

KELAN
v.
MANIKAM.

tion for the contention that it created any tenancy at all. The cases cited by the Subordinate Judge are not in point.

We reverse the decree of the Subordinate Judge and restore that of the District Munsif. The respondent will pay the appellant's costs throughout.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusami Ayyar.*

1887.
Dec. 15.

IN THE MATTER OF KITTU AND OTHERS.*

Act XIII of 1859, s. 2—Limitation Act no bar to a claim to recover an advance.

Act XIII of 1859 being a penal enactment, the Limitation Act is no bar to a claim under s. 2 to recover an advance made to a labourer.

CASE referred under s. 439 of the Code of Criminal Procedure by S. H. Wynne, Acting District Magistrate of South Canara.

The facts were stated as follows :—

“A complaint was brought under Act XIII of 1859 to recover a sum advanced in respect of work, which work was not done. The Magistrate has rejected the complaint under s. 203 of the Code of Criminal Procedure, because a suit to recover the sum would be barred by limitation. As it is expressly stated in the preamble to Act XIII of 1859 that the reason for the enactment is that the remedy by suit is wholly insufficient, I do not think the order was legal. There is no law limiting the time within which complaints under Act XIII of 1859 may be brought. The Act is penal, its object being to make ‘persons guilty of fraudulent breach of contract subject to punishment,’ and therefore proceedings taken under it are not suits and are not governed by art. 120 of sch. II of the Limitation Act.

“I request that the case be submitted for the orders of the High Court.”

The parties did not appear.

The Court (Collins, C.J., and Muttusami Ayyar, J.) delivered the following

* Criminal Revision Case 448 of 1887.

JUDGMENT :—Act XIII of 1859 is a penal enactment, and the Act of Limitation is no bar to the enforcement of a penal provision. Though it was passed because the remedy by suit was insufficient, it is no ground for saying that the Act ceases to be applicable when the civil remedy is barred. The expression without lawful or reasonable excuse has reference to the circumstances in which the breach occurred. A plea of limitation which is available only in civil suits cannot be taken to bar punishment for what is an offence. The case before us is perhaps one not foreseen and provided for by the Legislature, but we must construe a penal enactment as it stands. We set aside the order made by the 2nd-class Magistrate and direct him to restore the complaint to his file and to deal with it in accordance with law.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

PASSANHA (PLAINTIFF),

and

THE MADRAS DEPOSIT AND BENEFIT SOCIETY (DEFENDANTS).*

1888.
February 3

Limitation Act, sch. II, arts. 36, 49.

Plaintiff was the owner of a house mortgaged to defendants. On the 22nd August 1885 defendants sold the house by auction under a power of sale contained in the mortgage and gave possession to the purchaser. On the 2nd September 1887 plaintiff sued the defendants to recover the value of certain timber which was stored in the house and not mortgaged and which plaintiff alleged the defendants had taken possession of and converted to their own use. It was proved that the timber was in the house when defendants took possession from the plaintiff and defendants did not account for it :

Held, (1) that plaintiff was entitled to recover from the defendants the value of the timber and (2) that the suit was not barred by art. 36 of sch. II of Indian Limitation Act, 1879.

CASE referred under s. 69 of the Presidency Small Cause Courts Act, 1882, by J. W. Handley, Chief Judge of the Court of Small Causes at Madras.

* Special Case 83 of 1887.