

damages, would constitute a cause of action * * *. I reverse the decree of the Assistant Judge, and reject the claim, with costs on the plaintiff throughout."

The plaintiff preferred a second appeal to the High Court.

Gokuldás Kahándás for the appellant:—The omission, on the part of the defendants' father, to give the plaintiff the customary presents, lowered the plaintiff in his character and reputation. He had the right of receiving the presents, and the interference with such right was an injury for which he could sue. It was not the whole caste, but an individual member of the caste, who caused him the injury: therefore this is not a caste question so as to bar a Civil Court's jurisdiction. The suit may be regarded as one for slander.

There was no appearance for the respondents.

SARGENT, C. J.:—We entirely agree with the District Judge in his view of this case. It is plain there could be no legal right to the funeral presents, which it was said to be customary for a member of the caste on the occasion of the death of a member of his family to give to the other members of the caste. And as to the slight, which the omission to give such presents to the plaintiff might imply, it can only be regarded as the result of a breach of social etiquette, with which the caste was exclusively competent to deal. We must, therefore, confirm the decree, but without costs.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánabhai Hárídas.

BA'LKRISHNA GOPA'L, (ORIGINAL DEFENDANT), APPELLANT, v. BA'L JOSHI SADA'SHIV JOSHI, (ORIGINAL PLAINTIFF), DECEASED, BY HIS WILL MORESHVÁR BA'L JOSHI AND OTHERS, (RESPONDENTS).*

1886.
June 23.

Limitation Act (XV of 1877), Sch. II, Art. 171 B—Civil Procedure Code (XIV of 1882), Secs. 368, 582—Decease of respondent after appeal filed.

The word "defendant" in article 171 B of Schedule II of the Limitation Act (XV of 1877) does not include "respondent."

Udit Náráin Singh v. Harogouri Prosád (1) followed.

* Miscellaneous Appeal, No. 8 of 1886.

(1) I. L. R., 12 Calc., 590.

1886.
MAYASHAN-
KAR
v
HARISHAN-
KAR.

1886.

BALKRISHNA
GOPAL
v.
BAL
JOSHI
SADASHIV
JOSHI.

APPEAL from the order of R. Courtenay, Acting Assistant Judge of Thána, in Appeal No. 66 of 1884.

The sole question in this appeal was, whether article 171 B of Schedule II of the Limitation Act (XV of 1877) applied in the case of a deceased respondent. On this question the opinion of the lower Appellate Court was as follows :—

“In this case the respondent died more than a year ago, as will appear from the application made by appellant on the 18th November, 1884. At that time, as appellant was disputing the right of certain persons named in the will to represent deceased, who was only a trustee, two months were allowed to appellant. Subsequently, about five months ago, a certificate under Regulation VIII of 1827 was granted to the said persons. No explanation has been given of the delay which has taken place since the grant of the certificate.

“The appellant’s pleader merely contends that, according to the practice of the High Court, section 368 of the Civil Procedure Code does not apply to respondents. Moreover, in article 171 B of the Limitation Act, respondents are not mentioned ; therefore the bar of two months (sixty days) does not apply to the present case.

“No ruling has been quoted, nor any affidavit filed, to show the existence of the alleged practice of the High Court. The article 171 B, referred to, might have given rise to doubt until section 582 of the Civil Procedure Code became law ; but in that section it is most clearly laid down that, in proceedings arising out of the death of parties to an appeal, the word “defendant” includes “respondent,” and the meaning of the last paragraph of section 368, Civil Procedure Code, is perfectly clear. The article 171 B does not expressly exclude respondents ; it is merely silent in regard to them. Therefore, either sections 368 and 582, Civil Procedure Code, may be read by themselves, as in the case of section 230, or else along with the article must be read the latter section.

“I, therefore, under sections 368 and 582, Civil Procedure Code (Act XIV of 1882), order that this suit shall abate.”

Against this order the defendant (appellant) appealed to the High Court.

Ghanashám Nilkanth Nádkarni for the appellant.

Mahádev Chinnáji Apte for the respondents.

WEST, J. :—The view of the law taken by the Assistant Judge is opposed to Full Bench decisions of the other High Courts (see *Udit Náráin Singh v. Harogouri Prosád*⁽¹⁾) and to the practice of this Court. The case of *Lakshmibái v. Báلكrishna*⁽²⁾ says that the analogy of the ordinary rules as to supplying the place of defendants is to be applied to respondents, but this does not necessarily imply that the same rule of time applies to the two cases; and the express provisions of the Limitation Act (XV of 1877) as amended, Schedule II, articles 171—171 B, show that the analogy was not meant to be thus extended. We, therefore, reverse the order of the Assistant Judge with costs.

Order reversed.

(1) I. L. R., 12 Calc., 590.

(2) I. L. R., 4 Bom., 654.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

LA'DJI NA'IK, (ORIGINAL DEFENDANT), APPELLANT, *v.* MUSA'BI AND ANOTHER, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Limitation Act (XV of 1877), Sch. II, Arts. 28, 29, 62, 109—Suit for money received by defendant to plaintiff's use.

Under section 8 of the Vatandárs' (Bombay) Act III of 1874 the Collector passed an order, that a contribution should be paid by the holders of a part of the *shetsandi vatan* towards the annual emolument of the office-holder. As payment was not made, he caused the defaulters' moveable property to be sold on the 18th May, 1881, as for an arrear of land revenue, and part of the sale-proceeds to be paid over to the office-holder. The defaulters had, in the meantime, appealed to the Revenue Commissioner, who eventually on the 17th December, 1881, amended the Collector's order by reducing very considerably the amount of contribution to be paid to the office-holder. Thereupon the defaulters filed a suit on the 9th April, 1884, to recover from the office-holder the difference between what he had received under the Collector's order and what he ought to have received according to the Revenue Commissioner's order.

* Miscellaneous Appeal, No. 10 of 1886.

1886.

BÁLKRIŚHNA
GOPÁL
v.
BÁL
JOSHÍ
SADÁSHIV
JOSHÍ.

1886.
June 24.