

J. B. METCALFE WALTON v. HYAM MARGOLIS.

CIVIL APPEAL CAUSE No. 29 OF 1939.

Statute of Limitations—meaning of expression “beyond the seas”—defendant served with summons out of the jurisdiction absents himself at his peril.

A cause of action arose against the respondent in June, 1933, at which time the respondent was not within Northern Rhodesia. A summons was issued on the 25th May, 1939, and was served on the respondent in Johannesburg on the 4th August, 1939. The respondent pleaded, *inter alia*, that the debt was statute barred. The question also arose as to whether the respondent was within the jurisdiction of the Court. The lower Court held that the respondent was not “beyond the seas” and that consequently the Statute of Limitations applied and that the debt was statute barred. On appeal the High Court held that the meaning of “beyond the seas” in the Statute of Limitations means “without the territories” and that consequently the period of limitation did not commence to run until such time as the respondent came within the jurisdiction of the Court. It was further held that when once the respondent had been served with the summons if he absented himself at the trial he did so at his peril.

Law, C.J.: For the purpose of this appeal it is agreed that the cause of action arose in June, 1933, at which time the defendant was not within the Territory of Northern Rhodesia. The action is one for the payment of £88 1s. 2d. for services rendered and for monies paid on behalf of the defendant. The defendant pleaded that the claim was not maintainable against him being barred by limitation under the provisions of 4 Anne Cap. 6 (Section 19).

The language of that section is substantially as follows, in so far as it affects this case:

“If any person against whom there is any (such) cause of action, then such person which is entitled to any such action shall be at liberty to bring the said action against such person *after their return from beyond the seas*, within such times as are respectively limited for the bringing of the said other Act made in the 21 Jac. I.” The important words therein are italicised.

On reference to the Statute of 21 Jac. I (Cap. 16, section 3) it is seen that the period of limitation for bringing this action is six years. In section 7 of that statute a similar provision is to be found as in 4 Anne Cap. 16, section 19. In both sections the words “after their return from beyond the seas” appear. In an action for trover under the James Statute, *Ruckmabaye v. Lulloobhoy Mottichund*, 8 Moor’s Privy

Council Reports, p. 4 (14 E.R., p. 2), those words were held to be synonymous with the words "without the territories" and that the statute was no bar to the action.

It is difficult to appreciate how any other judicial interpretation can be placed on the same words which appear in a similar sense in 4 Anne Cap. 16, section 19. Consequently, I would hold that the words "beyond the seas" in the present case mean "without the territories" of Northern Rhodesia. It follows, therefore, that not only is this action not barred by limitation but also that limitation has not begun to run against the plaintiff because the defendant has not yet returned from beyond the seas. The fact, however, that a defendant is "without the territories" does not save him from being sued.

With regard to the question of jurisdiction, the learned Magistrate appears to be under the impression that the defendant is within the jurisdiction because an action has been instituted against him. This does not necessarily follow. In some instances a defendant may not be subject to the jurisdiction of a Court till he has submitted to its jurisdiction. (See *Harris v. Taylor*, 1915, 2 K.B., p. 580). But, if duly served, he absents himself at his own risk.

For the foregoing reasons the appeal is allowed with costs thereof in any event, and the case remitted to the Lower Court for disposal on any other issues which arise for determination between the parties.