ORDER.—The petitioner relies upon the fact that leave to appeal was granted by this Court in a similar case *In the matter of Krishnaswami Iyer*(1), but on a further consideration of the question we agree with the recent decision, *In re an Attorney*(2), that disciplinary proceedings under clause 10 of the Letters Patent are not appealable under clause 39, and that we have no power to give leave to appeal to the Privy Council from an order passed in the exercise of such jurisdiction. This is also the view taken in *G. S. D.* v. *Government Pleader*(3). In *Tetley* v. *Jai Shankar*(4) also it was held that no such leave could be granted and though in the subsequent case from Allahabad, *In re S.B. Sarbadhicary*(5) it appears that leave was granted by the Allahabad High Court, the reports show that special leave to appeal was obtained from their Lordships before the appeal was heard.

The application is dismissed.

C.M.N.

APPELLATE CIVIL—FULL BENCH.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Abdur Rahim and Mr. Justice Seshagiri Ayyar.

A. T. S. A. ANNAMALAI CHETTY AND TWO OTHERS (PLAINTIFFS), APPELLANTS,

v.

S. V. VELAYUDA NADAR (DEFENDANT), RESPONDENT. *

1915. July 21 and 30, August 5 and October 18 and 27.

30.

Limitation Act (IX of 1908), art. 80—Promissory note payable on demand—Agreement fixing time for payment—Suit by payee—Limitation, from the expiry of the period fixed.

Article 80 of the Limitation Act is the article applicable to a suit by the payee on a promissory note payable on demand but accompanied by an agreement fixing a period for payment and time begins to run from the expiry of the period fixed in the accompanying agreement.

Simon v. *Hakim Mahomed Sheriff* (1896) I.L.R., 19 Mad., 368 and *Somasundaram Chettiar* v. *Narasimha Chariar* (1906) I.L.R., 29 Mad., 212, overruled.

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(1) Civil Miscellaneous Petitions Nos. 595 and 596 of 1912.
(2) (1914) I.L.R., 41 Calc., 734. (3) (1908) I.L.R., 32 Bom., 106.
(4) (1878) I.L.R., 1 All., 726. (5) (1906) 34 I.A., 41.

* Civil Revision Petition No. 308 of 1914.

ANNAMALAI CHETTY v. VELAYUDA NADAR.

PETITION under section 25 of the Provincial Small Cause Courts Act (IX of 1887) praying the High Court to revise the decree of S. MAHADEVA SASTRIYAR, the temporary Subordinate Judge of Ramnad at Madura, in Small Cause Suit No. 88 of 1913.

The facts of this case are clearly set out in the Order of Reference of SADASIVA AYYAR, J., to the Full Bench.

B. Sitharama Rao for the appellant.

S. Ranganathu Ayyar for the respondent.

This Civil Revision petition came on for hearing before OLDFIELD and SADASIVA AYYAR, JJ. who made the following Orders of Reference to a Full Bench.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—The plaintiffs are the petitioners in revision. They brought the suit on a promissory note dated 4th August 1909 payable on demand. On that same date, however, a writing, Exhibit A1, was given by the drawer as follows :—

"Ten months' thavanai (time for payment) from the date of the pro-note has been fixed for this note." Thus Exhibit A was in the words of article 73 of the first schedule of the Limitation Act accompanied by a writing postponing the right to sue for ten months. The present suit was brought on the 30th June 1913 more than three years from the date of the promissory note, 4th August 1909, but within the limitation period of three years from the expiry of the ten months' period and within the period of the extension given by the provisions of section 4 of the Limitation Act which permits the plaintiff to institute a suit on the day on which the Court re-opens if the time expired during the vacation of the Court. The Subordinate Judge relying on *Somasundaram Chettiar* v. *Narasimha Chariar*(1) which followed *Simon* v. *Hakim Mahomed Sheriff*(2), held that the writing which evidences the agreement to give time for payment is a collateral agreement, that notwithstanding that agreement, the plaintiffs could have sued on the promissory note within the ten months and that therefore, time for calculating limitation began to run from the date of the promissory note itself and the suit was therefore barred. He does not mention the article of the Limitation Act which in his opinion applies to the case. I presume that he applied article 73 itself of the Limitation Act and that was the article relied upon by the respondent's learned vakil.

(1) (1906) I.L.R., 29 Mad., 212. (2) (1896) I.L.R., 19 Mad., 868.

