

Before Mr. Justice Macpherson.

L. HARRISON AND OTHERS v. A. H. HOPE.

1872
Dec. 2.

Limitation—Acknowledgment—Act XIV of 1859, s. 4—Service of Summons on Officer.

THE plaintiffs, who carried on business in Calcutta as tailors and outfitters, under the style of Ranken & Co., sued to recover from the defendant, an officer in the army, the sum of Rs. 1,267-3 for the price of goods sold and delivered, work done, and materials provided.

Service of summons was effected by transmitting a copy by post to the Commanding Officer of Secunderabad, where the defendant was stationed, who returned it with the defendant's acknowledgment endorsed thereon, and with a certificate that it had been duly served, but there was no affidavit of service. The service was held to be sufficiently proved.

The period of limitation had expired, but the plaintiffs relied on certain letters of the defendant as containing an acknowledgment of the debt. These letters were in answer to letters from the plaintiffs, stating the amount of the debt, demanding payment thereof, and threatening legal proceedings; but they themselves neither contained any mention of the sum due, nor any promise to pay the sum claimed. They were as follows:—

“ I simply did not answer your letters because I had nothing satisfactory to say. You know, as well as I can tell you, the immense delays and difficulties attending contested legal measures. I trust, therefore, you will do me the favor to afford me a little longer time, and kindly instruct your lawyers not to commence legal measures, as they tell me they are instructed to do.”

And again—

“ You will hear finally from me in the first week of January, and I hope this will be satisfactory. I am obliged to you for the time already given.”

The last letter was in the following terms:—

“ Since I met with a nearly fatal accident in February, the progress of my affairs has for that reason been very slow, as for months I was incapable of writing, and even now do so with difficulty. Of course, I cannot prevent your suing me, but I should be much obliged if you would give a little longer delay before doing so.”

Mr. Fergusson for the plaintiff.

MACPHERSON, J., held that the defendant's letters, taken in connexion with those from the plaintiffs, formed a sufficient acknowledgment to take the case out of the operation of the Limitation Act.

Attorneys for the plaintiffs: Messrs. Berners, Sanderson and Upton.