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October 31.
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of 1863.

NOTE.- For the illegality of a Bráhman's adoption of his sister's son in Bengal, see *Doe* v. *Kora Shunker Takoor* v. *Bebee Munnee*, East's Notes, Case 20, 1, Morl. Dig., 18, and that a sister's son cannot be adopted in the N. W. Provinces, see *Luchmeenauth Rao Naik Keleyah* v. *Mt. Bhina Baee*, 7, N. W. P., 441, 443. The reason given is that it imports incests. So a Bráhman widow cannot adopt her uncle's son, as she could not be his mother unincestuously, *Dagumbaree Dabee* v. *Taramoney Dabee*, Macn. Cons., H. L., 170. In Madras it has been held that there can be no adoption where there is such blood relationship between the adopter and adopted son's mother as would have prohibited marriage with her in her maiden state. *SS. AA. Nos.* 14 of 1857, M. S. D., 1857, pp. 94, 96.

APPELLATE JURISDICTION (*a*)

Regular Appeal No. 30 *of* 1863.

ISMÁ'IL SÁHIB.....*Appellant.*

ARUMUGA CHETTI and another..... *Respondents.*

Where a plaint is returned for amendment under Sec. 29 of the Code of Civil Procedure, the order of return should specify a time for such amendment.

Where the plaintiff within three years from the arising of the cause of action presented his plaint, which was returned to him for amendment but without specifying a time for such amendment, and the plaint was reproduced and filed some days beyond the three years, and the defendants pleaded the Statute of Limitation :—*Held* that the date of commencing the action was that of the original presentation of the plaint.

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of 1863.

THIS was a Regular Appeal from the decree of W. T. Blair, the Acting Civil Judge of Chittur, in Original Suit No. 3 of 1862.

Ismá'il Sáhib, the appellant, appeared in person.

Rangayya Nayudu, for the first respondent.

The facts sufficiently appear from the following

JUDGMENT :—In this case the plaintiff within three years from the arising of the cause of action presented his plaint, which was returned to him for amendment, but without the assignment of any specified period for such amendment.

It was reproduced and filed by the late Acting Civil Judge, but some days beyond the period of three years from the arising of the cause of action.

The defendants pleaded the Statute, and the successor of the Judge who filed the plaint, dismissed it as barred by the Statute.

(*a*) Present : Phillips and Holloway, JJ.

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The plaint must have been returned from amendment under Section 29 (*a*) of the Code of Civil Procedure, and it would have been better for the order of return to have granted a specified time for amendment, as required by the rule of practice of the late Sadr Court.

As the matter now stands the real question is, whether the date of bringing the action was the date of the original presentation of the plaint, or that of its return amended.

It was open to the Court to have rejected the plaint, and if that course had been taken, no question could have arisen; but we think that the return of the plaint for amendment was obviously treating it as an existing plaint, and that upon its reproduction, amended, and above all, upon its being received by the Court, the date of its original production must be treated as that upon which the action was really commenced. Supposing that, from defective scrutiny, the filling of the plaint had been originally permitted, permission to remedy what must have been merely formal defects, could not properly have been refused in the course of the trial.

We are unable to concur with the argument that the order of return for amendment must be read as if it had contained the words "you must produce it, within the two days still remaining of the three years from the arising of the cause of action." On the contrary we are of opinion that it must be read as if it had said, "you shall have a reasonable time for amendment," and it does not appear that more than a reasonable time was occupied in amending.

We reverse the decision of the Acting Civil Judge upon this preliminary point and enjoin him to replace the suit upon his file and dispose of it upon its merits.

Appeal allowed.

(*a*) This section enacts that "if the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than those required to be specified whether relevant to the suit or not, or if the statement of particulars be unnecessarily prolix, or if the plaint be not subscribed and verified as hereinbefore required, the Court may reject the plaint, or at its discretion may allow the plaint to be amended."