

1886
 NARHAT RAM
 v.
 HARNAM DAS.

Calcutta High Court, and a case arose there—*Harrak Singh v. Tulsi Ram Sahu* (1)—first before the Division Bench, and afterwards before the Court in appeal, in reference to the number of days within which an appeal would be in time. In that case it was never suggested that the Calcutta High Court had no power to make the rule applied there. Again, in 1879, *Fazal Muhammad v. Phul Kurr* (2), the Full Bench of this Court had to consider what was the period of limitation which should be computed according to this rule, and in that case also it was never suggested that the rule was *ultra vires*. No such question was raised, and under the circumstances, although the ultimate origin of the rule cannot be traced, we must assume that it had a legal origin, and was not *ultra vires* of the Court. The appeal must be dismissed with costs.

STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, JJ., concurred.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

BALDEO (PLAINTIFF) v. BISMILLAH BEGAM AND OTHERS (DEFENDANTS).^{*}
Appeal—Death of defendant-respondent—Civil Procedure Code, ss. 368, 582—Act XV of 1877 (Limitation), sch. ii, No. 171B.

Art. 171B, sch. ii of the Limitation Act (XV of 1877), applies to applications to have the representative of a deceased defendant-respondent made a respondent.

THIS was a second appeal from a decree of the District Judge of Aligarh, affirming a decree of the Subordinate Judge dismissing the plaintiff-appellant's suit. While the appeal was pending the respondent died, and, upon the application of the appellant, the representatives of the deceased, namely, his widow and minor children, were made respondents in his place. This application was not made until after sixty days from the date of the respondent's death.

At the hearing of the appeal a preliminary objection was taken on behalf of the respondents, that the appellant's application to have them substituted for the deceased as his representative had

^{*} Second Appeal No. 1597 of 1885, from a decree of W. R. Barry, Esq., District Judge of Aligarh, dated the 20th May, 1885, confirming a decree of Maulvi Sami-ullah Khan, Subordinate Judge of Aligarh, dated the 25th April, 1885.

(1) 5 B. L. R., 47. (2) I. L. R., 2 All. 192.

not been made within the time prescribed for such applications by art. 171B, sch. ii of the Limitation Act, and that the appeal should therefore be dismissed.

Mr. C. Dillon, for the appellant.

Munshi Hanuman Prasad and Mir Zahur Husain, for the respondents.

In support of the preliminary objection reference was made to the judgment of Mahanood, J., in *Narain Das v. Lajja Ram* (1), and it was contended that as art. 171B of the Limitation Act referred to applications "under s. 368" of the Civil Procedure Code, "to have the representative of a deceased defendant made a defendant," and s. 582 of the Code provided that in Chapter XXI the word "defendant" should be held, as far as may be, to include a respondent, the period of limitation prescribed by art. 171B, must be regarded as applying to applications to have the representative of a deceased respondent added as respondent in his place.

For the appellant it was contended that the scope of art. 171B was limited to applications for making the representatives of a deceased defendant a defendant, and that the article did not refer to the substitution of a deceased respondent's representatives. The cases of *Lakshmi v. Sri Devi* (2) and *Udit Narain Singh v. Havi Gauri Prasad* (3) were cited; and it was contended that the only provision of the Limitation Act which applied to the case was art. 178 of sch. ii.

OLDFIELD, J. — We must give effect to the preliminary objection of the defendants-respondents, and hold that the application for substituting the names of the respondents was barred by art. 171B of the Limitation Act. That article refers to applications under s. 368 of the Civil Procedure Code, to have the representative of a deceased defendant made a defendant, and the time runs from the date of death. In the case before us the respondent who died is the defendant, and I think the article referred to applies in his capacity of defendant. On this ground I would dismiss this appeal with costs under s. 368 of the Civil Procedure Code.

TYRRELL, J. — I concur.

Appeal dismissed.

(1) I. L. R., 7 All. 694. (2) I. L. R., 9 Mad. 1.

(3) I. L. R., 12 Calc. 590.