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of 1877, to this suit, which is not a mere suit for money but asks for the recovery of the amount of a bond-debt by the sale of the property hypothecated in the bond. S. 210 was not intended to enable the Courts to set aside and override such a contract as that on the basis of which the present claim is laid. The security over the hypothecated property which it gave for the payment of the debt would be of little value, if it could be so set aside and overridden. The plaintiffs are entitled to an award against the defendants of the principal sum, (Rs. 12,000) with interest at the rate of twelve per cent. per annum to date of decree, and to interest from the latter date to the date of realization at the rate of six per cent. per annum, and to their costs with interest thereon at the same rate; and to be empowered to recover the amount of the bond-debt by the sale of the hypothecated property. The decree of the lower Courts is modified accordingly; and the costs of this appeal are allowed.

Decree modified.

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May 19.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

BALL (DEFENDANT) *v.* STOWELL (PLAINTIFF).*

Instalment-Bond—Cause of Action —Act XV of 1877 (*Limitation Act*), *sch. ii., arts.* 66, 67, 75 *and* 80.

B and *S* executed a bond, dated the 15th August, 1874, in favour of plaintiff in consideration of a loan of Rs. 15,000, agreeing to repay the same within three years from the above date, and covenanting to pay every half-year interest on the same, at the rate of 8 per cent per annum; and also to pay the premia on certain policies of insurance made over to plaintiff by way of collateral security. In the event of failure in payment on due date of interest and premia, the obligors made themselves liable to pay the full amount of the bond debt. The bond also contained the stipulation that it should be optional with the obligee to claim and if necessary to sue for the full amount of the bond on the failure of any one or more stipulated payment, or on the full expiry of the period of three years.

Held, that the bond was not an instalment-bond, and therefore art. 75, sch. ii of Act XV of 1877 was inapplicable.

Held, by STUART, C. J., that limitation commenced after the expiration of the three years allowed by the bond for payment of the debt.

Held, by SPANKIE, J.—Art. 80, sch. ii of Act XV of 1877 applies to the suit, and limitation would run from the date when the bond became due; that, according to

* First Appeal, No. 154 of 1878, from a decree of J. Alone, Esq., Subordinate Judge of Agra, dated the 22nd August, 1878.

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the stipulation in the bond, it would become due on failure in payment on date of both the interest and premia, and not on failure in payment of either of them only.

Held further, that arts. 67 and 68, sch. ii of Act XV of 1877 were not applicable to the suit.

THIS was a suit for money due on a bond dated the 15th August, 1874, the suit being instituted at Agra in the Court of the Subordinate Judge on the 16th July, 1878. The terms of this bond were as follows:—"Know all men by these presents that we the undersigned, Edward Charles Ball and William DeRussett Stowell, having jointly and severally borrowed and received the sum of rupees fifteen thousand (Rs. 15,000) from Christopher William Stowell, at Agra, do hereby covenant and agree to pay or cause to be paid at Agra, unto the said Christopher William Stowell, or to his order, or to his heirs, executors, and assigns the said sum within three years from date hereof: interest on the same at the rate of 8 per cent. per annum being payable half-yearly, namely, on the 30th June and 31st December in each calendar year, and premia on life policies to be endorsed to the said Christopher William Stowell periodically, according to the rules of the Insurance Company."

"In the event of failure in the payment on due date of the interest and premia, and whether advice be or be not given of such defaults, we hereby jointly and severally render ourselves liable to pay up the full amount of this bond, or such portion or balance thereof as may be due or may become due according to the account of the said Christopher William Stowell, from date of such default to payment of loan in full and other charges that may or shall be incurred on account of the said loan."

"It shall be optional to the said Christopher William Stowell to claim, and, if necessary, to sue for the full amount due on the bond, on the failure of any one or more stipulated payment, or on the full expiry of the period this bond was originally intended to run, if all its provisions had been fulfilled by us."

