

1876  
May 29.

## APPELLATE CIVIL.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.*)

SKINNER (PLAINTIFF) v. ORDE AND OTHERS (DEFENDANTS).\*

*Act VIII of 1859, s. 308—Pauper Suit—Institution of Suit—Presentation of  
Plaint—Limitation.*

Where an application for permission to sue *in formâ pauperis* is numbered and registered, and deemed to be the plaint in the suit, not in consequence of proof of the plaintiff's pauperism, but in consequence of his abandoning his claim to sue as a pauper and paying for the stamps required for the institution of the suit, the date of such payment, and not the date of the application, must be taken, in computing the period of limitation, to be the date of the presentation of the plaint and the institution of the suit (1).

The plaintiff in this suit presented to the Subordinate Judge of Meerut on the 21st February, 1873, a petition for leave to sue as a pauper. This petition contained a statement of his claim to certain immoveable property and such particulars as are required in a plaint, the cause of action being stated to have arisen in August 1861. After various proceedings to which it is unnecessary for the purposes of this report to refer, the 27th November, 1874, was fixed for hearing the application; but on the 27th November the plaintiff, instead of following up his application, filed the stamps requisite for the institution of the suit. On the 29th December the Subordinate Judge directed that the application should be numbered and registered, and deemed to be the plaint in the suit.

At the hearing of the suit the Subordinate Judge held that it must be taken to have been instituted on the 27th November, 1874, and therefore dismissed it as barred by limitation.

The plaintiff appealed against this decision to the High Court.

Mr. *Conlan* and Pandit *Nand Lal*, for the appellant.

Mr. *Mahmood*, the *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), and Pandit *Bishambar Nath*, for the respondents.

\* Regular Appeal, No. 115 of 1875, from a decree of the Subordinate Judge of Meerut, dated the 6th July, 1875.

(1) Where an application to sue as a pauper is granted, and numbered and registered as a suit, the period of limitation should be reckoned, not from the day on which the application was granted, but from the day on which it was presented—*Seeta Ram v. Goluck*

*Nath*, Marsh. 174; S. C., 1 Hay, 378, and Ind. Jur. 66; *Bipro Pershad Mytee v. Kanye Deyee*, 1 W.R. 341; *Vinayak K. Dhavle v. Bhaú B. Sámvat*, 4 Bom. H. C. R., A. C. J., 39; and see the Indian Limitation Act, 1871, s. 4, Explanation.

The judgment of the Court was as follows :—

The cause of action in this suit accrued to the plaintiff in August, 1861, when his father died ; and the period during which the suit might legally be brought is 12 years. If the suit can be held to have been instituted on the 21st February 1873, the date on which the application for permission to sue *in formâ pauperis* was first presented to the Subordinate Judge of Meerut, it is clearly within time ; and there can be no doubt that, had the application of the 21st February, 1873, been granted, the suit would rightly be deemed to have been instituted on that date. But that application never was granted, and was indeed virtually withdrawn on the 27th November, 1874, by the plaintiff's offer to pay the amount of the fee chargeable on the plaint under the Court Fees Act before the inquiry into his pauperism had been concluded ; and his application was not numbered and registered and assumed to be the plaint in the suit under the provisions of s. 308, Act VIII of 1859, in consequence of proof of his pauperism, but in consequence of the payment by him of the proper fees. But there is no provision in the law which allows the application presented under s. 299 of the Code to be deemed the plaint in the suit when such application has been in effect revoked and superseded by the payment of the fees chargeable under the Court Fees Act. In such a case we conceive that the date of the presentation of the plaint and institution of the suit must be taken to be the date of the payment of the fees ; and we are therefore unable to rule that the lower Court has erred in declaring the present suit to have been instituted after the lapse of the period allowed by the law. We have no alternative but to dismiss the appeal with costs.

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RAM AUTAR AND OTHERS (JUDGMENT-DEBTORS) v. AJUDHIA SINGH AND OTHERS (DECREE-HOLDERS).\*

*Execution of Decree—Act IX of 1871, sch. ii, 167—Limitation.*

An application for the partial execution of a joint decree by one of the decree-

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\* Miscellaneous Regular Appeal, No. 50 of 1875, from an order of the Subordinate Judge of Gorakhpur, dated the 28th July, 1875.