

1931
 GULZARI
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 v.
 COLLECTOR
 OF ETIAH.

him in the court of the District Judge were insufficient; that the allowances made him were still inadequate; and that on his accounts properly taken no balance whatever was due from him.

[These objections were then discussed.]

In the result the objections taken by the appellant to the decree of the High Court fail in every particular.

Their Lordships will accordingly humbly advise His Majesty that this appeal from that decree be dismissed with costs.

Solicitor for appellant: *H. S. L. Polak.*

Solicitor for respondent: *Solicitor, India Office.*

REVISIONAL CIVIL.

1931
 April, 15.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice,
 SABIR HUSAIN KHAN (PLAINTIFF) v. JAN MUHAMMAD
 (DEFENDANT).*

Limitation Act (IX of 1908), article 97—Failure of consideration, suit on—Purchase of a decree which is subsequently declared void—Decree declaring voidness reversed on appeal but restored on second appeal—Time from which limitation runs.

The plaintiff purchased a decree from the defendant; this decree was subsequently declared to be void on the ground of fraud; this decision was reversed in appeal but was restored by the High Court in second appeal. Within three years of the decision of the High Court, but more than three years after that of the trial court, the plaintiff sued the defendant for refund of the price on the ground of failure of consideration: *Held* that time should begin to run from the date of the High Court's decree, and not from that of the trial court which was superseded in appeal, and the suit was not barred by limitation.

Mr. Mushtaq Ahmad, for the applicant.

The opposite party was not represented.

SULAIMAN, A. C. J.:—This is a plaintiff's revision from a decree of the Court of Small Causes. The plaintiff had purchased a decree which was ultimately set aside on appeal to the High Court. The

first court had decreed the suit for the setting aside of that decree on the ground of fraud; but that decree was reversed by the District Judge. It was on a further appeal to the High Court that the decree of the first court was restored. The present suit for refund of the price on the ground of failure of consideration was filed more than six years after the first court's decree setting aside the decree which had been purchased, but was within three years of the High Court's judgment. The learned Judge of the court below has relied on the case of *Juscurn Boid v. Pirthichand* (1), and has held that time began to run from the date of the first court's decree and the claim was barred by time.

It seems to me that when the first court's decree was set aside by the District Judge it was superseded and it no longer remained in force. It was impossible for the present plaintiff to have brought a suit for the refund of the sale consideration when the suit for the setting aside of the decree which he had purchased had been dismissed by the District Judge. Time should begin to run from the date of the High Court's decree which restored the first court's decree. The case of their Lordships of the Privy Council relied upon by the court below is obviously distinguishable. At page 679 their Lordships observed that "under the Indian law and procedure an original decree is not suspended by presentation of an appeal, nor is its operation interrupted where the decree on appeal is one of dismissal." The decree of the District Judge was one of reversal and not dismissal. This view is in accordance with that of the Madras High Court in *Sarvothama Rao v. Chinnasami Pillai* (2). I accordingly allow this revision and setting aside the decree of the court below send the case back to that court for disposal on the merits. Costs will abide the event.

1931

SABIR
HUSAIN
KHANJAN. MUHAM-
MAD.

(1) (1918) I.L.R., 46 Cal., 670. (2) (1918) I.L.R., 42 Mad., 507.