

limitation. The lower Appellate Court has now found for the plaintiffs, and has affirmed the decree made in their favour by the first Court. The defendants are the appellants in the present appeal.

The principal ground upon which the vakil for the appellants has addressed us is that the original stock of the family having been subjected to a separation many years ago, the presumption as to the joint family can no longer be maintained in regard to the various branches into which the family has been divided. With reference to this we think it sufficient to refer again to the case cited in our remand order, namely, *Upendra Narain Myti v. Gopee Nath Bera* (1). It appears to us that each branch of a family whose original stock has been divided may continue to be a joint family within the meaning of the Hindu law subject to all the presumptions arising from that state. We think, therefore, that the lower Appellate Court did not err in the manner suggested by the vakil for the appellants. That being so, and the District Judge having further found that the separation occurred in the year 1285, we think that the present suit is not barred by limitation; and the separation having taken place at so late a date, we are of opinion that the Judge was right in acting upon the presumption of law that the property in question was joint family property.

The appeal is dismissed with costs.

H. T. H.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Pigot.

THE ORIENTAL BANK CORPORATION v. T. F. BROWN & CO., LIMITED.

Discovery—Affidavit of documents—Sufficiency of affidavit—Further affidavit—Inspection of Documents—Privileged Communications—Practice.

Where in an affidavit of documents privilege is claimed for a correspondence on the ground that it contains instructions and confidential communications from the client (the plaintiff) to his solicitor, it must appear not merely that the correspondence generally contains instructions, &c., but that each letter contains instructions or confidential communications to the attorneys with reference to the conduct of the suit—*Bewicke v. Graham* (2) followed.

(1) I. L. R., 9 Calc., 817: 12 C. L. R., 356.

(2) 7 Q. B. D., 400.

1885

BATA
KRISHNA
NAIK

v.
CHINTAMANI
NAIK.

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THE
ORIENTAL
BANK COR-
PORATION
v.
T. F. BROWN
& Co., LD.

JUDGE'S summons to consider the sufficiency of an affidavit as to possession of documents sworn by John Paterson, the plaintiff's constituted attorney, on the 30th day of June, 1885. The material portions of the affidavit are as follows:—

1.—That the plaintiff-Corporation has in its possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto annexed.

2.—That on behalf of the plaintiff-Corporation I object to produce the said documents set forth in the second part of the first schedule hereto.

3.—That on behalf of the plaintiff-Corporation I object to produce the last mentioned documents on the ground that they are cause papers in this suit, and correspondence and other papers containing the instructions given on behalf of the plaintiff-Corporation and confidential communications made on behalf of the plaintiff-Corporation to the attorneys of the plaintiff-Corporation with reference to the conduct of this suit.

The second part of the first schedule was as follows: "The cause papers in this suit, and correspondence and other papers, containing instructions given on behalf of the plaintiff-Corporation and confidential communications made on behalf of the plaintiff-Corporation to the attorneys of the plaintiff-Corporation with reference to the conduct of this suit."

Mr. Pugh for the defendant. The affidavit is not sufficient—*Taylor v. Batten* (1). The documents should be put up in bundles and described properly, so that it may be known what the letters claimed to be privileged really are—*Walker v. Poole* (2).

Mr. Hill, *contra*, cited *Gardner v. Irvin* (3); *Taylor v. Batten* (1); *Bewicke v. Graham* (4).

PIGOT, J.—I think the description in the second part of the schedule should more clearly show, not merely that the correspondence generally contains instructions, &c., but that each letter contains instructions or confidential communications to the attorneys with reference to the conduct of this suit.

(1) 4 Q. B. D., 85.

(2) 21 Ch. D., 835.

(3) 4 Exch. D., 49.

(4) 7 Q. B. D., 400.

[Mr. Hill suggests, "correspondence with the attorneys containing instructions for the conduct of this suit." The documents could be placed in books and numbered A, B, C, &c., in fact most of the letters, &c., are in books.]

FIGOT, J.—That can be done, and they should be described as I have indicated. Let costs be costs in the cause. Let all the documents be numbered as directed in *Bewicke v. Graham* (1).

Solicitors for the plaintiffs: Messrs. *Barrow & Orr*.

Solicitors for the defendants: Messrs. *Sanderson & Co.*

P. O'K.

APPELLATE CIVIL.

Before Mr. Justice Wilson and Mr. Justice Beverley.

SHAMBHU NATH NATH AND ANOTHER (DEFENDANTS) v. RAM CHANDRA SHAHA AND OTHERS (PLAINTIFFS).*

Limitation Act (XV of 1877), s. 19—Limitation Act (IX of 1871), s. 20—Contents of acknowledgment of debt, Secondary evidence of—Evidence Act (I of 1872), s. 91.

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Para. 2, s. 19 of the Limitation Act, 1877, belongs to that branch of the law of evidence which is dealt with by s. 91 of Act I of 1872, and ought not to be read in derogation of the general rules of secondary evidence so as to exclude oral evidence of the contents of an acknowledgment which has been lost or destroyed.

THIS was a suit for the recovery of a sum of money due on a balance of accounts. The plaintiffs alleged that the defendants had given a written acknowledgment of the debt. The material issue upon the pleadings was whether there was any such acknowledgment. The Munsiff dismissed the suit, being of opinion that, as the acknowledgment, which was the only means of avoiding limitation, was said to have been lost, secondary evidence of its contents could not be received (para. 2, s. 19 of the Limitation Act). On appeal the Subordinate Judge decreed the claim, observing

* Appeal from Appellate Decree No. 1863 of 1884, against the decree of Baboo Dwarka Nath Bhuttacharji, Additional Subordinate Judge of Tipperah, dated the 19th of July 1884, reversing the decree of Baboo Protap Chandra Mozoomdar, Munsiff of Muradhagore, dated the 25th of September 1883.