The petitioners' learned vakil Mr. B. Sitarama Rao argued in the first place that the decision in *Somasundaram Chettiar* v. *Narasimha Chariar*(1) decided only that notwithstanding the contemporaneous written agreement restraining and postponing the payment, the holder of the note was entitled to sue at once and not that the limitation period should be calculated from the date of the note under article 73 of the Limitation Act. Conceding that the actual point decided was only that the holder was entitled to sue from the date of the promissory note notwithstanding the accompanying agreement, that actual decision necessarily involves the conclusion that the cause of action on the note arose at once notwithstanding the accompanying agreement. If the cause of action arose at once the period of limitation must also begin at once except in the cases of disability, etc., provided for by the Limitation Act. I might add that Justice Sir SUBRAHMANYA AYYAR who was one of the two Judges who decided *Somasundaram Chettiar* v. *Narasimha Chariar*(1), decided as a single Judge the prior case in *Simon* v. *Hakim Mahomed Sheriff*(2), in which he enunciated the same view as to the arising of the cause of action at once on a promissory note payable on demand even though there was a contemporaneous written agreement postponing the time for payment. In deciding those two cases, that very learned Judge seems to have been guided by certain English decisions, the most important of which is *Salmon* v *Webb and Franklin*(3). It seems to me that those English cases are based upon the doctrine of the English law that an agreement not to sue for a limited time or a covenant for a limited time only, that is, a covenant not to sue for a limited time was no answer to an action on a promissory note or even an ordinary bond unless that covenant was supported by a fresh consideration. As pointed out by Sir SUBRAHMANYA AYYAR, J., himself in *Davis* v. *Cundasami Mudali*(4), the Indian law (enacted in sections 62 and 63 of the Contract Act) is different; article 73 of the Limitation Act also clearly implies, in my opinion, that an agreement in writing accompanying a promissory note which agreement postpones the time for payment is a valid and enforceable agreement. Of course the negotiable character of the promissory note is not destroyed and bona fide

(1) (1906) I L.R., 29 Mad., 212.
(2) (1896) I.L.R., 19 Mad., 368.
(3) (1852) 3 H.L.C., 510.
(4) (1896) I.L.R., 19 Mad., 398.

ANNAMALAI CHETTY v. VELAYUDA NADAR.

SADASIVA AYYAR, J.

holders without notice of the accompanying agreement in writing will be protected even if they sued before the term mentioned in the accompanying agreement had expired. As between the parties to the note and as between the drawer and holders with notice or holders who are not holders in due course I am unable to see why the accompanying agreement, if in writing, should not be enforced. (That oral agreements to grant time will not extend limitation has been decided long ago by this Court and when such oral agreement varies the terms of a written contract, it would, in most cases, be inadmissible in evidence under section 92 of the Evidence Act.)

Article 73 of the Limitation Act provides three years' period from the date of the promissory note for a suit on a promissory note payable on demand and "not accompanied by any writing postponing the right to sue." The promissory note in the present case as it was accompanied by such writing cannot fall, in my opinion, under article 73. If it cannot fall under article 73 it must in my opinion fall under article 80 which relates to a suit on a bill of exchange, a promissory note or bond not herein expressly provided for, the article providing a period of three years from when the bill note or bond becomes payable. The promissory note in this case not having been provided for in article 73 or by any other previous article falls under article 80 and as it becomes payable according to the accompanying agreement ten months after the date of the note, the three years must be calculated from the expiry of those ten months.

Mr. Sitharama Rao argued on the strength of *Sanjivi* v. *Errapa* (1) that the suit came under the general article 120 which gives a period of six years from when the right to sue accrues. I am unable to accept this contention.

In the first place the terms of the promissory note in *Sanjivi* v. *Errapa*(1), were very peculiar as the note was not one containing merely a promise to pay on demand, nor was it accompanied by anything in writing postponing the period of payment; but its own terms were "to pay at any time within six years on demand." Hence the learned Judges thought that article 120 applied.

(1) (1883) I.L.R., 6 Mad., 290.

In the second place article 80 of the Limitation Act is not referred to in the judgments and seems not to have been brought to the notice of the learned judges. Mitra in his Limitation Act, page 960, referring to this case doubts its soundness and is evidently of opinion that article 80 was the proper article to be applied in such cases. Another learned writer Rustomji in his recent book on the Law of Limitation, at page 233, also thinks that article 80 ought to have been applied. In *Kuttiassan* v. *Suppi* (1), article 80 was applied to a promissory note which was payable on demand to be made after the payee attained majority, the Court holding that time began to run from when the payee after attaining majority made his demand.

I would therefore refer for the decision of the Full Bench the following question:—

What article of the Limitation Act applies to the suit on the promissory note sued on and when did the period for calculation of limitation begin?

(The opinion of the Full Bench will govern the decisions in the connected petitions also.)

OLDFIELD, J.—I should have been inclined after so many years to follow *Somasundaram Chettiar* v. *Narasimha Chariar*(2), as settled law. But I am not sure that English decisions, on which it is based, are applicable in India or that they represent the English law correctly. Vide observations on *Cumber* v. *Wane*(3) and *Thimbleby* v. *Barron*(4).

OLDFIELD, J.

I therefore concur in the reference proposed by my learned brother.

B. Sitharama Rao for appellant.

The question is one of limitation, viz., which article of the Act applies, article 73, 80 or 120? The period of limitation runs, not from the date of the note but from the date to which the time has been extended by agreement. The two cases quoted against this view are *Simon* v. *Hakim Mahomed Sheriff* (5) and *Somasundaram Chettiar* v. *Narasimha Chariar*(2).

