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ALI HASAN
v.
DHERJA.

Civil Procedure Code, would be disallowed. As to costs, I would under the circumstances direct that the parties bear their own costs in all Courts.

TYRRELL, J.—I concur in the order proposed by my hon'ble colleague.

Decree modified.

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June 19.

CIVIL JURISDICTION.

Before Mr. Justice Straight and Mr. Justice Mahmood.

BEAKE AND CO. (PLAINTIFFS) v. DAVIS (DEFENDANT)*

Act XV of 1877 (Limitation Act), ss. 9, 13—Continuous running of time—Exclusion of time of defendant's absence from British India.

S. 13 of the Limitation Act, 1877, is not in any way affected or qualified by s. 9 of the same Act.

In computing, therefore, the period of limitation prescribed for a suit, the time during which the defendant has been absent from British India should be excluded, notwithstanding that such period had begun to run before the defendant left British India.

Narronji Bhimji v. Mugnirum Chandaji (1) dissented from.

THIS was a reference by Mr. R. D. Alexander, Judge of the Court of Small Causes at Allahabad. The following statement of the case was made by the Judge:—

“This is a suit to recover payment for goods sold and delivered on the following dates—(i) 9th November, 1878; (ii) 13th March, 1879; (iii) 14th April, 1879; (iv) 13th January, 1880. The suit was brought on the 25th May, 1882, and under ordinary circumstances, as far as the goods supplied on dates (i), (ii) and (iii), are concerned would be barred by limitation. The plaintiff claims exemption from limitation on the ground that during the greater part of 1880-81 the defendant was absent from British India. This may be taken as proved. The plaintiff relies on s. 13, Act XV of 1877. There has, however, been a recent ruling by the Bombay High Court [*Narronji Bhimji v. Mugnirum Chandaji (1)*] in which it has been held that ss. 9 and 13, Act XV of 1877, must be read together, and that once a cause of action has arisen, the subsequent

Reference No. 153 of 1882,

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absence of a defendant from British India cannot be excluded in computing limitation. In the present case the cause of action had arisen also before the defendant left British India; and the question I wish to refer to the Hon'ble Court is—"Whether under the circumstances as stated the plaintiff's claim for sums due on dates (i), (ii) and (iii) is barred by limitation or not?"

"With due respect for the decision of the learned Judge in *Narronji Bhimji v. Mugnirum Chandaji* (1), I wish to point out that the language used in ss. 9 and 13 makes it appear very doubtful to me if it was ever intended that s. 9 should control s. 13, any more than that it should control s. 14, which of course would be a "*reductio ad absurdum*." S. 9 says: "When once time has begun to run, no subsequent disability or inability to sue stops it." The section therefore contemplates (i) a disability such as described in s. 7; and (ii) an inability such as want of funds and the like. S. 13 says: "In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded." There is no reference made to disability or inability here, but a simple, plain and imperative direction of law, equally simple, plain and imperative as the direction in s. 14 that a certain time in a certain class of suits shall be deducted.

"There was no inability to sue. The law (s. 89, Civil Procedure Court) contemplates a suit being brought against a defendant out of British India, by providing a method for service of summons on him. It cannot be said therefore that the plaintiff was unable to sue. But s. 9 only provides for cases where there is a subsequent disability or inability to sue. I venture therefore to state my opinion that s. 13 is in no way connected with s. 9. Its very place in the Act, viz., in Part III, "Computation of Limitation," appears to me to show that to be the case, and that it is one of a series of sections which provide imperatively for the exclusion of time on the occurrence of certain specified events. Looking at the position of s. 13. I am of opinion that it should be read by itself; and I would lay special stress on the fact that absence from British India on the part of the defendant does not constitute in any sense an inability

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to sue on the part of the plaintiff. I would therefore allow the plaintiff's claim, but as in doing so I should be running counter to one of the High Courts reported in the Indian Law Reports, and as I can find no decided ease on the point, I refer the question to the High Court for its decision. The decision is of some importance, as I have other cases pending in which the same point arises, and may expect similar suits in future."

The parties did not appear.

The Court (STRAIGHT, J. and MAHMOOD, J.) delivered the following opinion :—

STRAIGHT, J.—It appears to us that s. 13 of the Limitation Act is in no way affected or qualified by s. 9 of the same Law, and that its obvious scope and intention is to save the creditors, subsequently suing their debtors, the period during which such debtors have been absent from British India. The omission of the words "unless service of summons to appear and answer in the suit can during such absence be made under the Code of Civil Procedure, s. 60," which figured in s. 14 of the Act of 1871, from the present Law gives the most general effect to s. 13 of Act XV of 1877, and obviates any arguments, that might have been deduced from their presence, had they been found in the present Act. The Bombay case referred to—*Narronji Bhimji v. Mugnirum Chandaji* (1)—was a decision on the original side, and we find ourselves unable to concur in it. We make no order as to costs.

APPELLATE CIVIL.

Before Mr. Justice Brodhurst and Mr. Justice Mahmood.

INDAR KUAR (DEFENDANT) v. LALTA PRASAD SINGH (PLAINTIFF)*
*Hindu Law—Mitakshara—Hindu widow—Alienation—"Legal Necessity"—
Litigation—Reversioner*

R, a Hindu widow, who had succeeded to the estate of her deceased husband, mortgaged a portion of it to *L*, as security for the repayment of money which she borrowed from him for the purpose of suing for an estate to which her deceased husband had an alleged right of succession, which he had not however himself sought to enforce. This suit was dismissed. *R* subsequently transferred her

* First Appeal, No. 125 of 1880, from a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Benares, dated the 9th September, 1880.

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