

Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Raj Chunder Sen v. Gangadas Seal and others ; and of Ramgati Dhur and another v. Raj Chunder Sen and others, from the High Court of Judicature at Fort William in Bengal ; delivered the 2nd March 1904.

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

The only question on these Consolidated Appeals is whether the High Court at Calcutta was right in holding that the suit had abated, and the Appeals to that Court could not proceed in the absence of a representative of one of the Respondents who had died pending the Appeals.

The material facts are as follows:—The suit was in substance for taking the accounts and winding up the affairs of a partnership which had subsisted between the Plaintiff and the several Defendants to the suit. There were complicated questions as to the respective relations of the parties *inter se*. These preliminary questions were disposed of by the Subordinate Judge, and he thereupon directed the accounts to be taken by a Commissioner. Objections were taken to the report of the Commissioner, and in the result a final Decree, dated the 6th July 1896, was made by the Judge, by which it was ordered (so far as material for the present

purpose) that a sum of Rs. 9,258 odd should be contributed in certain proportions by the Plaintiff (Appellant in the first Appeal), the Defendants Ramgati Dhur and Bissumbhur Poddar (Appellants in the second Appeal), and certain other parties, and that out of that sum a sum of Rs. 1,740 odd should be paid to Abhoy Churn Chowdhry, one of the Defendants, and other payments be made to other parties. The Defendants Ramgati Dhur and Bissumbhur Poddar and the Plaintiff respectively appealed to the High Court. The Defendant Abhoy Churn Chowdhry died on the 9th July 1898, leaving a will, probate of which was granted to his son Nagendra Lal Chowdhry on the 18th November 1898. On the 27th April 1899 application was made by the Appellants in the second Appeal for an order for substitution of the name of Nagendra Lal Chowdhry for the deceased Defendant on the record. A similar application was made by the first Appellant. On the 21st November 1899 these applications were rejected on the ground that they were out of time and no sufficient cause had been shown for the delay. The substantive Appeals came on for hearing on the 20th March 1900, when the Court held that the Appeals had abated and could not therefore proceed. The present Appeals are from the Decrees then made.

By Section 368 of the Civil Procedure Code, if any Defendant dies before decree and the right to sue does not survive against the surviving Defendant or Defendants alone, the Plaintiff may apply to have a specified person whom he alleges to be the legal representative of the deceased substituted for him, and the Court is thereupon to enter the name of such person on the record, but it is provided that when the Plaintiff fails to make such application within the period prescribed, the suit shall

abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

By Section 582 the words "Plaintiff," "Defendant," and "suit" include an Appellant, Respondent, and an appeal respectively.

By Section 66 of the Civil Procedure Code Amendment Act (Act VIIth of 1888) the period of six months from the date of the death of the deceased Defendant is the period prescribed for making an application under Section 368 of the Civil Procedure Code.

It is not disputed that the right to sue did not survive against the other Defendants alone, nor could it be successfully contended that the Appeals could proceed in the absence of a representative of Abhoy Churn Chowdhry. But applications to substitute his legal representative for the deceased Respondent were not made until after the expiration of the period of six months from that Respondent's death. The legal representative of Abhoy Churn Chowdhry was constituted nearly two months before the expiration of the period, and there was no apparent difficulty in making the application in proper time. The only question therefore could be whether the Court was satisfied that the Appellants had sufficient cause for not doing so. No serious attempt was made for this purpose. In the circumstances therefore the Court had no option and the present Appeals are perfectly idle. Their Lordships will humbly advise His Majesty that they should be dismissed. The Appellants will respectively pay the costs of them.
