Present: Garvin J.

1928

EMMANUEL *v.* NAMASIWAYAM.

283—C. R. Jaffna 18,428.

Prescription—Goods sold—Absence beyond the seas—Death—Period of limitation—Ordinance No. 22 of 1876, s. 15.

Where a person in whose favour a cause of action accrued was at the date absent from the Island and died during such absence,—

Held, that the period of limitation commenced to run against him from the date of his death.

APPEAL from a judgment of the Commissioner of Requests, Jaffna.

H. V. Perera, for defendant, appellant.

Nagalingam, for plaintiff, respondent.

[1] *28 N. L. R. 292.*

[2] *26 N. L. R. 205.*

1928

Emmanuel v. Namasivayam

April 3, 1928. GARVIN J.—

This was an action by the administrator of the estates of two persons of the names of Babu Lall and Mathan Lall who were at one time carrying on a business in Ceylon. The claim is for a debt due in respect of goods sold and delivered. Such a claim would ordinarily be barred after the lapse of one year from the time when it became due. The cause of action originally arose some time in the year 1923, but the plaintiff pleaded that by reason of a certain payment on account made on October 4, 1924, during the absence from the Island of both the partners, and in consequence of a disability, which—it is alleged continued up to the time of their death, the case was taken out of the Act. The learned Commissioner has found that a payment on account was made on October 4, 1924. The effect of that payment clearly would be to take the case out of the Act in the sense that the original cause of action to recover the amount due for goods sold and delivered will be taken to have been superseded by a fresh cause of action to recover the balance due in respect of the goods so sold, dating as from the date upon which the payment on account was made. It has also been found that at the date of this payment the business was being conducted in Ceylon by an agent, both the partners being absent beyond the seas. By reason, therefore, of the provisions of section 15 the running of the period of limitation was suspended. Neither of the partners returned to Ceylon since, and while they were still away Babu Lall died in India on April 11, 1925, and Mathan Lall on May 8, 1925. Now, the learned Commissioner of Requests took the view that time did not commence to run until the appointment of the administrator. In this I think he is wrong. Section 15 provides that the period of limitation shall not commence to run " until the removal of such disability or the death of such person, whichever first shall happen." In this instance the disability of absence beyond the seas was not removed by the return of the partners or either of them. What happened " first " was that they both died. It seems to me, therefore, that the period of limitation in respect of this debt commenced to run at the latest on May 8, 1925, which was the date upon which the sole surviving partner, Mathan Lall, died. This action was not instituted till February 14, 1927, when a period of considerably over one year had elapsed. The claim is therefore barred.

The judgment under appeal is set aside, and the plaintiff's action dismissed, with costs in both Courts.

Appeal allowed.