

## APPELLATE CIVIL.

*Before Mr. Justice White and Mr. Justice Maclean.*

1880  
*April 19.*

JOHURI MAHTON (PLAINTIFF) v. THAKOOR NATH LUKHE  
(DEFENDANT).\*

*Limitation Act (XV of 1877), sched. ii, arts. 62 and 115—Money deposited for repayment on a contingency.*

The period of limitation for a suit to recover money deposited by the plaintiff with the defendant, upon the understanding that it will be returned in a certain event, should be calculated not under art. 115, but under art. 62 of sched. ii of Act XV of 1877. Such period begins to run on the happening of the event.

THE plaintiff in this case had deposited Rs. 395 with the defendant, pending negotiations for the renewal of a lease, upon the understanding that if the negotiation eventuated in the lease to the plaintiff being renewed, the Rs. 395 should remain in the hands of the defendant, and should be treated as part of the security to be given by the plaintiff for the due performance by him of the conditions of the new lease; but that if no new lease should be granted, the Rs. 395 should be returned to the plaintiff.

The negotiations eventually came to nothing, and no new lease was granted to the plaintiff. The present suit was instituted by the plaintiff to recover the deposit of Rs. 395, more than three years after the date of the deposit and also more than three years after the time when the negotiations for a new lease terminated. The Court of first instance held, that the suit of the plaintiff was a suit for compensation for the breach of an unwritten and unregistered contract, and was barred under art. 115 of sched. ii of Act XV of 1877; and therefore dismissed the plaintiff's suit. This decision was affirmed on appeal by

\* Appeal from Appellate Decree, No. 577 of 1880, against the decree of R. M. Towers, Esq., Officiating Judicial Commissioner of Chota Nagpore, dated the 5th January 1880, affirming the decree of Major Blathwayt, Officiating Deputy Commissioner of Hazareebaugh, dated the 29th July 1879.

the Officiating Judicial Commissioner of Chota Nagpore, and the appeal of the plaintiff was dismissed with costs.

The plaintiff then appealed to the High Court.

Mr. *Sandel* appeared for the appellant.

No one appeared for the respondent.

The judgment of the Court (WHITE and MACLEAN, JJ.) was delivered by

WHITE, J.—We have heard Mr. *Sandel* for the appellant, who is the plaintiff in the first Court.

The appeal is confined to a sum of Rs. 395. The lower Appellate Court has held that the claim of the plaintiff is barred by the law of limitation, inasmuch as the suit is not brought within three years from the date when the money became payable.

The money in question was deposited by the plaintiff with the defendant pending negotiations for a new lease; and the arrangement was, that if the new lease was granted, these 395 rupees should be treated as part of the security to be given for the due performance of the lease; but that, if no new lease were granted, the money should be returned. The negotiations fell through, and the consequence was, that the money immediately became repayable, and in the eye of the law was money had and received by the defendant for the use of the plaintiff. Article 62 of the Schedule of the Indian Limitation Act prescribes three years' limitation for a suit to recover money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use; and the date from which the three years are to count is when the money is received, that is, received by the defendant for the use of the plaintiff.

Under the circumstances which I have stated, the money in this case did not become money received by the defendant for the use of the plaintiff until the failure of the negotiations for a new lease.

The article of the Limitation Act which the lower Court has applied is art. 115 of the 2nd schedule. This article relates

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to suits for compensation for breach of contract. Inasmuch as, in the present case, it was expressly stipulated that the money should be returned if the new lease were not granted, it may no doubt be said that the defendant broke his contract when he failed to return the money. But in my opinion the more appropriate article is art. 62, for what the plaintiff really seeks is not compensation, which means damages, but to get back the money which he had deposited. As the period of limitation fixed by both the articles is the same, the question as to which article is most applicable becomes of no practical importance. We think the Judge was clearly right in holding the suit to be barred. It is therefore unnecessary to direct a notice to be sent to the lower Court, or a notice to be served on the respondent or his pleader.

We confirm the decision of the lower Appellate Court, and direct that the confirmation be notified to that Court under s. 551 of the Code of Civil Procedure.

*Appeal dismissed.*

*Before Mr. Justice White and Mr. Justice Maclean.*

1880  
 April 8.

TOPONIDHEE DHERJ GIR GOSAIN (PLAINTIFF) v. SREMFUTTY  
 SAHANIE (DEFENDANT).\*

*Res judicata—Court of Competent Jurisdiction—Decision on Question of Title—  
 Civil Procedure Code (Act X of 1877), s. 12.*

When a question of title has to be, and is, decided by a Court of competent jurisdiction with reference to the value of the subject-matter in dispute, such decision, or the ultimate decision upon appeal from such decision, is final, and the question of title becomes a *res adjudicata* as between the parties to the suit, although it may have the effect of determining the title to an estate or estates, the value of which exceeds the jurisdiction of the Court in which the suit was instituted.

*Per WHITE, J.*—In considering, on the hearing of an appeal, the competency of a Court for the purpose of deciding upon a question of *res judicata*, the

\* Appeal from Original Decree, No. 277 of 1878, against the decree of W. Wright, Esq., Subordinate Judge of Cuttack, dated the 23rd August 1878.