

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1911.

September 18.

SHEVDAS DAULATRAM MARWADI, ORIGINAL PLAINTIFF, *v.* NARAYEN
VALAD ASAJI, ORIGINAL DEFENDANT.*

Limitation Act (IX of 1908), section 31 (1)—Period of two years for filing suits—Period not "prescribed"—Last day Sunday—Suit filed on Monday next—Limitation.

A question having arisen as to whether a suit for which provision is made under section 31 (1) of the Limitation Act (IX of 1908), if instituted on a Monday, one day after the period of two years from the date of the passing of the Act has expired, can be taken to have been instituted within the period of two years,

Held that the suit could not be taken to have been instituted within the period of two years and that two years specified in section 31 of the Limitation Act (IX of 1908) was not the period of limitation 'prescribed.'

REFERENCE made by S. P. Badami, Second Class Subordinate Judge of Shevgaum in the Ahmednagar District, under Order XLVI, Rule 1, of the Civil Procedure Code (Act V of 1908).

The plaintiff sued under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) to recover Rs. 198 by sale of the mortgaged property. The mortgage bond was dated the 11th June 1892 and the money sued for became due on the 11th March 1893. Under Article 132 of the Limitation Act (IX of 1908) the period of limitation of twelve years for filing the suit expired on the 11th March 1905, but as section 31 of the Act, which came into force on the 7th August 1908, made a special provision for such suits enacting that such suits may be filed within two years from the date of the passing of the Act, and as the said period of two years expired on Sunday, the 7th August 1910, the plaintiff filed the suit on the next day, that is, on Monday the 8th August 1910. The suit being thus filed one day after the period of two years given by section 31, and a question having arisen as to whether the suit was in time, the Subordinate Judge referred the following question for an authoritative decision under Order XLVI, Rule 1, of the Civil Procedure Code (Act V of 1908):—

"Whether a suit for which provision is made under section 31 of the present Limitation Act, if instituted on the 8th

August 1910 (the 7th August being Sunday), can be taken to have been instituted within a period of two years from the date of the passing of the Act ? ”

The opinion of the Subordinate Judge was in the affirmative.

The suit being governed by the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879), the decree of the Subordinate Judge was not appealable under section 10 of the Act. In the body of the reference the Subordinate Judge noticed Civil Reference No. 9 of 1910 in which it was decided that the two years' period allowed by section 31 of the Limitation Act could not be taken as the period prescribed, sections 9 and 10 of the General Clauses Act (X of 1897), sections 4 and 12 of the Limitation Act (IX of 1908), *Shooshee Bhusan Rudro v. Gobind Chunder Roy*⁽¹⁾, *Peary Mohun Aich v. Amunda Charan Biswas*⁽²⁾, *Aravamudu Ayyangar v. Samiyappa Nadan*⁽³⁾, *Sambasiva Chari v. Ramasami Reddi*⁽⁴⁾.

K. H. Kelkar (*amicus curiæ*) for the reference.

P. D. Bhide (*amicus curiæ*) against the reference.

SCOTT, C. J.:—We have already held in *Dayaram v. Laxman*⁽⁵⁾ that the two years' time specified in section 31 of the Limitation Act of 1908 is not the period of limitation 'prescribed'. We are now asked whether a suit for which provision is made in section 31 (1), if instituted on a Monday, one day after the period of two years from the date of the passing of the Act has expired, can be taken to have been instituted within the period of two years.

The learned Subordinate Judge, who made the reference, thinks the suit must be taken to be within time, relying upon *Sambasiva Chari v. Ramasami Reddi*⁽⁴⁾ and *Shooshee Bhusan Rudro v. Gobind Chunder Roy*⁽⁶⁾. In the last mentioned case it was held that where thirty days were allowed for making a deposit in Court under section 174 of the Bengal Tenancy Act 1885, the deposit might be made within thirty-one days if the

(1) (1890) 18 Cal. 231.