The defendant Ball alone defended the suit; his defence to the same being that it was barred by limitation, in the first place, with reference to art 75, sch. ii of Act XV of 1877, inasmuch as interest being payable half-yearly the bond was one payable by instalments, and default having been made in the payment of interest, the period

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of limitation ran from the time when the first default was made; and in the second place, if the bond was not one payable by instalments, inasmuch as the plaintiff's cause of action arose on the first default, then the period of limitation ran from the date of the default, notwithstanding the concluding words of the bond. The Subordinate Judge gave the plaintiff a decree holding that the bond was not one payable by instalments but a single bond, where a day was specified for payment, such day being the 15th August, 1877, and that the suit was consequently one governed by art. 66, sch. ii of Act XV of 1877, and within time. Against this decree the defendant Ball appealed to the High Court.

Mr. *Hill* (Mr. *Howard* with him) for the appellant.—The sole question in this case is—When did the period of limitation begin to run? The difficulty lies in the "optional clause" at the conclusion of the bond, but apart from it, it is clear on principle as well as authority, that the suit would be barred. The Subordinate Judge has chiefly discussed the question—Under what particular class of bonds does the instrument in suit fall? His finding is, that it is a bond of the description provided for by art. 66, *i. e.*, a single bond in which a day is specified for payment. In this, it is submitted, he is wrong. The money was repayable *within* three years, that is, at any time the obligors might select within three years. There is a material and well recognised distinction between such a case and one in which the contract is, that the money shall be repayable on the expiration of a given period. It cannot, therefore, be said, from this point of view, that the money was repayable on a specified day. *But further, the parties stipulate that the money* may become payable on the occurrence of an uncertain event, *viz.*, a default in the payment of interest and premia, which might happen on any of the half-yearly recurring dates on which such payments fell due. If then the bond be a single bond, and no day be specified for payment, art. 67 will apply, and the limitation period begin to run from the date of execution. It is, however submitted, that the bond is not a single bond, but a bond subject to a condition, and governed by art. 68, or if not that, that it is unprovided for by the Act, otherwise than by art. 80. It hardly, however, seems material to determine with strict accuracy under what particular article the bond falls, since the period in all cases of purely

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money bonds is three years from the date when a right to sue for the whole sum secured first accrued. If this be so, and dealing with the question apart from the "optional clause," there can be little doubt in the matter. The Statute begins to run when the plaintiff might have first sued for the whole amount: Darby and Bosanquet on the Statutes of Limitations, p. 18: Chitty on Contracts, p. 750: *Hemp* v. *Garland* (1): *Hurronath Roy* v. *Maherullah Mullah* (2). There was, however, a suggestion in the lower Court that supposing a right of action did in fact accrue to the plaintiff on the first default in payment of interest, that right was waived, and the argument presumably was that then, by a series of tacit waivers, the vitality of the bond was preserved, as each default occurred, until the expiry of the full term of the bond. But it is submitted there was no waiver here. The conduct of the plaintiff relied upon to establish a waiver is, I presume, his forbearance to sue, for nothing else on his part has been proved or suggested, but this is not enough. There must be an overt act. Simply lying by and witnessing a forfeiture is not sufficient: *Keene* v. *Biscoe* (3): *Doe* v. *Allen* (4). The argument is apparently founded on analogies derived from the rule laid down in art. 75, sch. ii of the Limitation Act: that article, however, clearly shows that forbearance to sue, *per se*, does not amount to a waiver, for it is there provided that the right of suit arising out of a default shall co-exist with forbearance to sue until the right is altogether barred by the lapse of three years. Moreover, unless the effect contended for is expressly given to a waiver by the Act, it has not the effect of stopping the running of the limitation period: *Gumna Dambershet* v. *Bhiku Hariba* (5), where the authorities are collected. The general rule of law is that once the Statute has begun to run, nothing can stop it: Act XV of 1877, s. 9: *The East India Company* v. *Oditchurn Paul* (6). In the present case the lower Court has held that the bond falls under an article of the Limitation Act which is silent as to waiver. If it be conceded that the Statute began to run when the plaintiff might first have sued for the full amount of the bond, and that there was no waiver, or, if there were, that it was ineffectual, it remains only to be considered whether the effect of the "optional clause" is to take the case out

(1) 12 L. J. N. S. Q. B. 134.
(2) 7 W. R Civ. R. 21.
(3) L. R. 8 Ch. 201.
(4) 3 Taunt. 78.
(5) I. L. R. 1 Bom. 125.
(6) 5 Moore's Ind. App. 43.