[WALLIS, C.J.—The agreement will not bind the holder in due course. A third party without notice must sue within

(1) (1893) 3 M.L.J., 199.
(2) (1906) I.L.R., 29 Mad., 212. (3) 1 Sm. L.C., 338 at p. 352; s.c., 1 Strange, 426
(4) (1838) 3 M. & W., 210. (5) (1896) I.L.R., 19 Mad., 382.

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the time mentioned in article 73. Here the suit is between the maker and the payee and they are bound by the agreement. This is your argument.]

Yes. The words in section 32 of the Negotiable Instruments Act in "the absence of a contract to the contrary" also support my view.

Refers to *Salmon* v. *Webb and Franklin*(1); Smith's Leading Cases, volume I, page 352, paragraph 8, and section 24, sub-section 5 of the Judicature Act.

Under the English Common Law, a collateral agreement like the present one cannot be relied upon as a bar but in equity the party could always get an injunction compelling the plaintiff not to sue. See *Norton* v. *Wood*(2).

[WALLIS, C.J.—What is stated to be the law in Byles on Bills?]

Refers to pages 121 and 251. A covenant to renew is a good defence. See *Maillard* v. *Page*(3) and *Bowerbank* v. *Menteirs*(4).

In *Simon* v. *Hakim Mahomed Sheriff* ( ) the remedy by an injunction has been overlooked. In *Norton* v. *Wood*(2) there was a bond and collateral agreement. The view stated in Bosanquet on Limitation, page 41, is that after the Judicature Act, the collateral agreement will be a good plea in defence.

[WALLIS, C.J., refers to page 321, Byles on Bills. This is in your favour; you say that the decisions in *Simon* v. *Hakim Mahomed Sheriff* ( ) and *Somasundaram Chettiar* v. *Narasimha Chariar*(6) are not in accordance with English law.

That is my submission. See 19 Halsbury, page 55, paragraph 88.

Refers to Stoke's Anglo-Indian Codes regarding section 32 of the Negotiable Instruments Act, Daniel's Negotiable Instruments, section 156; Chalmer's Bills of Exchange, page 66 and Bashyam and Adiga on Negotiable Instruments, page 445.

S. Ranganatha Ayyar for the respondent.

I want to draw your Lordship's notice to one passage at page 372 in *Simon* v. *Hakim Mahomed Sheriff* (5).

[ABDUR RAHIM, J.—Why should not this contract be enforced in the same suit?]

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(1) (1852) 3 H.L.C., 510.
(2) (1830) 1 R. & M., 178; s.c., 39 E.R., 69.
(3) (1870) L.R., 5 Ex., 312.
(4) (1813) 4 Taunton, 844.
(5) (1896) I.L.R., 19 Mad., 368.
(6) (1906) I.L.R., 29 Mad., 212.

Refers to the observation of Sir BARNES PEACOCK in 14 W.R., 14.

A memorandum written subsequent to the note is not part of the same instrument. Byles on Bills, page 121, *Sanjivi* v. *Errapa*(1) and *Kuttiassan* v. *Suppi*(2).

This REFERENCE coming on for hearing the Court expressed the following

OPINION.—We agree with SADASIVA AYYAR, J., and, for the reasons given by him, that article 80 is the article applicable, and that time began to run from the expiry of the period fixed in Exhibit A 1. Such an agreement to give time is operative in India under sections 62 and 63 of the Indian Contract Act, and is recognised by the legislature in article 73 of the Limitation Act which excludes on demand bills and notes from the operation of that article when they are accompanied by any writing restraining or postponing the right to sue. Lastly, such agreements appear to be expressly saved by the provision in section 32 of the Negotiable Instruments Act, which provides that notes and bills are payable at maturity according to the apparent tenor of the note or acceptance only in the absence of a contract to the contrary, thus expressly recognising that such a contract may postpone the date of payment. We think that *Simon* v. *Hakim Mahomed Sheriff*(3) and *Somasundaram Chettiar* v. *Narasimha Chariar*(4) proceed on the authority of English decisions which are inapplicable to India and would appear to be no longer law in England since the passing of the Judicature Act, and that they must be treated as no longer law.

This civil revision petition came on for final disposal after the expression of the opinion of the Full Bench, when the Court (SADASIVA AYYAR and NAPIER, JJ.) delivered the following judgment:—

"In accordance with the opinion of the Full Bench, we set aside the decision of the Small Cause Court which dismissed the suit on the preliminary point of limitation and remand the suit for disposal on the other questions arising in the suit. Costs hitherto incurred will abide. There will be similar orders in the connected Civil Revision Petitions Nos. 339 and 340 of 1915."

C.M.N.

(1) (1883) I.L.R., 6 Mad., 290.
(2) (1893) 3 M.L.J., 199.
(3) (1896) I.L.R., 19 Mad., 368.
(4) (1906) I.L.R. 29 Mad., 312.