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the appeal to them with costs; that a decree to that effect should now be made; and that the respondent should pay the costs of this appeal. Their Lordships will humbly advise Her Majesty to that effect.

Appeal allowed.

Solicitors for the appellant: Messrs. *Pyke and Parrott.*

APPELLATE CIVIL.

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April 2.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight and Mr. Justice Mahmood.

CHAJMAL DAS AND OTHERS (DEFENDANTS) v. JAGDAMBA PRASAD (PLAINTIFF).*

Appeal—Abatement—Death of plaintiff—respondent—Application by defendants—appellants for substitution—Application presented after the 1st July, 1888—Limitation—Civil Procedure Code, ss. 368, 582—Civil Procedure Code Amendment Act (VII of 1888), ss. 53, 66—Act XV of 1877 (Limitation Act), sch. ii, No. 175 C.

The plaintiff-respondent in an appeal pending before the High Court died on the 17th September, 1885. Subsequently *D* applied to the High Court to be brought on the record as legal representative of the deceased; on the 15th April, 1886, he was referred to a regular suit to establish his title as such representative, and on the 25th February, 1887, such suit was dismissed. On the 6th February, 1886, the defendants-appellants applied to the High Court for judgment; but the application was dismissed under the decision of the Full Bench in *Chajmal Das v. Jagdamba Prasad* (1). On 24th July, 1888, they applied to the High Court to bring certain persons upon the record as the legal representatives of the deceased plaintiff-respondent.

Held that the application having been made subsequent to the 1st July, 1888, when the Civil Procedure Code Amendment Act (VII of 1888) came into force, and being an entirely fresh application not in continuation of any former proceedings between the same parties, must be dealt with under that Act and not under the Civil Procedure Code as it stood before the amendment; and that as it was made more than six months after the death of the deceased plaintiff-respondent, the appeal abated, with reference to s. 368 of the Code and Art. 175C of the Limitation Act (XV of 1877).

Held also that the petitioners had not shown "sufficient cause" within the meaning of s. 338 of the Code for not making the application within the prescribed period. *Ram Jivan Mal v. Chand Mal* (2) referred to.

* Application in First Appeal, No. 59 of 1884, from a decree of Manvi Muhammad Abdul Basit Khan, Subordinate Judge of Mainpuri, dated the 31st March, 1884.

(1) I. L. R., 10 All., 260.

(2) I. L. R., 10 All., 587.

THIS was a reference to a Bench of three Judges by Straight and Mahmood, JJ. The facts are stated in the following order of reference.

STRAIGHT, J.—In order to make the preliminary questions that arise in this appeal by way of preliminary intelligible, the following facts may conveniently be stated :—

On the 20th July, 1883, one Jagdamba Prasad instituted a suit against his father, Narain Lal, and the present defendants-appellants and other persons, to avoid certain alienations which he alleged Narain Lal had made in favour of the other defendants in derogation of the plaintiff's rights as a member of a joint Hindu family consisting of himself and his father. He also sought partition of his share in the joint estate from that of his father's share. Narain Lal made no defence to the suit, but it was contested by the defendants, who are appellants upon the record in this Court. The Sub-Judge of Mainpuri decreed the plaintiff's claim, and upon the 15th April, 1884, the three defendants who had contested the suit filed an appeal in this Court. Upon the 17th September, 1885, Jagdamba Prasad died, leaving behind him his father, his mother, his widow and a daughter. The widow and the daughter are now out of the question because they are already dead. Subsequently one Durga Prasad, alleging himself to be the adopted son of Jagdamba Prasad, applied to this Court to be brought on the record of the appeal here in the character of his legal representative. This Court considered that it was desirable before doing so that Durga Prasad should establish, if he could, his title as the adopted son of Jagdamba Prasad, and he was accordingly relegated to a suit for this purpose, which suit was instituted, tried and determined against him. He therefore is now also out of the question. Subsequently the defendants, appellants in this Court, put in a petition alleging that by reason of the circumstance that the legal representatives of Jagdamba Prasad had not put in any petition to be brought upon the record to defend the appeal, the defendants-appellants were entitled to judgment; and the question that they raised by the petition went to the Full Bench, and the Full Bench decided in *Chajmal Das v. Jagdamba*

