ORIGINAL CIVIL.

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

1912.
January 18.

LALJI NENSEY LUDHA (APPELLANT AND PLAINTIFF) *v.* KESHOWJI PUNJA AND OTHERS (RESPONDENTS AND DEFENDANTS).*

Joint Hindu family—Trading business belonging to joint Hindu family—Position of an infant member of a joint Hindu family with regard to business contracts—Joinder of parties—Necessary parties to a suit on a business contract entered into by certain members of a joint Hindu family carrying on an ancestral business on behalf of all the members of the family.

A trade, like other personal property, is descendible amongst Hindus, but it does not follow that a Hindu infant, who by birth or inheritance becomes entitled to an interest in a joint family business, becomes at the same time a member of the trading corporation which carries on the business.

Accordingly, it is not necessary in the case of a Hindu family to join in a suit upon a business contract minor members of the family who in fact take no share in the business which is carried on on behalf of the family. Those who actually were the contracting parties with the defendant must in the case of a suit by members of a Hindu family all be joined, but minor members of the family who take no part in the family business should not be joined in suing for business debts.

THE plaintiff sued the defendants for monies advanced to the defendants by the firm of Nensey Ludha as evidenced by an adjustment, dated the 21st of October 1903, signed by the 1st defendant, wherein it appeared that the sum of Rs. 5,397-12-0 was due from the defendants to the said firm.

The plaint, as amended, declared that in 1903 the plaintiff and his father, one Nensey Ludha, were carrying on business in the name and firm of Nensey Ludha and that the said business was an asset of a joint and undivided Hindu family, the only male members of which were the plaintiff and his father. The plaint further stated that the said Nensey Ludha had died on the 4th of February 1905, that the plaintiff thereupon became the sole owner of the firm of Nensey Ludha by survivorship,

* Appeal No. 37 of 1911 : Suit No. 167 of 1906.

that since the filing of the suit the plaintiff had had two sons born to him and that the plaintiff was the manager of a joint and undivided Hindu family, consisting of himself, his two sons and his mother.

The plaintiff's claim was first tried before Mr. Justice Beaman who dismissed the suit on the ground that the minor sons of the plaintiff, though born after the cause of action had arisen and the suit had been filed, were necessary parties to the suit. The learned Judge further came to the conclusion that at the date of their birth the claims of the minor sons against the defendants were barred under section 22 of the Act of Limitation (IX of 1908), and that consequently the plaintiff's claim would be time-barred if the minor sons were added as plaintiffs.

The plaintiff appealed.

Strangman (Advocate-General) and *Inverarity*, for the plaintiff and appellant.

Raikes and *Bahadurji*, for the defendants and respondents.

SCOTT, C. J. :—This is an appeal from the dismissal by Mr. Justice Beaman of a suit filed by the plaintiff, as the sole surviving partner of a firm carried on by himself and his father Nensey Ludha in the year 1903, in which year the defendants incurred certain obligations to that firm. The plaintiff alleged that his father died on the 4th of February 1905 and that the plaintiff then became the sole owner of the firm. The defendants put in a written statement in the year 1906, putting in issue the allegation that the present plaintiff was a partner with his father Nensey Ludha.

The suit came on for hearing on the 8th July 1911 and the first issue raised was whether the plaintiff was a partner with his father Nensey Ludha in the firm of that name. Certain evidence was recorded. The plaint-

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iff alleged a partnership and he was cross-examined, and as a result of the hearing on the first day it was apparently suggested that the plaintiff could not succeed unless the plaint was amended; and on the 15th July, in spite of the objection of the defendants, an amendment was allowed whereby the plaintiff altered his plaint in certain respects. The learned Judge states the circumstances, under which the amendment was allowed, as follows :—"This suit was originally instituted by the plaintiff as the surviving partner in a firm. An objection was taken that the firm, alleged to consist of the plaintiff and his father, was in no real sense a partnership, and the suit as framed was bad on that account. Issues were raised and some evidence was gone into, at the close of which it certainly did appear that the plaintiff would have little chance of establishing the alleged partnership. He was granted an adjournment to amend the plaint. This has now been done and the plaintiff sues as the surviving member of a joint Hindu family originally consisting of his father and himself alone, but at the present day consisting of himself and his two minor children born after the filing of the suit and his mother." The amendments in the plaint are as follows :—The first paragraph as it originally stood was : "In the year 1903 the plaintiff and his late father Nensey Ludha were carrying on business as grocers in Bombay in partnership with each other in the name or firm of Nensey Ludha." By the amendment the words "in partnership with each other" were struck out and the following sentence was added, namely, "The said business was an asset of a joint and undivided Hindu family, the only male members of which were the plaintiff and his said father." In the fourth paragraph instead of the words, "the plaintiff is now the sole owner of the said firm of Nensey Ludha" is substituted, "the plaintiff thereupon became the sole owner of the said

