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Mr. *Jackson* in reply.—We say they have overcharged us. That is relevant enough to the suit, and we want to know the actual prices they paid for the goods. We know what we paid them.

In *Heeralall Rukhit* v. *Ram Surun Loll* (1) a similar case Pontifex, J., directed a reference to an officer of the Court to report on the relevancy of the documents, of which inspection was sought.

This was followed by Sale, J., in an unreported case, *Mughu Bibee* v. *Heeralall* appearing in the records of 2nd May 1894.

A man can always, alleging a person to be his agent, claim an account.—*Makepeace* v. *Rogers* (2).

Under Order XXXI, Rule 1, documents of which inspection can be obtained are not confined to those that would be admissible in evidence. In the case cited by my friend the learned Judge's remarks as to discovery are mere dicta and not necessary to the decision of the case. The judgment of Pontifex, J., followed by Sale, J., is in point. Here we allege overcharge and give instances. They haven't met our affidavit.

STANLEY, J.—Let the books be produced before me on Saturday next at 11 o'clock for the purposes of inspection under s. 130 of the Civil Procedure Code. I reserve costs and adjourn this application.

Attorneys for the Plaintiffs: Messrs. *Leslie & Hinds.*

Attorney for the Defendant: *Babu Kally Mohan Rukshit.*

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[427] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K. C.I.E., Chief Justice, and Mr. Justice Banerjee.

JANAKDHARY SUKUL (*Plaintiff*) *v.* JANKI KOER AND OTHERS (*Defendants.*)* [23rd August, 1900].

Civil Procedure Code (*Act XIV of* 1882), *ss.* 410, 413—*Act VIII of* 1859, *ss.* 808, 810—*Suit by pauper—Application for permission to sue in forma pauperis—Limitation—Limitation Act* (*XV of* 1877), *s.* 4,—*Explanation—Date of institution of suit payment of Court fees.*

An application for leave to sue as a pauper being made, the defendant put in a petition of objection opposing it, and thereupon the applicant put in the proper Court-fee and asked the Court to treat his application as a plaint.

Held, that the application should be deemed for the purpose of limitation to be a plaint presented on the date on which it was filed. *Skinner* v. *Orde* (3) followed; *Abbasi Begam* v. *Nanki Begam* (4) dissented from.

THE plaintiff sued to recover possession of certain properties on the allegation that he was dispossessed therefrom on the 24th March 1874. He alleged that he had been a minor at the time of the dispossession, and that he had attained his majority on the 21st December 1891. The plaintiff presented his application for leave to sue as a pauper on the 8th December 1894. The defendants opposed the application and it was

* Appeal under s. 15 of the Letters Patent, No. 48 of 1899, against the decree of the Hon'ble Mr. Justice Wilkins, one of the Judges of this Court, dated the 14th of June 1899, in Appeal from Appellate Decree No. 1585 of 1897, against the decree of Alfred F. Stienberg, Esq., Additional Judge of Sarun, dated the 16th of July 1897, affirming the decree of Babu Behari Lal Mullick, Subordinate Judge of that District, dated the 7th of May 1896.

(1) (1879) I. L. R. 4 Cal. 895. I.A. 126.
(2) (1865) 34 L. J Ch 896, 898.
(3) (1879) I. L. R. 2 All. 241; L. R. 6 (4) (1896) I. L. R. 18 All. 206.

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withdrawn on the 2nd March 1895 when the plaintiff paid the Court fees and asked that his application might be treated as a plaint.

The Subordinate Judge who tried the case held that the plaintiff was not entitled to the benefit of s. 7 of the Limitation Act [428] to sue within 3 years of attaining majority, and accordingly dismissed the suit.

There was an appeal to the Additional Judge, who dismissed the appeal, but upon a different ground. He held that the suit was barred by limitation, inasmuch as it must be held that it was filed on the 2nd March 1895, *i.e.*, more than 3 years after the plaintiff had attained his majority, and not on the 8th December 1894, as contended by the plaintiff appellant.