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Prasad (1) that art. 178 of the Limitation Law was applicable to the case. The next matter to be mentioned is that upon the 24th July, 1888, the defendants-appellants put in a petition praying that Narain Lal and Musammat Genda Kuar should be brought upon the record as the legal representatives of Jagdamba Prasad, so that by their being made parties to the appeal this Court might proceed to dispose of the question raised by the former petition, which was put in by the petitioners on the 8th February, 1886. It is this petition that has come before us to-day, and it has been supported by Mr. *Jwala Prasad* and Mr. *Conlan*, on behalf of the defendants-appellants. It has been opposed by Mr. *Jogindronath Chaudhri* and Mr. *Kashi Prasad*, who severally represent Narain Lal and Musammat Genda Kuar. The position taken up by these learned gentlemen is that they are agreed in the contention that Musammat Genda Kuar is the proper person to bring upon the record, and if no difficulty had arisen upon another question we could have proceeded to dispose of the matter in difference as between Narain Lal and Musammat Genda Kuar as to which of them should be brought upon the record. But the point has been raised as to whether the petition at the instance of the defendants-appellants, which was filed on the 24th July, 1888, is to be dealt with under the provisions by way of amendment which have been introduced into the Civil Procedure Code by Act VII of 1888, or whether it is to be dealt with under the provisions of the Civil Procedure Code as it stood till the date when the amending Act came into operation; in other words, whether we are to apply a six months' limitation to the petition of the 24th July, 1888, under the new law, or, as the Full Bench ruling decided in this very case, the three years' rule of limitation. It is to my mind difficult to see how, looking to the fact that the petition was presented after Act VII of 1888 came into operation, and no saving clause is enacted therein to protect applications in reference to rights and incidents that have accrued in connection with litigations pending prior thereto, we can do other than apply the six months' rule. We have, looking to the terms of sec-

(1) I. L. R., 10 All., 260.

tion 582, as read with section 368 of the Civil Procedure Code, to take the defendants-appellants as standing in the position of plaintiffs in the suit, and as such standing as plaintiffs in the suit, asking us to bring upon the record the legal representatives of a deceased defendant. According to the law now passed they were bound to do this within six months from the 17th September, 1885, the date of the death of Jagdamba Prasad. Mr. *Conlan*, on behalf of the defendants-appellants, points out the hardship that such a construction of the statute would put upon his clients; but as at present advised I find it difficult to see how it is possible to adopt any other view. The case is necessarily one of considerable importance, because whatever view we arrive at as to the proper construction to be placed upon Act VII of 1888 read with the old Civil Procedure Code, that construction must govern a very large number of applications that will be presented which are pending in this Court in reference to the Full Bench ruling in this very case which is now before us. Under these circumstances I think that it is desirable that my brother Mahmood and I should have the advantage of the learned Chief Justice's assistance in disposing of this particular point, and, accordingly as the question is determined, what the effect of the action or want of action on the part of the defendants-appellants will be upon this appeal in reference to its abatement under s. 368 read with s. 582 of the Civil Procedure Code.

MAHMOOD, J.—I willingly agree to the order of reference which has been made.

The reference was ordered to be laid before a Bench consisting of Edge, C. J., and Straight and Mahmood, JJ.

The Hon. T. *Conlan* and Lala *Juala Prasad*, for the petitioners.

Babu *Jogindro Nath Chaukhri* and Munshi *Kashi Prasad*, for Narain Lal and Genda Kuar.

STRAIGHT, J.—This is an application made by the appellant in the F. A. No. 59 of 1884, pending in this Court, praying that Narain Lal and Musammat Genda Kuar should be brought upon the record as the legal representatives of Jagdamba Prasad, the

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deceased plaintiff-respondent, whose death took place upon the 17th September, 1885. The history of the litigation to which the appeal pending in this Court has reference and in respect of which this application now before us has been made, is very fully stated in my referring order of the 26th November, 1888, in which my brother Mahmood concurred. There are before this Full Bench only two questions for determination. The first of those questions is whether the application of these petitioners, who are appellants in the appeal in this Court, is to be dealt with under the Civil Procedure Code, Act XIV of 1882, as amended by Act VII of 1888, or whether it is to be dealt with under Act XIV of 1882, as it stood before it was so amended. The second question is, assuming that it is to be dealt with under Act XIV of 1882, as amended by Act VII of 1888, have the petitioners satisfied us that they had sufficient cause for not making their application within the period required by law and as contemplated by s. 368 of the Civil Procedure Code of 1882 as amended by Act VII of 1888?

