ORIGINAL CIVIL.

Before Mr. Justice Pontifex.

1878
March 21.

RAMKISSEN DOSS *v.* LUCKEYNARAIN.

Practice—Summons to the Defendant to appear and answer—Fresh Summons—Rules of the High Court (*4th December* 1875) 1 *and* (*9th February* 1875) 8—*Limitation.*

A plaint was filed on 12th March 1875, and the summons to the defendant to appear and answer issued on 13th March 1875. With the exception of an application for substituted service made on 20th March 1875, and which was refused, no further steps were taken in the matter until 21st March 1878, when the plaintiff applied for a fresh summons to issue, the time for the return of the first summons having long since expired. *Held*, that the mere filing of a plaint, or the naked fact that a plaint is on the file, will not of itself prevent the operation of the law of limitation, and that as no steps had been taken to renew the summons for three years, and as no sufficient case to excuse the delay had been made out, the application was out of time, and should be refused.

THIS was a suit to recover Rs. 19,983, balance due on two promissory notes payable on demand, and dated 1st March 1871 and 29th November 1872. It would appear that the demand for payment was made in November 1874; plaint filed 12th March 1875; and the summons to the defendant to appear and answer issued on the 13th March 1875. Service, however, could not be effected, and on 20th March 1875 the plaintiff applied for leave for substituted service, but which the Court refused. No further steps were taken in the matter, and the date for the return of the summons had long since expired. The plaintiff now learned that the defendant was dwelling at Delhi.

Mr. *Allen*, for the plaintiff, applied, on affidavit setting out the above facts, for a fresh summons to issue.

PONTIFEX, J.—The mere filing of a plaint, or the naked fact that a plaint is on the file, will not of itself prevent the operation of the law of limitation. A plaintiff is bound to conduct his suit with proper diligence, otherwise filing a plaint and abstaining from taking further proceedings, would have greater effect in keeping alive a demand than obtaining a decree. By the first of the rules of Court, the 4th of December 1875, which

govern the practice of this side of the Court, it is directed that a plaint shall be taken off the file unless within fourteen days after the institution of the suit a summons to the defendant to appear and answer is taken out and delivered to the Sheriff. By the 8th rule of the 9th of February 1875, the times are stated for which the summons is usually made returnable. But in cases where a defendant keeps out of the way to avoid service, or cannot be found after a *bonâ fide* endeavour has been made to serve him, it is the practice of the Court, upon application by the plaintiff, to renew the summons and extend its returnable period to three or six months, if a proper case be made. But it must be shown that a plaintiff has used proper diligence—*Urquhart* v. *Gilbert* (1). Filing a plaint is similar to filing a bill in Chancery, and a plaintiff is bound to take every means in his power by proper proceedings to compel the defendant to appear, or to give him notice of the suit. And so long as he can show that he has diligently attempted to perform this duty, and only so long he is entitled to insist upon the pendency of the suit as counteracting the ordinary law of limitation—*Hele* v. *Lord Bexley* (2). If the first summons cannot be served, the plaintiff should apply within reasonable time after its returnable period for the issue of a fresh summons, and, if a proper case is made, the usual returnable period will be extended; and I think the first of the rules of the 4th of December 1875 may be taken to furnish an index of what is a reasonable time. The suit ought, in fact, to be kept alive on the same principle, though under a different practice, as governed the decision in *Doyle* v. *Kaufman* (3) and *Manby* v. *Manby* (4). It is necessary that this practice should be strictly enforced, as there are too many cases on this side of the Court which are allowed to linger on the file without any serious attempt to bring them on for hearing. In the present case, no steps have been taken to renew the summons for three years, and as no sufficient case has been made by the plaintiff to excuse the delay, I must hold that the present application for the issue of a new summons is out of time, and I accordingly refuse it.

Application refused.

Attorneys for the plaintiff: Messrs. *Swinhoe, Law,* and *Co.*

(1) 1 In. Jur., N. S., 224.
(2) 20 Beav., 135.
(3) L. R., 3 Q. B. D., 7.
(4) L. R., 3 Ch. D., 101.