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of the Statute. It is submitted that it has no such effect; were it otherwise, it would involve the anomaly that a person might have two successive causes of action in respect of one and the same debt. The plaintiff here might have sued for the whole amount on the first default, but he could not do so unless he had then a cause of action for the whole amount. Mr. Addison, in his work on contracts, thus states the principle:—"It is a general rule that where there has once been a complete cause of action, the Statute begins to run, and that subsequent circumstances which would, but for the prior wrongful act or default, have constituted a cause of action, are disregarded." See also the judgment in *Hemp* v. *Garland* (1) and *Navalmal Gambhirmal* v. *Dhondibabin Bhagvantrav* (2), in the latter of which cases, Westropp, C. J., observes:—"There is, it is true, a proviso in the bond here that the obligee might waive the right to sue for the whole, and instead accept payment by instalments, but that proviso gave him nothing more than the right of waiver, which the law gave him, which right, as has been above observed, there is nothing here to show he exercised." In the present case all that the "optional clause" gives to the plaintiff is similarly a right to do that which he could by law do, namely, sue at the expiry of the term of the bond, if in the meantime he preserved his rights thereunder by waivers of his antecedent rights of action. It is hardly necessary to cite authority for the position that the parties to a contract cannot by agreement avoid the effect of the law of limitation; see, however, *The East India Company* v. *Oditchurn Paul* (3); *Krishna Kamal Singh* v. *Hira Sirdar* (4); *Stowell* v. *Billings* (5). Statutes of Limitation are in fact to be strictly applied; see the observations of the Privy Council in *Luchmee Buksh Roy* v. *Ranjit Ram Panday* (6). Interest beyond three years is not recoverable.

Mr. *Conlan*, with him the *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the respondent.—The appellant's contention is deprived of any force it might otherwise have by the circumstance that no such breach as is contemplated by the forfeiture clause of the bond has occurred. A twofold failure on the part of the obligors is there contemplated—a failure, that

(1) 12 L. J. N. S. Q. B. 134.
(2) 11 Bom. H. C. R., 155.
(3) 5 Moore's Ind. App. 43.
(4) 4 B. L. R. (F. B.) 101.
(5) I. L. R. 1 All. 350.
(6) 13 B. L. R. at p. 182.

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is, in the payment of interest *and* premia, not of one without the other. Interest may not have been paid, but the premia on the life policies have been regularly paid. Therefore, no cause of action accrued to the obligee until the full original term of the bond expired. We contend that the bond comes under art. 66 of the schedule, and that three years have not elapsed from the day specified for payment. Time does not necessarily run from the date on which a cause of action accrues, but the periods given in the schedules are to govern, and these have been fixed by the Legislature without necessary reference to the date on which a cause of action accrued. For example, in a case of pre-emption, the cause of action arises on the date of the sale, but the period under the Act does not begin to run until the purchaser takes possession. We do not deny that parties cannot by agreement avoid the effect of the Statute, but we submit that it is competent to parties when entering into a contract of loan to determine the date on which the loan shall be repayable. Here the obligee is expressly empowered to sue on the expiry of the full term of the bond. The defendant, having voluntarily given the plaintiff the option of suing either on the happening of a default or on the expiry of the term of the bond, is estopped from pleading that his creditor cannot avail himself of the option.

Mr. *Hill*, in reply.—The bond gives a right of action on the failure in payment of any *one* or more stipulated payment. A default in payment of interest is a default in payment of interest and premia, and would confer a right of action under this bond.

