

(1879) 03 PRI CK 0001

Privy Council

Case No: None

Stuart Skinner Alias
Nawab Mirza

APPELLANT

Vs

William Orde and
others

RESPONDENT

Date of Decision: March 21, 1879

Citation: (1880) 2 ILRPC 241 : (1879) 6 IndApp 126

Hon'ble Judges: J. W. Colvile, Montague E. Smith, R. P. Collier, JJ.

Judgement

Montague E. Smith, J.

1. The decision of this appeal is attended with considerable difficulty, since it presents a case which is not provided for by the Code of Civil Procedure. It becomes of importance to the parties, because the decision of the point of practice determines the question whether, or no the Statute of Limitations is a bar to the claim of the plaintiff. The original petition was filed in the Court of the Subordinate Judge of Meerut on the 20th February 1873. The claim of the plaintiff was to a share of the property devised by the will of the late Colonel Skinner. His claim arose upon the death of his father, Major Skinner, which occurred on the 22nd April 1861. The petition set out all the particulars required in a plaint, and prayed that the plaintiff might be allowed to sue in forma pauperis. The claim embraced landed property which was situate partly within the jurisdiction of the High Court of the North-West Provinces and partly within the jurisdiction of the Chief Court of the Punjab. The Judge of Meerut, apparently of his own motion, rejected the petition, on the ground that the question of the plaintiff's pauperism could be more conveniently tried in the Punjab. The plaintiff thereupon filed it in the Court of the Deputy Commissioner of Delhi, and on the 14th April 1873, an order was made by that Court, after examining witnesses, admitting the plaintiff's suit in forma pauperis. Before proceeding further with the suit, the Deputy Commissioner applied to the Chief Court of the Punjab for authority to proceed under Section 13 of the Code of Civil

Procedure. That section enacts: "If the districts within the limits of which the property is situate are subject to different Sudder Courts, the application shall be submitted to the Sudder Court to which the district in which the suit is brought is subject, and the Sudder Court to which such application is made may, with the concurrence of the Sudder Court to which the other district is subject, give authority to proceed with the same." On the 29th of May 1873, the Chief Court of the Punjab, presumably not without having consulted the High Court of Allahabad, directed that "the plaint should be returned to the plaintiff, with instructions that he should present it to some Court in the North-West Provinces." Accordingly the plaintiff took the proceedings back to the Court of Meerut from which he had been originally driven, and on the 19th July 1873, an order of the Sudordinate Judge of Meerut was made: "That the case be brought on the file, and numbered." Their Lordships think it must be assumed that this order was complied with, and that the plaint was brought upon the file, and was numbered.

2. The first question which arises is, whether the finding of the Deputy Commissioner of Delhi, that the plaintiff was a pauper, can be imported into the suit when it found its way upon the file of the Court at Meerut, and that depends upon the construction to be given to Sections 11, 12, and 13 of the Code of Civil Procedure. Undoubtedly, when a suit is in the position in which the present suit stood in the Court at Delhi, it would be convenient and proper when an application had been made by the Judge of the Delhi Court to the Chief Court of the Punjab, and that Court is required, before it acts, to consult the Judges of the High Court in the jurisdiction to which the plaint is to go, that those two Courts having consulted together should have power to direct that the cause should be transferred in its then state to the Court to which they think it right and expedient that it should go. But the legislation stops short of enacting that it should be so transferred. What it enacts is that the Judge shall apply to the High Court to which he is subject for authority to proceed, and the Court to which such application is made may, with the concurrence of the other High Court, give authority to proceed. There is no express power to transfer. Their Lordships having come to the conclusion to decide the case in favour of the appellant upon another ground, do not desire unnecessarily to express an opinion upon this first point. There being a grave doubt, at the least, whether the two Courts have power to make the transfer, they think it would be a proper addition to be made to this section, that this power should be conferred upon them.

3. The other question which has been raised is as to the effect of the proceedings in the Court of Meerut, and whether the judgment of the High Court affirming that of the Subordinate Judge of Meerut is correct in holding that the suit is to be considered as instituted when the plaintiff paid the amount of the stamps into Court, and that the petition was converted into a plaint from that time only.