firm of Nensey Ludha by survivorship." And paragraph 9 (*a*) was added stating as follows :—"since the filing of this suit the plaintiff has had two sons born to him. The plaintiff is the manager of the joint and undivided Hindu family consisting of himself, his said two sons and his mother."

There is, therefore, no allegation that the liability of the defendants was incurred to a firm or a business which at that time was being carried on by the plaintiff as manager on behalf of his minor sons. According to the plaint, they were not in existence at the date of the cause of action or at the date of the filing of the plaint. It has been contended on behalf of the respondents that the effect of the amendment of the plaint is to delete the allegation that the plaintiff and his father carried on business in partnership and to substitute a claim based upon the right of the plaintiff to sue on behalf of himself and his minor children as members of a joint Hindu family possessed of a cause of action in which they are all equally entitled, and it is contended that upon that footing the plaintiff cannot sue alone, and that if his minor sons should be joined, which they have not been, the suit would be barred by limitation. The learned Judge in the lower Court acceded to that argument and considering himself to be bound by the decision of this Court in *Naranji* v. *Moti*[1] held that there was a rule that all members of a joint Hindu family in existence at the date of the filing of the plaint were necessary parties and that the same rule extended to the members of a joint family born between the filing of the plaint and the decree.

Now, the report of the case of *Naranji* v. *Moti*[1] shows clearly, we think, that the *ratio decidendi* was that the debt sued for was joint family property and, treating the case

[1] (1907) 9 Bom. L. R. 1126.

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from that point of view alone, that a minor who was born after the date of the filing of the suit ought to be joined with his co-parceners in the suit. No reference is made in the judgment to the question whether the parties to the suit ought to be regulated according to the parties to the contract at the time the contract was made. It appears to us that this case should be decided with reference to the question who were the parties to the contract and that it is not necessary in the case of a Hindu family to join in a suit upon a business contract minor members of the family who in fact take no share in the business which is carried on on behalf of the family. The cases of *Ramsebuk* v. *Ramlall Koondoo*[1] and *Kalidas Kevaldas* v. *Nathu Bhagvan*[2] show that those who actually were contracting parties with the defendant must in the case of a suit by members of a Hindu family all be joined, but neither of those cases shows that minor members of the family who take no part in the family business should be joined in suing for business debts. The contrary has in fact been held by Mr. Justice Sale in *Lutchmanen Chetty* v. *Siva Prokasa Modeliar*[3], a case which unfortunately does not appear to have been cited to the learned Judge in the Court below. Mr. Justice Sale had before him a case the facts of which were as follows :—The only original partners of a firm in whose name the note in suit was given were the plaintiff and his brother Ramanathen Chetty, and upon the death of the latter and at the date of the note the plaintiff was the sole surviving partner of the firm. But it was proved that he had four sons living, the eldest of whom was nine or nine and-a-half, while the youngest was born since the institution of the suit, and the son of the deceased brother Ramanathen Chetty died after the institution of the suit leaving only a daughter. None of

(1) (1881) 6 Cal. 815.

(2) (1883) 7 Bom. 217.