The following judgments were delivered by the Court:

STUART, C. J.—The decree of the lower Court in this case is clearly right, both in regard to the question of limitation and the joint liability of the defendants for the sum decreed. In the lengthened and anxious argument of the counsel for the appellant, numerous authorities in the English Courts, and also in the Courts in this country, were cited to show that the bond in this case was an instalment bond, and it is chiefly from a desire to examine these authorities that I have delayed my judgment. I have now carefully considered all the authorities, and find that they all assume and relate to the case of an undoubted instalment bond. In the present case, however, I am quite clear that the bond sued on

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is not an instalment bond, but a bond simply acknowledging the debt with interest payable half-yearly, with the proviso that if not so paid the obligors should be liable to pay up the whole amount from date of such default, that is, from date of failure in payment of interest. As to the limitation pleaded, the period clearly runs from the expiration of three years allowed by the bond for the payment of the debt, that is, from the 15th of August, 1877, the date of the bond itself being the 15th of August, 1874. Such appears to be the real nature and position of the bond, but it contains an allusion to policies of assurance, and premia thereon, as to which there is no contract apparent on the face of the bond itself, although there would appear from the evidence to have been an arrangement of the kind between the parties to fortify and further secure the bond debt. Be that as it may, we are only concerned with the decree made by the Subordinate Judge, and we affirm that decree with costs in both Courts.

SPANKIE, J.—The bond recites that the sum of Rs. 15,000 borrowed from C. W. Stowell, the plaintiff, respondent, obligee, is to be payable within three years from the date thereof (15th August, 1874); that the interest is to be payable half-yearly, namely, on the 30th June and 31st December in each calendar year; that premia on life policies are to be endorsed to the said C. W. Stowell periodically according to the rules of the Insurance Company. The second clause recites that in the event of failure in the payment on due date of the interest and premia, and whether advice be or be not given of such default, the defendants, obligors, jointly and severally render themselves liable to pay up the full amount of the bond, or such portion or balance thereof as may be due, according to the account of C. W. Stowell, from date of such default to payment of loan in full and other charges that may or shall be incurred on account of the bond. In the third clause of the bond there is a condition that "it shall be optional to the said C. W. Stowell to claim, and if necessary to sue for the full amount due on the bond on the failure of any one or more stipulated payment, or on the full expiry of the period this bond was originally intended to run, if all its provisions had been fulfilled by us." There are two defendants, one, Mr. W. De Russett Stowell (son of C. W. Stowell, the obligee), unreserv-

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edly admitted the justice of the claim. The other, E. C. Ball, acknowledged execution of the bond but pleaded limitation generally. His counsel, however, contended that art. 75, Act XV of 1877 applies to the bond, which is one payable by instalments, as interest, the fruit of principal, was payable half-yearly; the plaintiff's cause of action arose when default occurred which gave him a right of suit, and from that time limitation would run; the proviso could not stop limitation from running; nor, if the bond is one payable by instalments, does the proviso amount to a subsequent waiver, and, therefore, it gives the plaintiff no further right than the law allowed him before it was written. The Subordinate Judge held that the bond contemplated in art. 75, sch. ii of the Limitation Act, is one in which the principal amount secured by the bond is made payable by instalments; that the bond in suit was not payable by instalments, but it was stipulated that the amount secured by the bond should be paid in a lump sum within three years from the date of the bond (15th August, 1874); that the lump sum became due on the 15th August, 1877, and, therefore, this suit instituted on the 16th July, 1878, was within time. The Subordinate Judge also held that the stipulation to pay interest half-yearly, with the proviso that in the event of default in such payment the principal as well as the interest shall be payable at once, cannot convert the bond into one under art. 75. He further held that art. 68 would not apply to the bond, as there was no stipulation in it for any penalty; but the bond came under art. 66 which provides for a single bond or a bond without a penalty, and being of this character the suit was not barred by limitation. The Subordinate Judge, therefore, decreed in favour of plaintiff against both defendants. E. C. Ball, defendant, alone appeals from the decree, and his counsel insisted upon the pleas on which appellant's defence rested in the lower Court, citing various authorities to show that, as the bond was one payable by instalments, the cause of action accrued to the plaintiff on the occurrence of the first default, and that limitation began to run from that date, the plaintiff not being at liberty to fall back upon the proviso that it was optional to him to wait until the term of repayment fixed in the bond had expired; that there had been no waiver of the right to sue, and consequently the suit was barred. Further, it was contended that, even if there was not a bond payable

