the basis for an account to be rendered, and time would have run from the date of termination of the proceeding. Would the rule of limitation be different, now that the father is dead and the suit is against the sons?

The answer to the question depends upon whether the sons were sued upon a cause of action different from that which was available against the father. In other words, did a fresh cause of action arise upon the father's death? The question, I think, is to be answered in the negative both upon general principles and upon authority. Suppose the father has been sued and had died pending suit. There is no doubt whatever, I suppose, that the sons could have been substituted for him as his legal representatives and the suit continued. This must surely mean that the cause of action survived the father's death, and was available also against the sons. A legal representative, so far as the assets come into his hands, carries on the liability of the deceased in all cases where that liability does not lapse with the death. Of the

cases cited which appear to run counter to this doctrine, the only one in which the facts raise an issue strictly analogous to the present is *Bindraban Behari* v. *Jamuna Kunwar*(1). In that case it was not only held that a fresh cause of action arose, when, upon the death of the father, the money came into the defendant's hands but, further, that the suit against the son would not fall under article 89 of the Limitation Act, because the suit was not against the agent but against his legal representative. With all respect, I must dissent from both propositions; against the latter it has only to be pointed out that the Limitation Act classifies suits according to their "description" and that a suit of the description referred to in article 89 may be brought against the legal representative of an agent as well as against the agent himself, just as under article 78 the drawer's representatives may be sued upon a dishonoured bill of exchange. Against the doctrine that receipt of the money by the son creates a fresh cause of action, the Madras case relied upon by the learned Judge, *Arunachelam Chetty* v. *Raman Chetty*(2) appears to me to be clear authority from which I can see no reason to differ.

It may be, as was admitted in *Venkatacharyulu* v. *Mohana Pandya*(3) that the onus and methods of proof may differ when the suit is against a legal representative, and it may even be that the remedy would be different in kind; but those are no reasons for holding that a fresh cause of action arose when the assets liable for the claim came into the defendant's hands upon their father's death.

I agree therefore that this appeal must be dismissed with costs.

N.R.

(1) (1903) I.L.R., 25 All., 55 at 56. (2) (1914) 16 M.L.T., 614.
(3) (1921) I.L.R., 44 Mad., 214.