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Skinner Vs. Orde and ors.

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SooperKanoon Citation : sooperkanoon.com/449348

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All230

Judge : Robert Stuart, C.J. and ;Pearson, J.

Appellant : Skinner

Respondent : Orde and ors.

Judgement :

1. The cause of action in this suit accrued to the plaintiff in August 1861, when his father died; and the period during which the suit might legally ho brought is 12 years. If the suit can he held to have been instituted on the 21st February 1873, the date on which the application for permission to sue in forma pauperis was first presented to the Subordinate Judge of Meerut, it is clearly within time; and there can be no doubt that, had the application of the 21st February 1878, been granted, the suit would rightly he deemed to have been instituted on that date. Hut that application never was granted, and was indeed virtually withdrawn on the 27th November 1874, by the plaintiff's offer to pay the amount of the fee chargeable on the plaint under the Court Fees Act before the inquiry into his pauperism bad been concluded, and his application was not numbered and registered and assumed to be the plaint in the suit under the provisions of Section 308, Act VI If of 1809, in consequence of proof of his pauperism, hut in consequence of the payment by him of the proper fees. But there is no provision in the law which allows the application

presented under Section 299 of the Code to be doomed the plaint in the suit when such application has been in effect revoked and superseded by the payment of the Ides chargeable under the Court Fees Act.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 he taken to he the date of the payment of the fees: and we are therefore unable to rule that the lower Court has erred in declaring the present suit to have been instituted after the lapse of the period allowed by the law. We have no alternative hut to dismiss the appeal with costs.

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