I have very carefully considered this question, and it may be seen from the terms in which the order of reference was made, that from the moment of this first point being raised, I did not entertain much doubt as to what the decision should be. Further consideration has not altered my view, and I have come to the conclusion that this application of the 24th July, 1888, which was presented to this Court subsequent to the coming into operation of Act VII of 1888 amending Act XIV of 1882, must be entertained, dealt with and disposed of under those two statutes taken together. In the Full Bench ruling of this Court, which determined the mode in which questions arising between mortgagors and mortgagees in respect of mortgages made before the passing and coming into operation of the Transfer of Property Act (1), I stated that I believed the rule of law to be that no person has any vested right in procedure, and that an application made or a suit commenced after a particular Act regulating procedure has come into operation must be dealt with according to the rules provided in such Act. It is true that

(1) *Shib Lal v. Ganga Prasad*, I. L. R., 6 All., 262.

the litigation between these petitioners and Jagdamba Prasad commenced as far back as 1884, and that the appeal was filed in this Court upon the 15th April, 1884. But it is equally clear that the application which we are now concerned with was a fresh application and not a continuation of any former proceedings taken by the same parties: in short it was an entirely new application made on the 24th July, 1888, which date I need scarcely point out was subsequent to the 1st of July, 1888, when Act VII of 1888 with its amendment of Act XIV of 1882 had come into operation. The point of time then to be looked at for the purpose of determining the question of limitation, which has now been settled by Act VII of 1888 in its amendment of the then existing Civil Procedure Code and of the then existing Limitation Act, is the 17th September, 1885, the date of the death of Jagdamba Prasad. It is therefore clear that the application being made after the amendment of Act XIV of 1882 had been made by Act VII of 1888, s. 368, Civil Procedure Code, as it now stands with the interpretation to be attached to the article of the Limitation Law which is now numbered Art. 175C, to be found in the schedule of Act VII of 1888, is to be applied to the present case. As I stated in the referring order, these defendants-appellants are to be regarded in the light of plaintiffs in the suit, and they stand in the position of plaintiffs who are coming in to have the representatives of a deceased defendant brought upon the record. Now from the terms of that article which amends the Limitation Law, the starting point is the date of the death of the deceased defendant or of the deceased plaintiff-respondent. In this case Jagdamba Prasad was the deceased plaintiff-respondent, and the date of his death is the date from which time must be counted. As that death took place on the 17th September, 1885, and as the application to bring upon the record the heirs of the deceased was not made until the 24th July, 1888, when the amending Act VII had come into force, it has not been made within the time, and cannot, therefore, *prima facie* be granted.

The second question then that arises is, have the petitioners satisfied the Court that they had "sufficient cause" for not making

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the application within the required period? I have taken occasion more than once to say that the Limitation Law in force in this country is made for the purpose of being obeyed, and not, as the suitors seem to imagine, of being disobeyed, and indulgence under it is not to be extended in uncertain haphazard fashion according to the fancy of a particular Judge or Bench of Judges, but upon well understood and recognised rules even at the risk of hardship to a particular party. For my own part, I do not think that in the present case any hardship will be inflicted upon these petitioners; they have no one but themselves to blame for the consequences that have resulted from their own negligence and dilatoriness. Recently the learned Chief Justice and my brother Tyrrell have laid down in very explicit terms the correct rule in regard to the mode in which the provisions of s. 14 of the Limitation Act are to be applied. By parity of reasoning the principle may be used in dealing with the question of what is "sufficient cause" under s. 368, Civil Procedure Code, with which I am now concerned. In the case above referred to, the learned Chief Justice and my brother Tyrrell accepted the ruling of my brother Mahmood in *Ram Jivan Mal v. Chand Mal* (1) in which the learned Judge's remarks were as follows. He says:—"In my opinion s. 14 of the Limitation Act itself does not contemplate cases where questions of want of jurisdiction arise from simple ignorance of the law, the facts being fully apparent and clear, and is limited to cases where from *bona fide* mistakes of fact the suitor has been misled into litigating in a wrong Court. The phrase 'other cause of a like nature' which occurs in the section is rather vague, but it cannot be held to undo the effect of the constitutional obligation which the law imposes upon every citizen to know the law of the land in which he lives." Now applying that principle to the case before us, I cannot for a moment come to the conclusion that these petitioners have shown any "sufficient cause" for not making their application within the period provided by law. Great stress is laid by them upon the circumstance that by the action of this Court in consequence of

