

wrong.' That is no answer, for, as I have often said, some one must pay the costs and I do not see who else but the defendants who do wrong are to pay them." There can be no doubt that the discretion of the Court under section 220 of the Code of Civil Procedure is one to be exercised with reference to general principles such as the above. The direction in that section that in the event of the Court not directing the costs to follow the event, it shall record its reasons in writing, is a clear confirmation of the said view. Here it is not suggested that the plaintiff in suing for the debt decreed to him was guilty of any misconduct, neglect or omission which would warrant the Court refusing him his costs. The fact that the Court of Wards had previous to the suit admitted that the money sued for was due to the plaintiff affords as little ground for depriving the plaintiff of his costs as it does for holding that he has no right to sue.

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In these circumstances the lower Court should have given the plaintiff his costs also. The appeal is allowed with costs, the lower Court's decree being modified as above.

APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Offg. Chief Justice, and
Mr. Justice Bhashyam Ayyangar.*

BANK OF MADRAS (PLAINTIFF), APPELLANT,

v.

MULTAN CHAND KANYALAL (DEFENDANT), RESPONDENT.*

1903.
October
23, 23.

Limitation Act—XV of 1877, sched. II, art. 95—"Other relief" in consequence of fraud—Suit for damages caused by defendant's fraud.

Plaintiff claimed compensation from the defendant for damages caused to plaintiff by the fraud practised by the defendant. The suit had been brought more than two years but less than three years after the fraud complained of. The fraud was this: Defendant, a judgment-creditor of some debtors, had caused a Court seal to be fraudulently placed on the door of a warehouse in which perishable articles belonging to the debtors were stored. This deceived the plaintiff, also a judgment-creditor, who was thus prevented from obtaining the goods and selling them. The goods were ultimately obtained and sold at a loss.

* Appeal No. 80 of 1901 presented against the decree of C. G. Kuppuswami Ayyar, Subordinate Judge of Cocanada, in Original Suit No. 17 of 1900.

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Damages were now claimed because the goods had deteriorated in quality, diminished in quantity and commanded a lower price in the market. On the question of limitation being raised :

Held, that the suit was not barred, it being governed by article 95 of Schedule II to the Limitation Act. The "other relief" referred to in that article need not be of the same kind, as "setting aside a decree obtained by fraud," and the article is not thus limited to specific relief on the ground of fraud. The expression "other relief" is comprehensive enough to include compensation for damages caused to the plaintiff by the fraud practised by the defendant.

SUIT for damages. As the case is only reported on the point decided as to limitation, it is sufficient to state the finding of the High Court that the suit was one for compensation for damages caused to the plaintiff by the fraud practised by the defendant. A Court seal was, as the High Court found, placed on the outer door of a warehouse at the instance of defendant, who was a judgment-creditor of the owners of certain jaggery which was stored in the warehouse. The plaintiff also obtained a decree against the owners of the jaggery, and was, by the defendant's action, prevented from obtaining the jaggery and selling it. The jaggery was ultimately obtained, after a delay of many months, but by that time it had deteriorated in quality and diminished in quantity and the market price of jaggery had also fallen. The plaintiff sued to recover damages from the defendant under each of these heads. The suit was instituted more than two years and less than three years after the act complained of.

The Subordinate Judge held that it was not established by the evidence that the Court seal had been put on the door at the instance of the defendant.

Plaintiff preferred this appeal.

Mr. *Chamier*, for appellant, referred to *Kissorimolun Roy v. Harsukh Das*(1).

Mr. *C. Krishnan*, for respondent, contended that the claim was barred by limitation. He cited *Chunder v. Thirthamund*(2) as showing that the "other relief" referred to in article 95 must be of the same kind as the reliefs mentioned in the earlier part of the article.

JUDGMENT.—We cannot uphold the finding of the Subordinate Judge that it is not established by the evidence in the case that the Court seal was put on on the outer door of the warehouse at the

(1) I.L.R., 17 Calc., 436.

(2) I.L.R., 3 Calc., 504.

instance of the defendant. He no doubt applied for attachment in the usual way under section 269 of the Civil Procedure Code, and the Amin returned the warrant of attachment unexecuted stating that the warehouse in which the jaggery was deposited was under the lock and key of the Bank of Madras. But as a matter of fact it is conclusively proved that the seal of the Court was affixed to the lock, and that this was done by an Amin of the Court, Thannikachallam, at the instance of the defendant's gumasta. It is also proved that when the Bank servants subsequently came to the warehouse with a view to open the warehouse the defendant's Vakil and the defendant's gumasta both told them that the warehouse was under Court seal and that should they remove the seal and open the warehouse they would do so at their own risk. We are clearly satisfied that the defendant in collusion with an Amin of the Court fraudulently and without the authority of the Court had the Court seal placed on the outer door of the warehouse in order to deceive the Bank into the belief that the property in the warehouse had passed to and remained in the custody of the Court and thereby prevented the Bank from taking possession of the jaggery, arresting its deterioration and wastage and selling it when the prices were favourable. In this view the gist of the action is fraud and the article of the Limitation Act applicable is neither article 29 nor article 36 but article 95.

We cannot accept the argument that the "other relief" referred to in article 95 must be of the same kind as setting aside a decree obtained by fraud and thus limit the operation of the article to specific relief on the ground of fraud. The relief claimed in this case is compensation for damages caused to the plaintiff by the fraud practised by the defendant and the expression "other relief" in article 95 is comprehensive enough to include such relief. The suit is therefore not barred by limitation, but before we dispose of the appeal we must call for a finding upon the third issue upon the evidence on record. [This issue had reference to the amount of damages.]

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