(3) (1899) 26 Cal. 349.

the plaintiff's sons were in existence at the time the dealings with the defendant commenced. At the date of the execution of the note in suit the plaintiff's eldest son was probably in existence, and the plaintiff's brother's son was also in existence, but it did not appear when he was born and the defendant relied mainly in bar of the suit on the plea that all necessary parties to the suit had not been joined as plaintiffs. Mr. Justice Sale, after referring to *Ramsebuk's* case, said (p. 354): "No authority has been cited to show that infant members of a Hindu co-parcenary must be joined as co-plaintiffs in suits to recover claims arising out of a joint family business managed by adult members of the family. A debtor of a firm carrying on a joint family business is no doubt entitled to insist that all his co-contractors should join as plaintiffs in a suit instituted to recover the debt, but on what principle can it be said that infants, possibly of tender years as in this case, who are not shown to have been admitted into the trading partnership or to have taken any part in the business or exercised any control therein, are in any sense co-contractors of the debtor? A trade like other personal property is descendible amongst Hindus, but it does not follow that a Hindu infant, who by birth or inheritance becomes entitled to an interest in a joint family business, becomes at the same time a member of the trading partnership which carries on the business." He then refers to the case of *Petumdoss* v. *Ramdhone Doss*[1]. In that case it was held that a minor son of a Hindu father could not join in a claim upon a mercantile contract for non-delivery of goods, and the Chief Justice said (p. 281): "The son is proved to be only three years of age, and it appears that there are other sons of the father. The witness who said that they were partners, appears to us to have drawn that conclusion merely from the use of the child's

(1) (1848) Taylor 279.

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name in the firm. The law of joinder of parties is a law of procedure, and is governed by the *lex fori*. It is desirable that it should be uniform. If we were to decide in this case that the infant son may be joined, it would be equivalent to a decision that he and others, situated as he is, must be joined in all cases as co-plaintiffs, and as this could only proceed on the ground of a real partnership evidenced by the mere use of a name, it would be really equivalent to deciding that such infants might be joined as defendants at the pleasure of a plaintiff." That case was referred to in the earliest of the Bombay cases upon the law relating to infants interested in family businesses: *Ramlal Thakursidas* v. *Lakhmichand Muniram*[1]. It is also pointed out by Mr. Justice Sale that a dormant partner in England may join in a suit as plaintiff but never need do so: That is stated in Lindley on Partnership, page 333 (8th edn.); and in Dicey on Parties, page 151, it is said: "A *dormant* partner is *a person who does not appear to be a partner, but is so*, and occupies the position of an undisclosed principal, and therefore always *may*, and never *need*, join in an action on a contract made with the firm." The case of *Ramsebuk* v. *Ramlall Koondoo*[2] has lately been discussed by their Lordships of the Judicial Committee in *Kishen Parshad* v. *Har Narain Singh*[3] and from that judgment it appears that a man can only claim to be sued by the people with whom he contracted.

It appears to us that upon amendment the plaint has a twofold aspect. It is based on the allegation that a firm was carried on for the purpose of a grocery business between the plaintiff and his deceased father, of which the plaintiff is the sole surviving partner and also upon the allegation that the plaintiff and his father were joint and that as a necessary consequence the sons of the

(1) (1861) 1 Bom. H. C. R. Appx. 51. (2) (1881) 6 Cal. 815.
(3) (1911) L. R. 38 I. A. 45 at p. 53.

plaintiffs born after the institution of the suit are joint with the plaintiff in the family property. It does not follow from that, however, that the defendants can insist upon those sons being joined.

We are of opinion that the allegations introduced in the plaint by amendment are mere developments of the plaintiff's position and they do not introduce any new cause of action which can be defeated by applying the law of limitation. The amendments only develop the original cause of action.

We set aside the decree of the lower Court and remand the case for trial to a conclusion. Costs costs in the cause.

Attorneys for the plaintiff: *Messrs. Ardeshir, Hormusji, Dinsha & Co.*

Attorneys for the defendants: *Messrs. Wadia, Gandhi & Co.*

Decree set aside.

H. S. C.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

BHAGWANDAS PARASHRAM, A FIRM, PLAINTIFFS, *v.* BURJORJI RUTTONJI BOMONJI, DEFENDANT.*

1912. *April* 1.

Interrogatories—Admissibility of interrogatories—Inadmissibility of certain questions as interrogatories though admissible in cross-examination—Interrogatories obviously designed to assist in fishing up a case—Defence of wagering—Inadmissibility of interrogatories by the party raising defence of wagering as to the general business transactions of his opponent apart from the particular transactions in suit.

The mere fact that questions would be admissible in cross-examination of a witness does not make them good as interrogatories. Interrogatories must not

* Suit No. 272 of 1911.