

enquiry which has not yet taken place—that Bishtu Churn actually entered into a contract to sell the property of the deceased to the respondents, and received the greater part of the consideration money, the respondents have acquired an interest in the estate, such as would entitle them to come in and ask for a revocation of probate, if it were improperly granted. As matters stand at present, there is no evidence on the record to show that this deed of *byana patra* is true, or that any consideration really passed under it.

We think, therefore, that the order of the District Judge must be set aside and the case sent back to him with directions that he should determine upon evidence which the parties may adduce, whether or not this *byana patra* is true, and whether the earnest money mentioned in it passed, before he proceeds to determine the question as to the authenticity of the will propounded by the petitioner. The costs will abide the result.

A. A. C.

Case remanded.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and
Mr. Justice Ghose.*

HURI MOHUN OHUCKERBUTTY (DEFENDANT) v. NAIMUDDIN
MAHOMED (PLAINTIFF).*

1892
August 8.

Limitation—Plaint insufficiently stamped, when deemed to have been presented—Suit, institution of—Civil Procedure Code (Act XIV of 1882), s. 54 (b)—Limitation Act (XV of 1877), s. 4, Sch. II, Art. 23.

A plaint having been filed upon the last day allowed by the law of limitation written upon paper insufficiently stamped, the plaintiff was ordered to supply the requisite stamp paper within seven days. This order was complied with within the time appointed, and the plaint was duly registered. *Held*, that the suit should be taken as instituted on the day when the plaint was first presented to the proper officer, and that the suit was not barred.

Balkaran Rai v. Gobind Nath Tiwari (1) distinguished and doubted.

THE plaintiff sued to recover damages as compensation for malicious prosecution, alleging that the defendant and others had

* Appeal from order No. 285 of 1891, against the order of Babu Rabi Chandra Gangooly, Subordinate Judge of Dacca, dated the 19th of June 1891, reversing the order of Babu Chundi Churn Sen, Mansif of Munshigunge, dated the 9th of January 1891.

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1892 instituted criminal proceedings against him in the course of which he was sentenced to a term of imprisonment, that upon appeal he had been honourably acquitted by the Sessions Court, that he had been put to great expense in engaging Counsel to defend him, and that the cause of action accrued on the 6th May 1889, the date of his acquittal. The plaintiff was filed on the 6th May 1890, but was insufficiently stamped, and on that day the Munsiff ordered that the amount of the deficient Court-fee should be paid within seven days. The amount of the stamp duty was paid on the 12th May 1890, and the plaintiff was duly registered, but the period of limitation prescribed by Article 23 of the second schedule of the Limitation Act (XV of 1877) had by that time expired. On this ground a preliminary objection was taken by the defendant at the hearing in the Court of first instance. The Munsiff held, upon the authority of the case of *Balkaran Rai v. Gobind Nath Tiwari* (1), and the interpretation there placed upon section 54 of the Code of Civil Procedure, that the plaintiff must be taken to have been presented on the day the deficient stamp was paid, and dismissed the suit upon the ground of limitation. This decision was reversed on appeal by the Subordinate Judge, who distinguished the ruling of the Allahabad Full Bench, and remanded the case for trial on the merits. From this decision the defendant appealed to the High Court.

Baboo *Debendro Nath Banerjee* appeared for the appellant.

Mr. *Solaiman* and Moulvi *Mahomed Yusuf* appeared for the respondent.

The judgment of the Court (PETHERAM, C.J., and GHOSE, J.) was as follows:—

This is an appeal against an order of remand passed by the Subordinate Judge of Dacca on the 19th June 1891. It appears that the plaintiff in this case was presented in the Court of first instance on the 6th May 1890; but, it being found that it was insufficiently stamped, the following order was recorded:—"The plaintiff having been filed insufficiently stamped, ordered that the deficient Court-fee be paid within seven days." Within the time appointed, the plaintiff paid the deficient Court-fee stamp, and the

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plaint was duly registered; but it so happened that during that time the period within which the plaintiff was bound to institute his suit under the law of limitation had expired, although, upon the date that the plaint was originally presented, it was within time.

Objection having been raised by the defendant on the score of limitation, the Munsiff held that the plaint should be regarded as having been filed not on the 6th May 1890, but on the subsequent date when the deficient Court-fee was paid, and that therefore the suit was barred by limitation. He relied on the Full Bench case of *Balkaran Rai v. Gobind Nath Tiwari* (1), which deals with a memorandum of appeal that was presented to the Allahabad High Court.

The Subordinate Judge, upon appeal by the plaintiff, has held that the suit is within time, and that it should be taken to have been instituted on the 6th May 1890, when the plaint was first presented, and he has accordingly directed that the case should go back to the Court of first instance for a trial on the merits.

