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that the absence was for such a protracted period as nine months, but we think we are at liberty in this case not to treat her as a free agent at the time or subsequently. We are, however, not to be understood to hold as matter of law that mere legal infancy as such would entitle her hereafter to continue to live away from the house where she is bound to live under the will, and we think those interested in her welfare, relatives or others, with whom she has lately been, would be acting very unjustly by her were they, by in any way further delaying her return to the house, to risk the forfeiture by her of the benefits to which she is entitled under the will. The appeal is dismissed with costs.

A. A. C. *Appeal dismissed.*

Before Mr. Justice Pigot and Mr. Justice Macpherson.

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March 4.

AGHORE NATH MUKHOPADHYA (DEFENDANT No. 2) *v.* GRISH CHUNDER MUKHOPADHYA (PLAINTIFF).*

Limitation Act (XV of 1877), Sch. II, Art. 107—Joint Hindu family—Debts of manager—Contribution, limitation in respect of suit for.

Where money is borrowed by the manager of a joint Hindu family on his personal security for purposes of necessity, his right to contribution arises when he expends the money, and limitation runs against his claim from that date, and not from the date on which he repays the loan and releases his security.

Sunkur Pershad v. *Goury Pershad* (1); *Ram Kristo Roy* v. *Muddun Gopal Roy* (2) followed.

THE plaintiff sued to recover the sum of Rs. 905-15 from the defendants, by way of contribution to the amount of three money decrees obtained against him upon certain promissory notes executed by him for the alleged purpose of raising money for the joint family expenses. The plaintiff and the defendants were the sons of one Kashi Nath Mukhopadhya, who died in the month of *Joisto* 1280 (*May* 1873). The plaintiff alleged that he and his

* Appeal from Appellate Decree No. 1732 of 1890, against the decree of H. Beveridge, Esq., District Judge of the 24-Parganas, dated the 31st of July 1890, affirming the decree of Babu Rabutty Churn Banerjee, Munsiff of Alipore, dated the 27th of January 1890.

(1) I. L. R., 5 Calc., 321.

(2) 12 W. R., 194; 6 B. L. R., Ap. 103.

brothers lived in commensality as a joint Hindu family until Choitro 1289 (March 1883), that the brothers afterwards separated, and the defendant No. 3 brought a suit, No. 66 of 1886, in the Court of the Twenty-four Pergunnahs against his brothers, for partition and adjustment of accounts, in pursuance of which the property was partitioned and the brothers received possession of their respective shares; that while the brothers were living jointly, the plaintiff and the defendant No. 1 managed the joint estate and the household business between the month of June 1873 and the month of September 1882, and during this period money being required for the payment of Government revenue and other joint expenses, the plaintiff borrowed from his wife Mukshoda and her uncle Durga Das, the sum of Rs. 400 upon certain hand-notes dated respectively the 1st Assar 1287 (14th June 1880) and the 10th Assar 1289 (23rd June 1882), these debts being recognized as family debts in the adjustment of the accounts upon partition, and that subsequently in June 1888 decrees were obtained against him in respect of the amounts due, and he was forced to pay the whole amount Rs. 1,081-12. He now claimed Rs. 811-5 from the defendants as contribution, with interest at 12 per cent. per annum, amounting to Rs. 905-15. The first defendant did not enter an appearance. The other defendants denied their liability, and alleged that there was no necessity for borrowing, and that the decrees were collusively obtained.

The Court of first instance held that the plaintiff had shown necessity for incurring a debt on behalf of the joint family; that accounts had been taken and filed in the partition suit, and the joint liability of the defendants had been recognized in that suit, the debts being specified in certain petitions filed on the 6th and 22nd June 1887; that the plaintiff by making a part payment upon the promissory notes in Bysack 1292 (April 1886) to Mukshoda and Durga Das had prevented limitation from running, and that there was no fraud or collusion on the part of the plaintiff or of Mukshoda and Durga Das, and that the defendants were therefore legally bound to reimburse the plaintiff.

The lower Appellate Court affirmed this decision, holding that the main questions in the case were practically disposed of in the partition suit; that there was no reason to doubt the *bonâ fides*

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of the transaction; that the obligation had been kept alive by the payment of interest in 1292, and that the money having been borrowed for the benefit of the estate, the defendants must recoup the plaintiff. The question of limitation was not argued in either Court.

The defendant No. 2 appealed to the High Court.

Baboo *Sarut Chunder Chatterjee* and Baboo *Lal Mohun Das* appeared for the appellant.

Baboo *Trailokhya Nath Mitter* and Baboo *Umakali Mukerji* appeared for the respondent.