The plaintiff appealed to the High Court. The appeal, which came on for hearing before Mr. Justice Wilkins, was dismissed on the 14th June 1899. The material portion of the judgment, necessary for the purpose of the present report, was as follows :—

"The learned pleader for the appellant contends upon the authority of *Skinner* v. *Orde* (1) that the plaintiff's suit should be deemed to have been instituted from the date when he filed his pauper application and that limitation runs against him only up to that date; the suit is therefore within time. That case, however, has been explained in the latter case of *Abbasi Begam* v. *Nanhi Begam* (2), wherein it is pointed out that *Skinner* v. *Orde* (1) "was decided on a prior Code of Civil Procedure and that it was decided apparently to some extent on the belief that there was a practice in the Courts in India which had justified what had taken place in that case." After stating that the case before them had to be dealt with under the present Code of Civil Procedure and that no practice exists in those Provinces by which the Courts recognize any infringement of the specific provisions of the Court Fees Act, the learned Judges go on to say (at p. 209) : "It is not contemplated in the Code of Civil Procedure that a person may present a petition for leave to sue as a pauper, and, after the law of limitation has become a bar to any suit, elect to dispauperise himself and to proceed, as if his petition for leave to sue as a pauper was a regular plaint in an ordinary suit at the date, when it was filed. It has been decided by this Court that the effect of the Court Fees Act is that a plaint if not properly stamped within limitation is not a good plaint to prevent the law of limitation from applying to the suit . . . . When the stamps in this case were paid into Court, any suit by Abbasi Begam for dower was already time-barred." Although the rulings of this Court are not altogether in accord with those of the Allahabad High Court in respect of the necessity of filing the proper Court fee stamp within limitation [See the case of *Moti Sahu* v. *Chhatri Das* (3), *Huri Mohan Chuckerbutti* v. *Naimuddin Mahomed* (4) [429] yet in the cases decided in this Court the plaint had been filed bearing some, though insufficient stamps, and I am not aware of any authority for the proposition that a plaint which requires to be stamped can be held to be properly filed when no stamp whatever is affixed to it. Under the Court Fees Act every plaint must bear a stamp of some value; there may be a *bona fide* miscalculation and that may be corrected under the Procedure Code; but there can be no excuse for filing a plaint without any stamp at all.

In other respects the remarks of the learned Judges in *Abbasi Begam* v. *Nahni Begam* (2) would apply to the case now before me.

It is also to be remarked that in *Skinner* v. *Orde* (1), the suit instituted by the plaintiff was held to have been filed not upon the date when the pauper application had been filed, *viz.*, 20th February 1873, but on the date upon which the case had been "brought on the file and numbered," *viz.*, 19th July 1873, and this after the application for leave to sue as a pauper had been granted by the Court of the Deputy Commissioner of Delhi, before whom that question first came for disposal, and, as their Lordships of the Privy Council lay down, "this is the plaint that is allowed to go on" (*ibid*, p. 250). That case is, therefore, clearly distinguishable from the case now under consideration. I may add that the explanation to s. 4 of the Limitation Act XV of 1877, which provides that "a suit is instituted, in ordinary

(1) (1879) I. L. R. 2 All. 241 ; L. R. 6 A. 126.
(2) (1896) I. L. R. 18 All. 206.
(3) (1892) I. L. R. 19 Cal. 780.
(4) (1892) I. L. R. 20. Cal. 41.

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cases, * * * in the case of a pauper, when his application for leave to sue as a pauper is filed." seems to me to apply only to cases in which the application has been granted and the case of *Chunder Mohun Roy* v. *Bhubon Mohini Dabea* (1) supports this view.

If the application of the plaintiff had been rejected, manifestly his suit would have been time-barred, for there would have been no longer any application in existence which could by the affixing of Court fee stamps be treated as a plaint. The statement made by the plaintiff on the 2nd March 1895 that he did not wish to press his application and desired to put in the Court fee stamps, in order that it might be treated as a plaint, was practically a statement withdrawing the pauper application, which consequently ceased to be in existence then and there. The remarks of their Lordships of the Privy Council in *Skinner* v. *Orde* (2) at p. 250, would, as already pointed out, not be applicable to a case like the present one, for the circumstances of the two cases materially differ. I am, therefore, of opinion that the finding of the Lower Appellate Court was correct and I dismiss this appeal with costs.

