

the claim barred, and that, without considering any other point in the case, the decrees of the Courts below should be reversed and the claim rejected with costs.

Decree reversed.

NOTE.—This ruling was followed in *Abbesing Dosabkai v. Maharana Jasvatsingh*, Reg. Ap. 31 of 1880, decided on 4th October, 1882, by MELVILL and PINHEY, JJ.

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RAM GUNE
v.
DESAL.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Pinhey.

PIRJADE (ORIGINAL PLAINTIFF), APPELLANT, v. PIRJADE (ORIGINAL DEFENDANT), RESPONDENT.*

September 5.

Limitation—Decree—Execution—Act XV of 1877, Section 14, Schedule II, Article 179, Clause 4—The Code of Civil Procedure Act X of 1877, Sections 374 and 647.

The rule laid down in section 374 of the Code of Civil Procedure Act X of 1877, that, where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought, applies to applications for execution; and, therefore, in counting the time of three years prescribed by the Limitation Act XV of 1877, Sch. II, art. 179, cl. 4, an application allowed to be withdrawn must be discarded as if it had never been presented. The bar created by section 374 of the Code of Civil Procedure is, in such a case, not removed by section 14 of the Limitation Act, as causes for which the withdrawal of a suit or application may be permitted, are not causes "of a like nature" with defect of jurisdiction.

This was an appeal from the order of W. H. Newnham, Judge of Poona, confirming an order of the First Class Subordinate Judge of Poona, who rejected the application of the applicant for execution of his decree.

The facts sufficiently appear from the judgment of the High Court.

Manekshah Jehangirshah for the appellant.

Ghanasham Nilkanth for the respondent.

MELVILL, J.—The decree which the plaintiff seeks to execute was passed on the 14th July, 1862.

An application for execution was presented on the 15th June, 1876; another on the 17th April, 1878; and a third, which is that with which we have to deal, on the 15th April, 1881.

* Second Appeal, No. 693 of 1881.

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The application of the 17th April, 1878, was withdrawn, with permission to present a fresh application.

The Courts below have held that an application so withdrawn is not such an application as will keep the decree alive. The District Judge says: "This *darkhast* of 1878 was incorrect by reason of misdescription, and the plaintiff was allowed to withdraw it 'with leave to present another'; while the next one was presented in 1881. I do not think that an application which has to be withdrawn from incorrectness can be held to be one which can keep the decree alive."

Unfortunately, the application of 1878, and the proceedings thereon, have not been sent up: but, if the description of it given by the District Judge be correct, it may well be doubted whether the application was made "in accordance with law", within the meaning of clause 4, article 179, of the Limitation Act XV of 1877.

It is not, however, necessary to send for the proceedings in order to decide this point, because we are able to dispose of the question before us on another ground.

Section 374 of the Civil Procedure Code (Act X) of 1877 says: "In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought."

As rules of limitation are rules of procedure, it must be held that the above provision, relating to suits, is extended to applications by section 647, which says, "the procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings, in any Court of civil jurisdiction other than suits and appeals."

It was contended for the plaintiff that the meaning and effect of section 374 is simply this, that a party who has withdrawn from a suit cannot in a fresh suit claim the benefit of section 14 of Act XV of 1877, which enables a plaintiff to deduct the period during which he may have been prosecuting a former suit in a Court "which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

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We do not, however, think that the above section of the Limitation Act was present to the mind of the Legislature when framing section 374 of Act X of 1877. The causes for which the withdrawal of a suit may be permitted, are not causes "of a like nature" with defect of jurisdiction—*Chunder Madhub Chuckerbutty v. Bissessuree Debea*(1). Section 374 seems to have been framed with the intention of laying down in the most general terms a rule which, in regard to suits, was perhaps unnecessary, viz., that in the fresh suit any question of limitation should be decided in the same manner as if the former suit had not been brought at all.

The same rule must, we think, be applied to applications. Clause 4, article 179, of Act XV of 1877 must be read subject to the rules contained in sections 374 and 647 of the Code of Civil Procedure; and, therefore, notwithstanding that the present application has been presented within three years from the date of the application of 1878, yet the question of limitation must be determined as if the application of 1878 had never been presented at all.

The result is that the decrees of the lower Courts must be confirmed with costs.

Decree confirmed.

(1) 6 Calc. W. R., 184.

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

RAMJI (ORIGINAL DEFENDANT), APPELLANT, v. DHARMA (ORIGINAL PLAINTIFF), RESPONDENT.*

September 4.

Limitation—Acknowledgment—Account stated—Adjusted account—Adjustment of accounts, effect of—"Ruzu"—Act XV of 1877, Section 19—Act IX of 1872, Section 25, Clause 3.

The "ruzu" or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract. If it is to be used as an acknowledgment giving a fresh starting point for computing a new period of limitation it must be made in writing and signed before the expiration of the period of limitation prescribed. If it is to be used as evidence of a new contract furnishing

* Second Appeal, No. 442 of 1880.