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within three years thereof, there is no bar of limitation in favour of either set of defendants.

The third plea is that the defendants are entitled to deduct the sum of about Rs. 5,100, which was due from the firm of Jodhraj Chunni Lal. The story is that the plaintiff's father Ram Chandra, when he deposited money with Ramnath Baijnath, was in the employment of the firm of Jodhraj Chunni Lal, that the two firms began to deal with each other and Ram Chandra agreed that his money should be security for any sum which might fall due to Ramnath Baijnath from Jodhraj Chunni Lal and that any such sum should be deducted when the money of Ram Chandra was repaid. We agree with the court below that the evidence on the point is most unconvincing. As a matter of fact the sum which Jodhraj Chunni Lal owed to Ramnath Baijnath was actually written off by the latter firm as a "bad debt." Ram Chandra died in 1897. At no time has the sum ever been debited to his account, as it most certainly would have been debited if he had stood surety for Jodhraj Chunni Lal. We do not believe the story and the evidence does not convince us and we hold against the appellants. The result of our findings is that the appeal fails and we dismiss it. We award costs to the plaintiff. The second set of defendants who are the persons really at fault in the matter will bear their own costs of this appeal.

Appeal dismissed.

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March, 10.

Before Mr. Justice Tudball and Mr. Justice Rafiq.

CHHABILE RAM AND ANOTHER (PLAINTIFFS) *v.* DURGA PRASAD AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), *section* 92—*Public trust—Suit instituted by two plaintiffs—Death of one plaintiff pending suit—Abatement of suit.*

Where a suit concerning a public trust of a charitable or religious nature has been instituted by two persons having an interest in the trust with the consent of the Advocate-General, and one of the plaintiffs dies, the suit will abate. But it is open to any other member of the public similarly interested to obtain the consent of the Advocate-General and to apply to be brought on to the record as a co-plaintiff, and it would be the duty of the court to give a person wishing so to be made a party a reasonable opportunity of obtaining the consent of the Advocate-General.

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* First Appeal No. 290 of 1913, from a decree of E. C. Allen, District Judge of Mainpuri, dated the 18th of February, 1913.

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CHHABILE RAM v. DURGA PRASAD.

THIS was a suit brought by two persons named Chhabile Ram and Bhagwan Das against one Durga Prasad under the provisions of section 92 of the Code of Civil Procedure, 1908. During the pendency of the suit Bhagwan Das died. One Mahant Kanhaiya Lal applied to the court to be brought on the record as a co-plaintiff in place of Bhagwan Das. Kanhaiya Lal was apparently not related to Bhagwan Das and was not his legal representative in the usual acceptation of that term. The court rejected Kanhaiya Lal's application and dismissed the suit as no longer maintainable. The plaintiffs thereupon appealed to the High Court.

Dr. *Surendra Nath Sen*, for the appellants.

Munshi *Lakshmi Narain*, for the respondents.

TUDBALL and RAFIQ, JJ.—This appeal arises out of a suit brought by two persons under the conditions mentioned in section 92 of the Code of Civil Procedure. These two persons were Chhabile Ram and Bhagwan Das. They obtained the sanction of the Legal Remembrancer and instituted the suit. The trustee against whom they sued was Babu Durga Prasad, the present respondent in this appeal. While the suit was pending Bhagwan Das died. One Mahant Kanhaiya Lal applied to the Court to have his name brought on the record as co-plaintiff in place of that of Bhagwan Das claiming to be the heir and legal representative of the deceased. Apparently Kanhaiya Lal was not related in any way and could not have been deemed to be the heir and legal representative of Bhagwan Das in his personal capacity. The Court refused the application and dismissed the suit as it was no longer maintainable by one plaintiff. The judgement shows clearly that the question of Kanhaiya Lal's obtaining sanction from the Legal Remembrancer was before the court. That court was of opinion that the defect in the suit could not be cured by allowing Kanhaiya Lal time to apply for sanction. It therefore dismissed the suit. It is quite clear that a suit of this nature brought by two persons is brought by them in their representative capacity as members of the public interested in the trust. It has been held that section 92 is not mandatory but is permissive and directory. It seems to us also to be clear that, when a suit is brought by two or more persons under the conditions mentioned in section 92, for the continuance of the suit

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it is necessary that there should be at least two plaintiffs, i. e., two persons interested in the trust and holding the sanction of the Advocate-General or, in these provinces, of the Legal Remembrancer, in order to enable them to carry on the litigation. It is clear that if one representative dies it is open to another member of the public interested in the trust to come forward to take his place and thus to prevent the suit abating. It is also necessary that this other member of the public thus interested should obtain the sanction of the Advocate-General or the Legal Remembrancer. The suit being one which had been brought with sanction and it being a matter of a public trust, the lower court ought, in our opinion, to have given Kanhaiya Lal an opportunity, first, of obtaining sanction from the Legal Remembrancer and, secondly, of showing that he was a person interested in the trust, and on proof of these two qualifications the court ought in the interest of the public to have made Kanhaiya Lal a co-plaintiff in order to enable the suit to be carried on provided no good cause was shown by the other side against his being allowed to represent the public interest in the trust. The rulings quoted by the court below, viz., I. L. R., 26 All., page 162, and I. L. R., 36 Bom., page 168, are totally beyond the question and have no weight in the decision of the matter. We accordingly allow the appeal. We set aside the decree of the court below and we remand the case to the court below with direction to re-admit it on its original number and to proceed to hear and determine the same in view of the directions given above. The costs of this appeal will be costs in the cause and will abide the result.

Appeal decreed.

*PRIVY COUNCIL.

LAHAR PURI (PLAINTIFF) *v.* PURAN NATH (DEFENDANT).

[On appeal from the High Court of Judicature at Allahabad.]

Hindu law—Endowment—Election of mahant of temple—Sadhak or disciple of deceased mahant—Election by a majority of the dasnam bhik (the ten classes of mendicants) assembled for purpose of such election—Separate election by faction of dasnam bhik.

An election of a mahant of a temple by the *dasnam bhik* (the ten classes of mendicants), in order to be a valid and effectual election must be made by a

* *Present* :—Lord DUNEDIN, Sir GEORGE FARWELL, Sir JOHN EDGE, and Mr. AMEER ALI.