[430] From this decision the plaintiff appealed under s. 15 of the Letters Patent.

Babu *Dwarka Nath Mitter*, for the appellant.

Babu *Lalmohan Ganguli*, on behalf of Babu *Karuna Sindhu Mukherjee*, for the respondents.

1900, AUGUST 23. MACLEAN, C. J.—To my mind this case is covered by the decision of the Judicial Committee of the Privy Council in the case of *Skinner* v. *Orde* (2). I dissent from the view taken by the Allahabad High Court in the case of *Abbasi Begam* v. *Nanhi Begam* (3) and I do not think that the grounds upon which that Court distinguished the case before it from the case of *Skinner* v. *Orde* (2) are well founded. It is true that *Skinner* v. *Orde* (2) was decided under a Procedure Code other than the present, *viz.*, under Act VIII of 1859, but the language of s. 310 of that Code is, in substance, the same as s. 413 of the present Code, except that the words "unless precluded by the rules for the limitation of suits" are excluded from s. 413 of the present Code. The exclusion of those words in the present Code does not appear to me to strengthen the argument upon which the Allahabad decision proceeded. Then, as regards the suggestion that the Privy Council decision rested to some extent upon some supposed practice in the Courts of India, all that the Judicial Committee said was, "although the analogy is not perfect, what has happened is not at all unlike that which so commonly happens in practice in the Indian Courts, that a wrong stamp is put upon the plaint originally and the proper stamp is afterwards affixed." I do not think that it can be fairly inferred from the language that the decision was based upon some supposed practice in the Indian Courts. On the contrary ample, and if I may say so respectfully, very forcible reasons for their decision are clearly stated in the judgment of the Judicial Committee.

[431] In the view I take, it is unnecessary to deal with the other cases which have been cited.

The appeal must be allowed, and the case must go back to the Lower Appellate Court to try the other issues and questions in the case. The appellant must have the costs of this appeal and the costs of the appeal before Mr. Justice Wilkins, and of the appeal before the District Judge.

BANERJEE, J.—I am of the same opinion. The question raised in this case is, whether the suit should be regarded as instituted on the day

(1) (1877) I. L. R. 2 Cal. 389. I. A. 126.
(2) (1879) I. L. R. 2 All. 241 ; L. R. 6 I. A. 126.
(3) (1896) I. L. R. 18 All. 206.

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upon which the application for leave to sue in *forma pauperis* was filed, or whether it should be treated as having been instituted on the day on which the Court fee was paid. Upon that question the case of *Skinner* v. *Orde* (1) is clear authority in favour of the view that the suit should be treated as having been instituted on the day on which the application for leave to sue in *forma pauperis* was made. Mr. Justice Wilkins in taking the other view, namely, that the suit should be regarded as instituted on the day the Court fee was paid, has followed the decision of the Allahabad High Court in the case of *Abbasi Begam* v. *Nanhi Begam*, (2) which distinguishes the case decided by the Privy Council from a case like the one before us, on the ground that the case before the Privy Council was decided with reference to the former Procedure Code, and to what was supposed to be the practice in India relating to the payment of Court fees; but, as has been pointed out in the judgment of the learned Chief Justice, these two points of distinction are not really material points of distinction at all. It is quite true that under the former Code of Civil Procedure Act VIII of 1859 as well as the present, where an application for leave to sue as a pauper is rejected, and the applicant institutes a suit in the ordinary manner, the rules of limitation apply to his case, and his suit should be regarded as instituted on the day on which he presents his fresh plaint. That, however, was not the case here; what happened here was that, after the application for leave to sue as a pauper was made, and the defendants had put in their petition of objection opposing the application, the applicant for leave to sue as a pauper offered to put in the proper Court fee, and **[432]** asked the Court to treat his application as a plaint. That was done, and that is exactly what happened in the case of *Skinner* v. *Orde* (1).

