

## APPELLATE CIVIL

Before Sir Charles Sargent, Kt., Chief Justice, (r. Justice  
Nánabhái Haridas.

YEKNA'TH RA'MCHANDRA, (ORIGINAL PLAINTIFF), APPELLANT, v.  
WA'MAN BRAHMA'DEV, (ORIGINAL DEFENDANT), RESPONDENT.\*

1885.  
December 21.

*Limitation Act XV of 1877, Sec. 8—Cause of action, accrual of, during minority—  
Minor's right to sue after attaining majority.*

The plaintiff having attained majority on the 11th March, 1882, sued the defendant, within three years from that date, upon a bond obtained in 1872 by his mother and guardian in the plaintiff's name alone. The defendant contended that the plaintiff's brother, who was capable of giving a valid discharge to the debtors, having failed to sue within proper time, the suit was barred as to the High Court,

*Held*, that the suit was not barred. The plaintiff's brother to the bond, section 8 of the Limitation Act XV of 1877 would have been passed to the plaintiff alone, and the right of action accrued on July, 1873. Being then a minor, time did not begin to run until his majority.

THIS was a reference by S. Tagore, District Judge of Sholapur, under section 617 of the Civil Procedure Code (Act IV of 1882). The plaintiff sought to recover the sum of Rs. 115-1-0 being balance of principal and interest due on a bond passed by the defendant on the 8th July, 1872. The plaintiff alleged that, at the time the bond was passed, he was a minor; that the bond had been taken in his name by his mother, Yamunábái, the administratrix of his property; that he did not attain his majority until the 11th March, 1882, and that, therefore, the claim was not barred. The Defendant contended that the bond had been taken by the plaintiff's mother in her own name as guardian; that the plaintiff had an undivided brother named Keshav, then living, who was under a disability in interest from him; that the said Keshav was then of age and could have given a valid discharge to the debtors; that neither the plaintiff's mother nor brother having sued within proper time, the plaintiff's claim was barred by limitation.

The question referred for decision was :—Whether, under the circumstances stated above, the claim was time-barred.

The District Judge of Sholapur-Bijapur was of opinion that the claim was barred, holding that a discharge

\*Civil Reference, No. 9 of 1885.

1885.

YEKNÁTH  
RÁMCHANDRA  
v.  
SWÁMAN  
BRÁHMÁDEV.

fully been given by Keshav, notwithstanding anything in the certificate.

Naráyan G. Chandávárkar for the plaintiff:—The bond was obtained in the plaintiff's name alone, and his elder brother was not a party to it. The right to sue on the bond, therefore, belonged to the minor plaintiff: see *Khodabux v. Budree Narain*<sup>(1)</sup>. The fact that a minor is for a time represented by a guardian does not remove his disability: see *Anantharamá Ayyan v. Karuppi*<sup>(2)</sup>. This suit is within time, being brought within three years from the date of the plaintiff's attaining his majority.

The appearance for the defendant.

—As Keshav (plaintiff's brother) was not a party to the bond, section 8 of the Limitation Act XV of 1877 has no application. The bond was passed to the plaintiff alone by his guardian; and the right of action accrued to him on 11th March, 1873. Being then a minor, time did not begin to run until he attained his majority on the 11th March, 1882. The suit is, in our opinion, therefore, not barred.

<sup>(1)</sup> I. L. R., 7 Calc., 137.

<sup>(2)</sup> I. L. R., 4 Mad., 119.

## ORIGINAL CIVIL.

Before Mr. Justice Scott.

SHA'PURJI NOWROJI POCHA'JI, PLAINTIFF, v. BHIKA'IJI,  
DEFENDANT.\*

*Limitation Act XV of 1877, Sec. 10—Express trust—Administration suit—Executor—Suit for an account against an executor or his representative.*

In 1865, leaving a will of which his nephews P. and S. were the executors, the testator provided that after payment of all debts, &c., the residue of his estate should remain in the hands of the executors, who were "to maintain the family in the same manner as I used to maintain the family in my house." The residue of both the executors the residue was to be apportioned among his nephews in equal shares. On the death of the testator, P. died on the 10th January, 1876. S. remained in possession of the estate, and died on the 10th January, 1876. S. remained in possession until the 17th August, 1884, when he took out probate of R.'s will. On the 17th August, 1884, he filed the present suit against the defendant as widow and executrix, praying for an account of the estate of R. that had come to

\*Suit, No. 22 of 1885.