

The Weekly Reporter,

CIVIL RULINGS.

The 24th April 1873.

Present :

The Hon'ble Louis S. Jackson and Dwarkanath Mitter, *Judges.*

Reversioner—Right of Suit—Limitation.

Case No. 804 of 1872.

Special Appeal from a decision passed by the Officiating Judge of Chittagong, dated the 22nd February 1872, reversing a decision of the Officiating Subordinate Judge of that District, dated the 29th July 1871.

Bishonath Surmah and others (Defendants),
Appellants,

versus

Sreemutty Shushee Mookhee (Plaintiff),
Respondent.

Mr. R. E. Twidale and Baboo Aukhil Chunder Sen for Appellants.

Baboos Sreenath Banerjee and Romesh Chunder Mitter for Respondent.

A party desirous, as a reversioner, to obtain a declaration of his rights affected by a sale or gift made by a Hindoo widow, must bring his suit within twelve years of the alienation. After the death of the widow, the remedy open to him is of a different description.

Jackson, J.—THIS was a suit by the daughter to set aside an act of alienation made by her mother in 1855, and to have the daughter's reversionary right declared notwithstanding such alienation, the mother being still living, and fifteen years having elapsed from the date of the alienation at the commencement of the suit. The lapse of this time seems to have escaped the notice of the Subordinate Judge. He went into the ques-

tion of the necessity or otherwise of alienation, and on that point he found in favor of the defendant. The case went on appeal before the District Judge, Mr. C. D. Field, and he, in discussing the plaintiff's right to recover, appears to have lost sight of the objection which was manifestly raised by the defendant that this suit was barred by limitation. The judgment of the District Judge, who reversed the decree of the Subordinate Judge, is now before us in special appeal, and the point of limitation is now raised. The very facts which would have supported, and which do support, this plea of limitation are raised in the grounds of special appeal, but curiously enough for another reason and in another shape. It is said "that when the plaintiff admits that a sale was executed in 1855, at which time the purchasers got possession; that, in execution of a decree against the purchasers, their rights were purchased by the second set of defendants; and that, in execution of a decree against those second set of defendants, the property was purchased by your petitioners, and when there is no allegation of fraud as to these purchases, which are *bona fide* made, then the plaintiff's claim for a declaratory decree ought to have been dismissed on the ground of her long silence and acquiescence for a period of above sixteen years." Although this point, therefore, was not directly taken in the grounds of special appeal, it seems to us from the very nature of the suit that it is one which ought to be allowed to be taken, and which, therefore, we have allowed to be taken. It appears that the plaintiff (the daughter) was not only in the same position of reversioner which she now holds, but she was actually a party to the legal proceedings, ending in a decree, in part satisfaction of which the alienation complained of was made. It has been held in many cases by

this Court that a party desirous, as a reversioner, to obtain a declaration of his rights affected by a sale or gift made by a Hindoo widow must bring his suit within twelve years of the alienation, and that it is a remedy of a different description which is open to him after the death of the widow.

Under these circumstances, we have no choice, but to reverse the decisions of the Courts below, and dismiss the plaintiff's suit with all costs.

The 24th April 1873.

Present :

The Hon'ble Louis S. Jackson and Dwarkanath Mitter, *Judges.*

Minor's Right of Action—Limitation—Act XIV. of 1859, s. 2.

Case No. 805 of 1872.

Special Appeal from a decision passed by the Officiating Judge of Chittagong, dated the 9th March 1872, reversing a decision of the Officiating Subordinate Judge of that District, dated the 28th August 1871.

Taruck Chunder Sen (Plaintiff), *Appellant,*
versus

Doorga Churn Sen (Defendant), *Respondent.*

Mr. R. E. Twidale and Baboo Aukhil Chunder Sen for Appellant.

Baboo Motee Lall Mookerjee for Respondent.

Case.—Plaintiff sued to recover certain moneys from defendant, who had been appointed manager of property which plaintiff's late uncle had conveyed to him by a will, and who had obtained a certificate under Act XI. of 1858. Plaintiff alleged among other things that defendant, as manager, had sued for money due on a bond executed by one T; but that the suit was dismissed as barred by limitation to the plaintiff's prejudice. The Lower Appellate Court held that the defendant could not be made liable; but that the dismissal of the suit on the ground of limitation would be no bar to a suit by the minor within three years of his attaining his majority:

HELD that, as the cause of action in respect of the bond had arisen in the lifetime of the testator, no further time would, under the proviso in Act XIV. of 1859, s. 2, be allowed to plaintiff by reason of his previous legal disability.

Jackson, J.—THE only ground on which the special appellant appears justly to impugn the judgment of the Lower Appellate Court is that which relates to the bond given by one Tiluck Chunder, the amount whereof the defendant seems to have omitted to sue

for and to realize. It appears that a suit on that bond was commenced, if not by the defendant, in the name of the defendant, though the defendant states that this suit was really brought without his knowledge or authority by the plaintiff's brother. The defendant's liability as to this amount has been got rid of by the Lower Appellate Court in the following words: "The dismissal of the suit by the manager and guardian on the ground of limitation will be no bar to a suit by the minor within three years of his attaining his majority, having reference to section 2, Act XIV. of 1859, and the law already referred to." It is not clear what is meant by "the law already referred to," but section 2 of the Limitation Act says: "The action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person, or of the legal disability of any person claiming through him."

Now it appears that the cause of action in respect of the bond in question had arisen during the lifetime of the testator, and, therefore, under that proviso, a further time would not be allowed to the present plaintiff by reason of his previous legal disability. It will, therefore, have to be determined whether the defendant is not liable to the plaintiff for the amount of this bond, and if so, to what extent the account between the parties will be affected by the liability. For this purpose the case will go back to the Lower Appellate Court.

The 24th April 1873.

Present :

The Hon'ble Sir Richard Couch, *Kt.*, *Chief Justice*, and the Hon'ble F. A. Glover, *Judge.*

Adjournment under Act VIII. of 1859, s. 146—
Rescission of Order of Adjournment—Re-trial—
Fresh Summonses.

Case No. 1111 of 1872.