

demand for the principal, and to forbear to sue until that day. Hence the period of limitation must be reckoned from that day, and the suit, having been brought on the 27th March 1876, is not barred. The verdict, therefore, should stand.

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JANARDHAN  
RAMCHANDRA

## [ORIGINAL CIVIL JURISDICTION].

*Reference from Court of Small Causes.*

*Suit No. 27039 of 1876.*

HEARN AND OTHERS (PLAINTIFFS) v. BAPU SAJU NAIKIN (DEFENDANT). December 15.

*Attorney and client—Bill of costs—Limitation—Act IX. of 1871, Schedule II.,  
Clause 85—Act VIII. of 1859, Section 206.*

A solicitor was retained in July 1871 to execute a decree. In November 1871 a prohibitory order was made in the cause after which the solicitor did nothing more in the matter. In June 1872 the decree-holder and judgment-debtor settled the matters in dispute between them without the knowledge of the solicitor, but this compromise was not made through, or certified to, the Court which passed the decree. In a suit brought in December 1875 by the solicitor against the decree-holder to recover the amount of his bill of costs,

*Held* that the plaintiffs' claim was not barred by Article 85 of Schedule II. to Act IX. of 1871.

THIS was a case stated for the opinion of the High Court, under Section 55 of Act IX. of 1850, by J. O'Leary, First Judge of the Court of Small Causes at Bombay.

The plaintiffs, who are a firm of solicitors in Bombay, were retained by the defendant in July 1871 for the purpose of executing a decree which had been obtained by the defendant. In November 1871 a prohibitory order was made in the cause, after which no further work was done in the matter by the plaintiffs for the defendant.

In June 1872 the defendant and her judgment-debtor settled the matters in dispute between them without the knowledge of the plaintiffs; but this compromise was not made through, or certified to, the Court which passed the decree.

On the 11th December 1875 the plaintiffs instituted the present suit against the defendant, to recover from her the amount of their bill of costs. The defendant pleaded limitation, and relied

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on Clause 85 of Schedule II. of Act IX. of 1871. The Third Judge of the Court of Small Causes, who tried the case, found a verdict for the plaintiffs for the amount claimed. The defendant then moved for a new trial before the First, Third, and Fourth Judges, who, having differed in opinion, ordered the verdict for the plaintiffs to stand, subject to the opinion of the High Court on the question, " Was the claim of the plaintiffs barred by the law of limitation ? "

At the hearing of the reference by WESTROPP, C.J., and SARGENT, J., on the 15th December 1876, *Macpherson* (for *Marriott*, Acting Advocate-General), on behalf of the plaintiffs :—Clause 85 of Schedule II. of Act IX. of 1871 is no bar to the present suit, for there has been here no discontinuance by the attorneys of the business which they were conducting for the defendant, nor has that business terminated. The compromise between the defendant and her judgment-debtor cannot be recognized by the Court (Act VIII. of 1859, Section 206), and therefore the Court cannot hold that that compromise was the " termination of the suit or business " in respect of which these costs became due. *Whitchead v. Lord*<sup>(1)</sup> governs the case.

There was no appearance on behalf of the defendant.

PER CURIAM :—Let the decree for the plaintiffs by the Court of Small Causes stand. The costs of this reference must be paid by the defendant.

### [ORIGINAL CIVIL JURISDICTION.]

*Suit No. 470 of 1874.*

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January 27.

MANCHERJI KAWASJI DAVUR AND ANOTHER (PLAINTIFFS) v.  
MITHIBAI (DEFENDANT).

*Parsi succession—Act XXI. of 1865—Childless widow of predeceased son of a Parsi intestate.*

It is not a condition precedent to the application of Section 5 of Act XXI. of 1865 that the predeceased son of an intestate Parsi shall have left a widow and issue.

(1) 7 Exch. 691; S. C. 21 L. J. Exch. 239.