The judgment of the Court (PIGOT and MACPHERSON, JJ.) was as follows :—

These are appeals from an appellate decree. The plaintiff and the defendants are the sons of Kashi Nath Mukhopadhya, who died in 1280. From 1280 to 1289 the plaintiff and defendant No. 1 were managers of the family. Plaintiff alleges that in 1287 and in 1289 he raised money to pay certain necessary family expenses, including Government revenue and municipal taxes. This money he says he raised on promissory notes, two made in Assar 1287 and one in Assar 1289; the aggregate amount of them is stated in the plaint at Rs. 400, one of those in Assar 1287 being in favour of plaintiff's wife, Mukshoda: the other two being in favour of Durga Das, her uncle.

The holders of these notes sued the plaintiff on them in 1888 and obtained three decrees against him for the amount of the notes, interest and costs, being the sums mentioned in the schedule to the plaint, amounting in the aggregate to Rs. 1,081-12.

The plaintiff then brought this suit, claiming from each of the defendants a 4-anna contribution to the amount paid by him under these decrees with interest from the date of the decrees, viz., June 6, 1888.

The appellants in the two appeals before us, namely, defendants 2 and 3, denied their liability, denied that the money was raised for family purposes, denied that the decrees against plaintiff were obtained in good faith, and denied that any money would be due to plaintiff on accounts being taken of his management. They did not set up limitation in either of the lower Courts.

Both the Courts below decided against the defendants on the merits, and gave the plaintiff a decree. In the appeal before us it is contended that the plaintiff's claim, if any, is barred by limitation.

The cases of *Ram Kristo Roy* v. *Muddun Gopal Roy* (1) and *Sunkur Pershad* v. *Goury Pershad* (2) were cited to show that where money is borrowed on the personal security of the manager of a Hindu family for family purposes, and is applied by him to those purposes, his right to contribution arises when he expends the money, and limitation runs against his claim from that date, and not from the date at which he pays the person from whom he borrowed, and thus releases his security.

It seems to us that the question is not merely one of limitation, but that a question in the case also arises as to the nature of the plaintiff's right of action. It seems to be the plaintiff's case that if the money was borrowed for necessary family expenditure it follows that the plaintiff, if he raised the money on his personal security, was entitled, by reason of his discharging that debt, to claim contribution; that is to say, that his personal debt, if contracted to enable him to defray expenses common to him and the other members of the family, became thereby a family debt itself. We do not think that this notion is right: it is inconsistent with the authorities just referred to.

No doubt the members of the family might have agreed with the plaintiff that if he should raise the money in this manner, they would contribute towards the discharge of the liability so incurred by him; but in the absence of such an agreement, or of any adoption by them of his act as their own, we are unable to see that any obligation was created on their part towards him, by reason of his having satisfied the decrees under which he was alone liable.

We do not think that the proceedings in the partition suit, No. 66 of 1886, can be held to have had the effect of making any of the parties to that suit liable to recoup the plaintiff as adopting as their own (as between them and him) the debt under his promissory notes. There was no adjudication in that suit as to the debts

(1) 12 W. R., 194; 6 B. L. R., Ap. 103.

(2) I. L. R., 5 Calc., 321.

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referred to in the petition of the 6th June 1887, amongst which, no doubt, those of Assar 1287 were included. It would be giving too strict an interpretation to the terms of that petition to hold that thereby the parties to it other than the plaintiff adopted and ratified as their act the making of the notes. It lay on the plaintiff to show that this was the meaning and intention of the defendant Aghore Nath when he joined in that petition. By itself, it is too ambiguous to justify us in attributing that effect to it; it may have been a mere oversight that the amount then due for interest on the notes was included as part of the family debt.

But we think that, apart from this, the plaintiff had no authority to bind the defendants by the part payment of 1886 so as to prevent the notes from being barred, and so render a decree against him possible.

The result is that, except so far as the plaintiff did pay any of the money raised by him for family necessities, he has no cause of action; it is admitted that such payment (if made) was made so long ago that any claim founded upon it is long since barred by limitation. The suit therefore wholly fails, and the appeal must be allowed. We set aside the decree of the lower Appellate Court and dismiss the suit with costs in all the Courts.

Appeal decreed.

A. A. C.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

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July 21.

THAKOOR DYAL SINGH AND OTHERS (JUDGMENT-DEBTORS) *v.* SARJU PERSHAD MISSER AND ANOTHER (DECREE-HOLDERS).*

Execution of decree—Civil Procedure Code (Act XIV of 1882), *s.* 257(*a*)—*Agreement sanctioned by Court executing decree—Enforcement of agreement in execution.*

An agreement, which has received the sanction of the Court of execution under s. 257 (*a*) of the Civil Procedure Code, that money due under it

* Appeal from order No. 284 of 1891, against the order of J. F. Stevens, Esq., District Judge of Tirhut, dated the 2nd of June 1891, affirming the order of Babu Grish Chunder Chowdhry, Subordinate Judge of that district, dated the 21st of March 1891.