

[ORIGINAL CIVIL JURISDICTION.]

Reference from the Court of Small Causes.

Suit No. 7026 of 1876.

NATHA HIRA AND ANOTHER (PLAINTIFFS) v. JANARDHAN RAM-
CHANDRA AND ANOTHER (DEFENDANTS).

1876.
December 15.

Limitation—Act IX. of 1871, Schedule II, Cl. 72—Promissory note—Novation.

The holder of a promissory note, payable on demand, dated 14th April 1870, demanded payment on 8th December 1872. The maker then paid interest in advance up to 1st April 1873, upon the condition that the holder should make no demand until that date.

Held that this transaction amounted to the substitution of a new contract for that contained in the promissory note; that the period of limitation must be reckoned from 1st April 1873; and that, consequently, a suit to recover the balance due on the note, instituted on 27th March 1876, was not barred.

THE following case was stated for the opinion of the High Court in accordance with Section 55 of Act IX. of 1850 by J. O'Leary, First Judge of the Court of Small Causes at Bombay:—

“1. The action in this case was brought for the recovery of a balance alleged to be due by the defendants to the plaintiffs on a promissory note, bearing date 14th April 1870.

The said note purported to be payable on demand.

“3. The first unqualified demand on the note was made on or about the 8th December 1872.

“4. This suit was instituted on the 27th March 1876.

“5. The defendants pleaded the Law of Limitation as a bar to the claim, the first absolute demand having been made more than three years before the institution of the action.

“6. The plaintiffs contended that the period of limitation ought to be computed from 1st April 1873, and relied upon the following facts (which were proved to the satisfaction of this Court) in support of their contention:—

(a) On the 8th December 1872, the defendants made a proposal to the plaintiffs, which, translated into English, was in the following words:—

‘We pay you now interest up to the 1st April 1873.

You are not to make any demand upon us until the 1st April 1873.’

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- (b) The plaintiffs at once accepted this proposal.
- (c) The defendants, immediately on the plaintiffs' acceptance of their proposal as aforesaid, paid to the plaintiffs interest on the note up to the 1st day of April 1873.
- (d) At the same time one of the defendants (Janardhan Ramchandra) with the knowledge and consent of his co-defendant wrote a memorandum upon the note in the following form :—

'8th December 1872, paid interest up to 1st April 1873.'

"7. During the interval of time that elapsed between the 8th December 1872 and the 1st April 1873, the plaintiffs made no demand for repayment of the amount secured by the note.

"8. Upon this evidence the Fourth Judge who tried the case disallowed the plea of limitation and gave judgment for the plaintiffs for the amount claimed.

"9. The defendants obtained a rule *nisi* for a judgment in their favour on the ground that the Fourth Judge was in error in holding that the plaintiffs were entitled to sue within three years from 1st April 1873.

"10. The First and Fourth Judges, before whom the rule *nisi* came on for argument, discharged the rule subject to the opinion of the High Court, which we have now the honour to solicit upon the question,

"Whether the plaintiffs were entitled to bring their suit within three years from the 1st April 1873 under the circumstances stated in this case?"

The reference was considered by WESTROPP, C.J., and SARGENT, J.

There was no appearance of the parties either in person or by counsel.

PER CURIAM :—We think that the transaction of the 8th December 1872 amounted to the substitution of a new contract for that contained in the promissory note of 14th April 1870, under which new contract the plaintiffs, in consideration of a payment of interest in advance up to the 1st April 1873, agreed to defer their

demand for the principal, and to forbear to sue until that day. Hence the period of limitation must be reckoned from that day, and the suit, having been brought on the 27th March 1876, is not barred. The verdict, therefore, should stand.

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[ORIGINAL CIVIL JURISDICTION].

Reference from Court of Small Causes.

Suit No. 27039 of 1876.

HEARN AND OTHERS (PLAINTIFFS) v. BAPU SAJU NAIKIN (DEFENDANT). December 15.

*Attorney and client—Bill of costs—Limitation—Act IX. of 1871, Schedule II.,
Clause 85—Act VIII. of 1859, Section 206.*

A solicitor was retained in July 1871 to execute a decree. In November 1871 a prohibitory order was made in the cause after which the solicitor did nothing more in the matter. In June 1872 the decree-holder and judgment-debtor settled the matters in dispute between them without the knowledge of the solicitor, but this compromise was not made through, or certified to, the Court which passed the decree. In a suit brought in December 1875 by the solicitor against the decree-holder to recover the amount of his bill of costs,

Held that the plaintiffs' claim was not barred by Article 85 of Schedule II. to Act IX. of 1871.

THIS was a case stated for the opinion of the High Court, under Section 55 of Act IX. of 1850, by J. O'Leary, First Judge of the Court of Small Causes at Bombay.

The plaintiffs, who are a firm of solicitors in Bombay, were retained by the defendant in July 1871 for the purpose of executing a decree which had been obtained by the defendant. In November 1871 a prohibitory order was made in the cause, after which no further work was done in the matter by the plaintiffs for the defendant.

In June 1872 the defendant and her judgment-debtor settled the matters in dispute between them without the knowledge of the plaintiffs; but this compromise was not made through, or certified to, the Court which passed the decree.

On the 11th December 1875 the plaintiffs instituted the present suit against the defendant, to recover from her the amount of their bill of costs. The defendant pleaded limitation, and relied