4. In order to explain the view their Lordships have taken of this point, it will be necessary to refer to some of the proceedings. The order of the 19th July 1873, directing the case to be put on the file and numbered has been already adverted to. When that was done the defendants put in written statements objecting that the plaintiff ought to establish his position as a pauper in the Meerut Court, treating what had taken place at Delhi as irrelevant, and upon these statements, on the 10th November 1873, the Subordinate Judge of Meerut directed that the case could not be heard, and rejected the plaint. There was an appeal to the High Court from that decision, and on the 10th July 1874, the High Court held that the time of the abortive proceedings at Delhi should be deducted from the period of limitation, and remanded the suit" to the Subordinate Judge, directing him to proceed with it. That being so, proceedings were taken by him with a view to an inquiry into the pauperism of the plaintiff. Issues were framed, and a day was fixed for the trial of those issues; the day so fixed was the 27th November 1874. On that day the plaintiff presented a petition praying for leave to deposit the amount of the stamps, alleging that he had succeeded in negotiating a loan for a sum of money sufficient to cover the amount of the institution stamps. It appears that on the same day, having obtained the permission of the Subordinate Judge, the plaintiff paid the proper stamps into Court. That having been done, the defendants raised two objections; first, that the suit ought not to proceed, because the plaintiff had fraudulently applied to be made a pauper when he had property; and secondly, that the suit should be regarded as instituted on the date the Court-fee was paid, which was beyond the period of limitation. The Subordinate Judge went into evidence on the first issue, and found that there had been no fraud on the part of the plaintiff in tiling a petition to be allowed to sue as a pauper, and therefore it must now be taken that that petition was filed bond fide, and without fraud. On the other point the Judge held in effect that he saw no reason why, upon payment of the fee, the suit should not be deemed to be instituted on the day "which the pauper admittance would have carried," and added: "The Court, then, would allow the case to proceed on its present basis, but at the same time would suggest to the defendants the advisability of appealing to the High Court to determine whether, by the substitution of the institution fee, the case is to be deemed a plaint and deemed to be filed on the day on which the application to sue in forma pauperis was originally submitted." The Judge then directed that the application should be numbered and registered, and be deemed the plaint in the suit, and that a day be fixed for the settlement of issues. This was the first opinion of the Subordinate Judge, but he appears afterwards to have resiled from it, and to have framed issues, two of them raising the questions which are now before their Lordships for decision. First,--"Can an "application" to be allowed to sue in forma pauperis be converted into a "suit" as between parties at any subsequent date by filing the institution fee, and in the latter instance, from what date should the institution of suit be calculated;" the second, "Is the suit barred by efflux of time?" Three other issues were settled as to the merits of the case, and the Judge, after settling these issues, examined witnesses. On the 6th

July 1875, he gave judgment. Having referred to the dates of the application to sue in forma pauperis, and to some of the other dates of the proceedings, he says: "The granting of the application, then, constitutes an essential ingredient to further progress, as an ordinary suit with the privilege of limitation counting from the day the petition to sue in forma pauperis was presented, and not from the date when it was registered under Section 308. But it will be seen that prior to the application to sue in forma pauperis being granted and whilst the question was still under inquiry and investigation, the plaintiff has converted the matter into a regular suit, the consequence of which is that he has by his own act given up the advantages or disadvantages (as the case might be) of the position he may have become possessed of. By such act the pauper application died a natural death, and by the conversion the regular suit came into operation on its own individual and inherent basis from date of such conversion, and as a consequence, in computing limitation, the computation must be made from date of such conversion, which places the plaintiff out of Court." No doubt, if the Judge is right, the plaintiff would be barred by the Statute of limitations, and the plaint would be properly rejected. There was an appeal from that decision to the High Court, which affirmed it. The following passage of their judgment gives the view of the High Court on the question: "But there is no provision in the law which allows the application presented under Section 299 of the Code to be deemed the plaint in the suit when such application has been in effect revoked and superseded by the payment of the fees chargeable under the Court Fees Act. In such a case we conceive that the date of the presentation of the plaint and institution of the suit must be taken to be the date of the payment of the fees." The High Court does not decide that the plaint ought to be rejected altogether. It seems to consider that the petition should be retained as a plaint, but that it should be taken to be converted into a plaint only from the day when those fees were paid.