S. 4 of the Limitation Act, when it says, in the Explanation, that a suit in the case of an application for leave to sue as a pauper is to be treated as instituted when the application for leave to sue is filed, must no doubt be taken to have reference to a case, in which such application is granted; and it is not intended to apply to a case in which the application to sue as a pauper is rejected. In the present case the application for leave to sue as a pauper was neither granted nor rejected, for this simple reason that the case had not arrived at the stage at which the Court had to determine the question of granting or rejecting the application, because the applicant offered to pay the Court fee whilst the application was pending. The view taken by the Allahabad High Court is this, that, unless the application for leave to sue as a pauper is granted, the institution of the suit cannot be said to date from the day of the filing of that application, and that in a case like the present, the suit must be treated as being instituted on the day on which the Court fee is paid. But this is not what their Lordships of the Privy Council say with reference to such a case. In *Skinner* v. *Orde* (1), after referring to ss. 308 and 310 of the former Code of Civil Procedure, under which that case was decided, and which correspond to ss. 410 and 413 of the present Code, their Lordships say: "But this case is one which the statute has not in terms provided for. The intention of the statute evidently was that, unless the petition was rejected, as it contained all the materials of the plaint, it should operate as a plaint without the necessity of filing a new one. Then what are the facts in this case? The petition is filed and

(1) (1879) I. L. R. 2 All. 241; L. R. 6 I. A. 126.

(2) (1896) I. L. R. 18 All. 206.

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proceedings are taken to enquire into the pauperism, which are delayed by varius orders of the Court, after the plaintiff had been already bendied about from one Court to another, until a very considerable period of time has elapsed. Then pending that enquiry the plaintiff by paying the amount of stamp fees [433] into Court admits that he is no longer desirous to sue as a pauper, and gives up so much of the prayer of his petition as asks to be allowed so to sue, but no more. The defendant, so far from being a sufferer by that change, is benefited, as both parties will go on with the litigation on equal terms. Is there, then, anything in the Act which requires that in such a state of things the petition of plaint shall be rejected altogether, and the plaintiff he compelled to commence *de novo*? Their Lordships do not see their way to the middle course followed by the Court in holding that the petition was coverted into a plaint from the date of the payment of fees. To be logical, the Court should have rejected it altogether. The petition of plaint was placed upon the file and numbered on the 19th July 1873, and this is the plaint that is allowed to go on."

These are remarks that fully apply to the facts of this case, and, it must be held in this case, as was held by their Lordships in *Skinner* v. *Orde* (1), that the suit must be taken to have been instituted on the day when the application for leave to sue as a pauper was filed.

With reference to the case of *Abbasi Begam* v. *Nanhi Begam* (2) I will add that one of the cases on which that case is based, namely, *Balkaran Rai* v. *Gobind Nath Tewari* (3) has been dissented from by this Court in two cases, *Moti Sahu* v. *Chhatri Das* (4) and *Huri Mohun Chuckerbutti* v. *Naimuddin Mohamed* (5), which go to support the view I take.

Appeal allowed; *case remanded.*

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28 C. 434.

[434] CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

REILY (*Petitioner*) *v.* THE KING-EMPEROR (*Opposite Party*).*

[26th April, 1901.]

Offences committed before Court of Session by person—Committal of such person by Court of Session for trial before itself—Charge—Proceedings to be drawn up on day of committal—Charges of perjury and forgery—Specific statements as to such charges—Code of Criminal Procedure (Act V of 1898), ss. 195 and 477—Penal Code (Act XLV of 1860), ss. 193, 466 and 471.

If a Court of Session proceeds to take action under s. 477 of the Code of Criminal Procedure it must, in the first instance, frame a charge so as to enable the accused to know the exact nature of the offence he is alleged to have committed. A charge is a precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest stage. After the accusation has been formulated in the shape of a charge the Sessions Court may then either commit the accused for trial before itself upon the charge so framed, or admit him to bail for the same purpose.

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* Criminal Revision No. 316 of 1901, made against the order passed by A. P. Pennoll, Esquire, Sessions Judge of Noakhali on the 16th February 1901.

(1) (1879) I. L. R. 2 All. 241; L. R. 6 I. A. 126.
(2) (1896) I. L. R. 18 All. 206.
(3) (1890) I. L. R. 12 All. 129.
(4) (1892) I. L. R. 19 Cal. 780.
(5) (1892) I. L. R. 20 Cal. 41.