(2) (1891) 18 Cal. 631.

(3) (1897) 21 Mad. 385.

(4) (1898) 22 Mad. 170.

(5) (1911) 13 Bom. L. R. 284.

(6) (1890) 18 Cal. 231.

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thirtieth day fell on a Sunday. The learned Judges deduced from the cases of *Mayer v. Harding*⁽¹⁾, and *Waterton v. Baker*⁽²⁾, the broad principle that although the parties themselves cannot extend the time for doing an act in Court, yet, if the delay is caused not by any act of their own but by some act of the Court itself—such as the fact of the Court being closed—they are entitled to do the act on the first opening day. We are unable to find any such general principle laid down in those cases. In *Mayer v. Harding*⁽¹⁾ the appellant having applied to the Justices to state a case under 20 & 21 Vict. C. 43, (which provides that the party shall within three days after receiving such case transmit the same to the proper Court) received the case from the Justices on Good Friday and transmitted it to the proper Court on the following Wednesday, and it was held that as the offices of the Court were closed from Good Friday till Wednesday, the appellant had sufficiently complied with the requirements of the section. Mellor J. in delivering the judgment of the Court said,

“Where a statute requires a thing to be done within three days, or six months, or within any particular period, the time may no doubt be circumscribed by the fact of its being impossible to comply with the statute on the last day of the period so fixed. But this is not the present case. Here it was impossible for the appellant to lodge his case within three days after he received it. As regards the conduct of the parties themselves, it is a condition precedent. But this term is sometimes used rather loosely. I think it cannot be considered strictly a condition precedent where it is impossible of performance in consequence of the offices of the Court being closed, and there being no one to receive the case.”

The opening passage in Mellor J.'s judgment refers to the well-established rule of construction in England that Sunday is not a *dies non* in computing time in accordance with an Act of Parliament. In *Ex parte Simplin*⁽³⁾ it was said: “where an Act of Parliament gives a given number of days for doing a particular act, and says nothing about Sunday, the days mentioned are to be taken as consecutive days including Sunday.” The same rule was applied in *Rowberry v. Morgan*⁽⁴⁾ and *Peacock*

(1) (1867) L. R. 2 Q. B. 410.

(1868) L. R. 3 Q. B. 173.

(3) (1859) 29 L. J. M. C. 23 at p. 25.

(4) (1854) 23 L. J. Ex. 191.

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v. *The Queen*⁽¹⁾ and *Wynne v. Ronaldson*⁽²⁾: in this last mentioned case Crompton J. followed *Peacock v. The Queen*⁽¹⁾ saying, "we have always held that where Sunday is the last day, Monday is too late for renewing a writ." The case of *Waterton v. Baker*⁽³⁾, cited in *Shooshee Bhusan Rudro v. Gobind Chunder Roy*⁽⁴⁾, was one in which the neglect of the appellant's adversary created an impossibility against which the appellant was relieved.

None of the other cases in *Hossein Ally v. Donzelle*⁽⁵⁾ or *Peary Mohun Aich v. Anunda Charan Biswas*⁽⁶⁾ were cases of delay caused merely by the last day of a period falling on a Sunday.

We think that as the Special Statutory provisions, section 10 of the General Clauses Act and section 4 of the Limitation Act, do not apply to the case, we must decline to sanction the non-observance of the provisions of section 31 (1) on the ground that the last day of the two years' period fell on a Sunday. It is not a case of hardship. It was a simple matter of calculation to realise that the suit in order to get the advantage of the saving provisions in section 31 must at latest be instituted on the Saturday preceding the last Sunday. For these reasons we answer the question in the negative.

Order accordingly.

G. B. R.

(1) (1858) 27 L. J. C. P. 224.

(4) (1890) 18 Cal. 231.

(2) (1865) 12 L. T. N. S. 711.

(5) (1880) 5 Cal. 906.

(3) (1866) L. R. 3 Q. B. 173.

(6) (1891) 18 Cal. 631.