5. Now a petition to sue in forma pauperis contains all that a plaint is required to do. By Section 300 "the petition shall contain the particulars required by" Section 26 of this Act in regard to plaints, and shall have annexed to it a "schedule of any moveable or immoveable property belonging to the petitioner," with the estimated value thereof, and shall be subscribed and verified in the "manner hereinbefore prescribed for the subscription and verification of "plaints." Therefore it contains in itself all the particulars the statute requires in a plaint, and, plus these, a prayer that the plaintiff may be allowed to sue in forma pauperis.

6. The Act provides what shall happen by the prayer of the petition be granted by Section 308. It also provides by Section 310 what shall be the effect of a rejection of the petition. But this case is one which the statute has not in terms provided for. The intention of the statute evidently was that, unless the petition was rejected, as it contained all the materials of the plaint, it should operate as a plaint without the necessity of filing a new one. Then what are the facts in this case? The petition is filed, and proceedings are taken to inquire into the pauperism, which are delayed by

various orders of the Court, after the plaintiff had been already bandied about from one Court to another until a very considerable period of time has elapsed. Then, pending that inquiry, the plaintiff by paying the amount of stamp fees into Court admits that he is no longer desirous to sue as a pauper, and gives up so much of the prayer of his petition as asks to be allowed so to sue, but no more. The defendant, so far from being a sufferer by that change, is benefited, as both parties will go on with the litigation on equal terms. Is there, then, anything in the Act which requires that in such a state of things the petition of plaintiff shall be rejected altogether, and the plaintiff be compelled to commence *ale novo*? Their Lordships do not see their way to the middle course followed by the Court in holding that the petition was converted into a plaintiff from the date of the payment of the fees. To be logical, the Court should have rejected it altogether. The petition of plaintiff was placed upon the file and numbered on the 19th July 1873, and this is the plaintiff that is allowed to go on. Although the analogy is not perfect, what has happened is not at all unlike that which so commonly happens in practice in the Indian Courts, that a wrong stamp is put upon the plaintiff originally, and the proper stamp is afterwards affixed. The plaintiff is not converted into a plaintiff from that time only, but remains with its original date on the file of the Court, and becomes free from the objection of an improper stamp when the correct stamp has been placed upon it.

7. This case, which is not provided for by the Act, approaches more nearly to the state of things contemplated by Section 308 than that contemplated by, Section 310. There are no negative words in the Act requiring the rejection of that plaintiff under circumstances like the present, nor anything in its enactments which would oblige their Lordships to say that this petition, which contains all the requisites which the statute requires for a plaintiff, should not, when the money has been paid for the fees, be considered as a plaintiff from the date that it was filed. It is obvious that very great injustice might be done if this were not to be the practice. There could hardly be a stronger instance of the mischief which might arise than what would have happened in this case. Their Lordships of course say nothing about the merits of the case. The claim may be utterly untenable, but on the assumption that the claim is a good one, nothing more unjust to the plaintiff could have happened than that he should have been deprived, by having done an act which is in itself meritorious, of the benefit which he would have had if he had been found to be a pauper. He was a pauper when his petition was filed. Supposing there had been any fraud found by the Judge, the consideration which would determine the judgment would then have been different.

8. Their Lordships have only to advert to the Statute of Limitations, Act IX of 1871. Their Lordships think that their decision is in no way inconsistent with this Act, The explanation in Section 4 is this: "A suit is instituted in ordinary cases when the plaintiff is presented to the proper officer; in the case of a pauper when his application for -leave to sue as a pauper is filed." In their view the petition to sue as a pauper became a plaintiff, and under this statute the suit must be deemed to be instituted

when that application was filed.

9. In the result their Lordships will-humbly advise Her Majesty to reverse both the decisions below, and to remand the case for trial on the merits. The respondents must pay the costs of the appeal.