The present appeal is by the defendant against this order. We think that the Sub-Judge has taken a correct view of the matter. By clause (b) of section 54 of the Code of Civil Procedure, it is provided that the plaint shall be rejected "if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so."

Now, in this case the plaint was not rejected by the Munsiff, and he could not do so because the law requires that the Court shall call upon the plaintiff to supply the requisite stamp within a fixed time, and it is only if the party fails to comply with the order of the Court that the plaint is to be rejected. The plaintiff did comply with the order of the Court within the time appointed, and the plaint was duly registered.

We think that under these circumstances the suit should be taken to have been instituted on the day that the plaint was presented, that is to say on the 6th May 1890, to the proper officer,

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as provided by section 4 of the Limitation Act (1). This is the view that was adopted in the case of *Mussumat Begee Begum v. Syud Yusuf Ali* (2) and this also is the view that was expressed by the Judicial Committee of the Privy Council in the case of *Skinner v. Orde* (3). In this latter case, the question that was raised was, whether a person who had asked for leave to sue as a pauper, but who subsequently, pending the inquiry into his pauperism, paid in the requisite Court-fee, should be taken to have instituted his suit on the day when he filed his pauper petition, or on the day when the Court-fee being paid the plaint was numbered and registered as a plaint. It was held by the Judicial Committee that the suit must be admitted to have been instituted when the application to sue as a pauper was filed, and they observed as follows (4):—"Although the analogy is not perfect, what has happened is not at all unlike that which so commonly happens in practice in Indian Courts, that a wrong stamp is put upon the plaint originally, and the proper stamp is afterwards affixed. The plaint is not converted into a plaint from that time only, but remains with its original date on the file of the Court, and becomes free from the objection of an improper stamp when the correct stamp has been placed upon it." And the same view was practically taken in the case of *Mengur Munder v. Huree Mohun Thakoor* (5).

We think that the order that was made by the Court on the 6th May 1890 may well be regarded as an order of amendment of the plaint within a given time, and in that class of cases it has been held that the return of a plaint for amendment, and its subsequent presentation and acceptance by the Court, would not constitute a fresh institution of the suit. See *Ram Lal v. Harrison* (6), *Greesh Chunder Singh v. Pran Kishen Bhattacharjee* (7), and *Ram Coomar Shaha v. Dwarkanath Hazra* (8).

The learned pleader for the appellant relied strongly upon the Full Bench decision in *Balkaran Rai v. Gobind Nath Tiwari* (9); but that had reference to a memorandum of appeal which perhaps

(1) Act XV of 1877.

(2) 6 N.-W. P., 139.

(3) I. L. R., 2 All., 241.

(4) I. L. R., 2 All., 241 (250).

(5) 23 W. R., 447.

(6) I. L. R., 2 All., 832.

(7) 7 W. R., 157.

(8) 5 W. R., 207.

(9) I. L. R., 12 All., 129.

stands on a different footing from a plaint dealt with under section 54 of the Code, and we may observe that the view of the Allahabad High Court, as expressed in that case, has not been adopted in this Court. In the case of *Syud Ambur Ali v. Kali Chand Doss* (1) it was held that "The Deputy Registrar has no authority to make an order returning a petition of appeal when the stamp fee paid upon it is insufficient. The right course for that officer, if his requirements as to stamps are not complied with, is to lay the matter before the Court. But if the appellant is ready to pay what is required, then, whether the time for filing the appeal has expired or not, the Deputy Registrar is bound to receive it if it was originally presented in time." And in a recent case [*Moti Sahu v. Chhatri Das* (2)] decided by Prinsep and Banerjee, JJ., on the 10th May last, this Court did not follow the decision of the Allahabad Court, and it was held with reference to a plaint, and in circumstances similar to those in the present case, that the suit should be regarded as having been instituted on the day that the plaint was originally presented, and that it was not barred by the law of limitation.

Upon these considerations we think that the decision arrived at by the Court below is right, and this appeal should be dismissed with costs.

Appeal dismissed.

A. A. C.

PRIVY COUNCIL.

MANICK CHAND (DEFENDANT) *v.* HIRA LAL (PLAINTIFF).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Partition—Partition among shareholders in zamindari villages—
Construction of agreement—Custom.*

On a dispute among proprietors of shares in zamindari villages as to the respective amounts of the holdings till then undivided, to which they were entitled, a compromise made by their common ancestor's five sons, of

* *Present:* LORDS WATSON and MORRIS, SIR R. COUCH, and LORD SHAND.

(1) 24 W. R., 258.

(2) I. L. R., 19 Calc., 780.

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