the application made by Durga Prasad to be brought on the record in place of Jagdamba Prasad, the proceedings in their appeal were hung up for a considerable time. They were no doubt hung up from the 15th April, 1886, until 25th February, 1887, when the suit of Durga Prasad was dismissed by the Sub-Judge of Mainpuri, but even if indulgence for that period were to be granted to them, yet they had from the 25th February, 1887, until the 24th July, 1888, or a period of more than a year, left within which to apply, and yet no application was made on the part of these petitioners of the character and description they have now presented. I am of opinion that both the questions referred must be answered adversely to the petitioners. The first is answered by saying that this application is governed by the existing Civil Procedure Code with the amendment introduced by Act VII of 1888, the second that they have not satisfied us that they had "sufficient cause" for not preferring the application contained in their present petition within the proper period.

The effect of that view will be that the appeal will abate; but as this Bench is not seized of the appeal, the view expressed by this Bench will be laid before the Division Bench and no doubt will be given effect to by that Bench.

EDGE, C. J.—I concur.

MAHMOOD J.—I also concur and concur entirely in what has fallen from my brother Straight. Yet I wish to add a few words to what he has said. The real difficulty in this case, as it seems to me, has arisen over the Full Bench ruling of this Court, where a line of distinction was drawn between plaintiffs-appellants and defendants-appellants, for the purpose of array of parties, after the death of any respondent whether such respondent be plaintiff or the defendant. I have no desire to refer to those rulings, because their effect has now been settled by Act VII of 1888, to which my brother Straight has already referred.

The other difficulty has arisen in consequence of the circumstance that in s. 368 of the Code of Civil Procedure the following words

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occur :—“ When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.”

This is not the first occasion upon which I have expressed a regret that this question as to the extension of the period of limitation or as to the interpretation of what the “ *sufficient cause* ” should be, is out of place in the Code of Civil Procedure, because that is not an enactment dealing with that department of the adjective law of Limitation. The proper place for the sentence above quoted would have been s. 5 of Act XV of 1877. It is however not there, and because it is not there, we have had the difficulty with which my brother Straight has fully dealt, and which required the case to be dealt with by three Judges instead of my brother Straight and myself, when we originally heard the case in the Division Bench.

The judgment of my brother however disposes of the difficulty, and I agree with him entirely.

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June 11.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

BHAGWANT SINGH (PLAINTIFF) v. DARYAO SINGH AND
OTHERS (DEFENDANTS)*

Bond—Interest post diem—Damages for non-payment on due date—Limitation—Act XV of 1877 (Limitation Act), sch. ii, No. 116—Charge on hypothecated property—Successive or continuing breaches of contract—Practice—Danger of deciding case upon a document by construction put on another document in another suit.

A contract to pay interest *post diem* on a mortgage ought not to be implied when the parties to the written contract have not expressed therein any such intention. This is particularly the case where the written contract does in clear terms provide for the payment of interest and compound interest during the term of the mortgage. *Narain Lal v. Chajmal Das* (1) followed. *Chhab Nath v. Kamta Prasad* (2) and *Haldeo Pandey v. Gokal Rai* (3) referred to.

* First Appeal, No. 74 of 1888, from a decree of Maulvi Shah Ahmad-ul-lah, Subordinate Judge of Mainpuri, dated the 14th February, 1888.

(1) Decided 7th March, 1889, not yet reported.

(2) L. L. R., 7 All., 333.

(3) L. L. R., 1 All., 693.