1868. *January* 3. *R. C. No.* 45 *of* 1867.

opinion on the first question is that the suit is not maintainable before the lapse of the time which raises the legal presumption of the death of the obligor, unless there is proof of special circumstances which warrant the inference of his death within a shorter period. The reasonableness of the evidence to warrant this inference in the present case is for the consideration and decision of the Munsif. If no such evidence is forthcoming and it is desired to avoid the bar under the Act of Limitation, the proper course is to institute a suit against the obligor, giving his last known place of abode, and if, after due diligence, the plaintiff is unable to procure due service of the summons to appear and answer the claim and consequently to prosecute the suit to a decision, Section 14 of the Act of Limitation would, it seems to us, apply and prevent a suit against his representatives being barred. With reference to the observation in para. 6 of the case it is only necessary to say that, in a suit against representatives as such, there cannot be a decree against them for anything beyond the amount of the assets of the deceased debtor.

Appellate Jurisdiction (*a*)

Regular Appeal No. 105 *of* 1867.

Y. K. K. A. M. R. C. JEYANGARULAVARU and another..... } *Appellants.* (*Plaintiffs.*)

SRI HATI R. M. M. DURMA DOSSJI. { *Respondent.* (*Defendant.*)

Act XX of 1863 does not apply to a suit brought by the Dharmakarta of a temple and one of its worshippers to compel the defendant, as heir of the late manager, to make good, out of the property inherited by him, the deficiency in the Devasthánum funds caused by breach of trust and misappropriation by the late manager.

The leave of the Civil Court for the institution of such a suit is not necessary and the suit is maintainable.

The right of instituting such suits is not a privilege accorded by Act XX of 1863, but a pre-existing right.

1868. *February* 12. *R. A. No.* 105 *of* 1867.

THIS was a Regular Appeal from the decision of O. B. Irvine, the Acting Civil Judge of Chittúr, in Original Suit No. 18 of 1867.

(*a*) Present : Scotland, C. J. and Ellis, J.

1868.
February 12.
R. A. No. 105
of 1867

The *Advocate General* and *Ráma Ráu* for the appellants, the plaintiffs.

Mayne for the respondent, the defendant.

The facts sufficiently appear in the following

JUDGMENT:—This is a suit by the Dharmakarta of the temples of Terumala and Terupati in Chendragiri Taluq in the Chittúr Zillá, and by one of the worshippers frequenting such temples, to compel the defendant as the heir of Shivadoss, the late manager, to make good out of the property inherited by him the deficiency in the Devasthánum funds owing to the misfeazance, breach of trust and misappropriation of the late manager. The defendant's written statement contains a denial of the plaintiffs' right to sue, on the ground, amongst others, that the leave of the Court had not been obtained under Section 18 of Act XX of 1863, and a denial also of the defendant's liability.

On the day of first hearing, the Lower Court, it appears, gave judgment against the plaintiffs without recording any issue, on the ground that a suit against a deceased trustee or manager is not provided for by Act XX of 1863, and that the privilege of persons in the plaintiff's position to sue for breach of trust in respect of Devasthánum property does not exist independently of that Act, and thereupon a decree was passed dismissing the suit, against which the plaintiffs have appealed.

The questions to be determined are, first, whether Act XX of 1863 applies to the case and if it does not, secondly, whether the plaintiffs can maintain the suit, and for the purpose of deciding both questions we must of course assume the truth of the material statements in the plaint. On the first point the Lower Court's decision, we think, is right. The suits to which the Act relates are such as come within the provision in Section 14, and that plainly applies only to suits against trustees, managers, or superintendents, or the members of a District Committee whilst in office.

But on the second point, we are of opinion that the decision of the Lower Court is wrong. There can be no

1868. *February* 12. *R. A. No.* 105 *of* 1867.

doubt that before the passing of the Act, a Dharmakarta of a temple might have maintained a suit on behalf of himself and all others interested in the temple of which he was the Dharmakarta, to compel a defaulting trustee, or his legal representative to account for the property and funds of the temple and to make good the loss occasioned by the trustee's misconduct. The right of suit in this case is not therefore, as the Civil Judge expresses it, a privilege accorded by Act XX of 1863, for purposes under that Act only, but a pre-existing right, and the provisions of the Act were clearly, we think, intended to extend and not restrict the remedy by suit for breaches of trust and neglect of duty by the trustees, managers, or superintendents of religious establishments. They render it unnecessary that suits against such officers should be brought by persons having a pecuniary, official, or even a direct or immediate interest, and declare that habitual attendance as a worshipper, or participation in the benefits of any distribution of alms shall be a sufficient interest. It would be a strange anomaly if the property of a deceased trustee could not be made liable in the hands of his legal representative except by the succeeding trustee, when very often the latter is himself the legal representative, as is the case here.

We are consequently of opinion that the first plaintiff's interest as Dharmakarta entitled him to sue and that he might join the second plaintiff with him, and the Act not applying to the case, that they were at liberty to institute the suit without the previous leave of the Civil Court. The decree must therefore be reversed and the case remanded for the settlement of proper issues and hearing and determination upon its merits.

The appellants' costs of the appeal should, we think, be borne by the respondent, and the costs in the Lower Court must abide the final determination of the suit.

Appeal allowed.