

1875 being then due, is mentioned in the illustration as barred by the section. On comparing s. 43 of Act X of 1877, as modified by Act XIV of 1882, with s. 7 of Act VIII of 1859, we find that the words "which the plaintiff is entitled to make in respect of the same cause of action" have been substituted for the words "arising out of the cause of action." We are, therefore, of opinion that the words "every suit shall include the whole of the claim in respect of the cause of action," include not only the claim arising out of that cause of action but also any other claim founded on the same cause of action and enforceable at the date of the former suit. This view is in accordance with the decision of the Judicial Committee in *Madan Mohan Lal v. Lala Sheo Sanker Sahai*(1).

VENKOB
v.
SUBBANNA.

Our answer, therefore, to the reference is that no second suit would lie for mesne profits, which had accrued due prior to the date of the former suit and which the plaintiff was in a position to have then claimed. The plaintiff will pay the defendant's costs of this reference.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

VITLA KAMEI (PLAINTIFF),

and

KALEKARA (DEFENDANT).*

1887.
Sept. 2.

Limitation Act, 1877, sch. II, art. 80.

Suit on an unregistered bond, whereby certain movable property in the debtor's possession was pledged as security for the repayment of principal and interest:

Held, that the suit was governed by art. 80, sch. II, of the Indian Limitation Act, 1877.

CASE stated, under s. 617 of the Code of Civil Procedure, by P. Ram Rau, District Munsif of Kasergode, in small cause suit No. 24 of 1887.

The material portion of the Munsif's judgment was as follows:—

"The suit was for Rs. 17-2-6, principal and value of arrears of interest under a bond, being a hypothecation of movable

(1) I.L.R., 12 Cal., 432.

* Referred Case No. 7 of 1887.

VITTA KAMTI
².
 KALEKARA.

property (namely cattle), executed by a Tiyan, named Fakira, deceased, uncle and karnavan of the defendant. The bond is dated 31st May 1882 and is for Rs. 7. It simply pledges four head of cattle described, without giving possession, and provides that the sum shall be repaid in six months with 75 cocoanuts as interest; in default, interest is charged at the rate of 150 cocoanuts per annum, and the whole made payable on demand; this interest is alleged by plaintiff to have been paid up to 31st May 1884. The defendant is sued as the legal representative of the deceased obligor in possession of his property, including the hypothecated cattle, and decree is prayed for against him and 'on the security of the cattle.' The bond is not registered.

"Defendant denied the plaintiff's claim, ignored the bond, and contended that the suit is barred by the law of limitation. He stated that no interest was ever paid, that the obligor, Fakira, died four years ago, and that his property has not come into defendant's possession. The exhibit A executed to plaintiff by defendant's uncle Fakira, on 31st May 1882, for Rs. 7 was filed for plaintiff, and three witnesses were examined for plaintiff. The bond A was proved by the evidence of two of the plaintiff's witnesses—the writer and one of the attesting witnesses. The evidence, however, as to the payment of interest given by two of the plaintiff's witnesses, who deposed to a payment of 75 cocoanuts 'between two and three years ago' was vague and unsatisfactory, and had the appearance of having been merely got up with a view to take the case out of the statute of limitation; accordingly I have rejected it. Payment of interest being thus not proved, the question arises as to the bar of limitation and as to the article of the Limitation Act XV of 1877, which should govern this case.

"If the period of limitation applicable to the case is the ordinary limitation of three years, the suit is clearly barred, seeing that the six months' time allowed in A for payment of the debt expired at the end of November 1882 and the suit was not instituted till the 18th February 1887; but it is contended for plaintiff that A is not a mere bond but a hypothecation of movable property, and that neither such hypothecation nor a suit for recovery of money charged on movable property is contemplated in any of the articles of schedule II of the Limitation Act prescribing a period of three years; and it is, therefore, argued that, in the absence of any express provision, the article applicable to the case is No. 120,

which prescribes a period of six years for cases not elsewhere provided for.

VITTA KANTI
v.
KALEKARA.

“The defendant’s vakil argues, on the other hand, that the limitation applicable to the case is three years under art. 80, which refers to a ‘suit on bill of exchange, promissory note, or bond not herein expressly provided for,’ if not under art. 115 (for compensation for breach of contract, not in writing registered and not specially provided for); and he submits that, even if the suit were viewed as for specific performance of contract, or even if the plaintiff were to sue for possession of the specific movable property hypothecated, the case would be governed by three years’ limitation (arts. 113 and 49). Another article referred to by him, viz., No. 65, I pass over as inapplicable to the present case.

“In support of the argument for plaintiff that neither art. 80 nor 115 is intended to be applicable to a suit on a hypothecation bond, the following analogy is suggested, viz., while a suit against a mortgagee to redeem or recover possession of immovable property mortgaged has a period of sixty years (art. 148), a similar suit for movable property has thirty years (art. 145), and as a suit for money charged upon immovable property is governed by a limitation of twelve years (art. 132)—vide *Aliba v. Nanu*(1)—it is submitted that it is not unreasonable to suppose that a suit for money charged upon movable property must be governed by a limitation of six years as in art. 120, and not merely three years. It is further submitted that, when even a hypothecatee of immovable property after the passing of the Transfer of Property Act, 1892, can sue for foreclosure or sale at any time within sixty years under art. 147 (see *Aliba v. Nanu*), a hypothecatee of personal property may fairly be supposed to have a longer period than the ordinary limitation of three years, but the above position of the hypothecatee of immovable property is the outcome of the Transfer of Property Act, with which the cases of movable property have nothing to do.

“The question for decision, then, is whether the limitation applicable to this suit is three years or six years, or, in other words, whether a suit for money due on a simple pledge, without possession of movable property, falls under art. 120 or under art. 115 or 80.

(1) I.L.R., 9 Mad., 218.

VITLA KAMTI
^{v.}
 KALEKARA.

“I am of opinion that the limitation applicable is three years either under art. 80 or under art. 115; but, as the parties have applied for the reference of the question for the decision of the High Court, and, as, under the circumstances stated, I have doubts whether such a suit may not fall under art. 120, there being no decided case in point, I respectfully refer the above question, and, contingent upon the decision of the High Court, I direct that the suit be dismissed as time-barred.”

Gopál Ráu for plaintiff.

Defendant did not appear.

The Court (Muttusámi Ayyar and Parker, JJ.) delivered the following

JUDGMENT.—The bond, which is the subject of this suit, created an obligation to pay a debt on the security of certain movable property, which the debtor retained in his possession. The question referred for our opinion is whether art. 80 or 120 of the sch. II of the Limitation Act, 1877, applies to the suit, and whether the period of limitation prescribed for it is three or six years. There can be no doubt that a suit to recover the debt due under the bond is governed by art. 80. The power to bring the movable property to sale is an incident in the nature of an accessory to the right to recover the debt, and, if that right becomes incapable of being enforced owing to the lapse of three years, the power to sell the security must likewise cease to be capable of being exercised. In the absence of a special provision applicable to a suit brought to enforce the sale of the security, we must hold that the period of limitation is three years and that the suit is governed by art. 80.

The question referred to us will be answered accordingly.