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by instalments, the right to sue accrued when the default provided for in the bond occurred, and, therefore, the suit was barred; that art. 66 did not apply to the deed, as no day of payment was specified in the bond, and, therefore, limitation ran from the date of execution, and again the suit was barred. It was also urged that art. 68, sch. ii, might apply, the bond being subject to a condition, but this point was not seriously pressed, it being contended that art. 80 applied, which refers to a suit on a bill of exchange, promissory note, or bond herein not expressly provided for, and the time from which limitation begins to run in such a suit is when the bill, note or bond becomes payable, and this suit should be barred, as the cause of action accrued on the first default. I propose first to deal with these contentions, and then dispose of the remaining objections in the memorandum of appeal to which I will subsequently refer.

I am not prepared to admit that the bond in suit is one payable by instalments. There was no contract between the parties that the sum borrowed should be paid off by instalments, that is to say, there was no agreement that the money borrowed and secured by the bond should be repaid in certain portions at different times. Interest may not be a part of a contract between the parties to it. If there is a condition in a bond that simple interest should be paid at a certain rate, then it is as much payable by virtue of the contract as the principal. It is a necessary incident to the original debt, but it is not a part of the original sum borrowed. It is the sum of money paid or allowed for the use of the money lent for a certain time at a fixed rate per cent. It is not added to the principal as a part of the original debt, but principal and interest in case of failure to pay make up the amount due under the bond. If I hold (as I do hold) that the bond in suit is not one payable by instalments, then art. 75, sch. ii, Act XV of 1877 does not apply to it. But I am quite willing to admit that if this article could be applied to it, then on the ruling of the authorities cited (1) this suit might be barred, assuming that the circumstances of this case are on all fours with those quoted, and that there had been no waiver. I was at first disposed to

(1) *Hemp* v. *Garland*, 12 L. J. N. S., Q. B., 134; *Karuppanna Nayak* v. *Nallamma Nayak*, 1 Mad. H. C. R. 209; *Nâvalmal Gambhirmal* v. *Dhondibabin Bhagvantrav*, 11 Bom. H. C. R., 155.

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apply art. 66 to the bond, accepting the conclusion of the Court below on this point. The bond at first sight appears to be a single bond, no penalty being attached to it, in which a day is specified for payment, and the time from which limitation begins to run is the day so specified. It is true that the day, the 15th August, 1877, is not so specified in so many words. But the debt is to be paid within three years from the date of the bond; any one is entitled to tender payment of a debt of this nature within the time fixed for its repayment, and the bond in suit allows this to be done, but the time at which the debt must be repaid is specified in this case, and the last day would be the 15th August, 1877. If this be so, the suit clearly is, unless otherwise barred, not beyond time, as it was instituted in 1878, and the period of limitation is three years from that date. If this view be correct, then art. 67 does not apply, as it cannot be said that the bond is one in which no day for repayment has been specified. Had the bond been silent in this respect the period of limitation would begin to run from the date of its execution, and art. 67 would have applied. I have, however, no doubt that art. 68 is not appropriate, as I do not find that the bond is subject to a condition. In the third section of the Limitation Act (XV of 1877) "bond" includes any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void, if a specified act is performed, or is not performed, as the case may be. Bearing in mind this interpretation of the word bond, and applying it to sch. ii of the Act, the instrument now before us does not contain any condition of the nature described in s. 3, and, therefore, it does not come under art. 68. But, as I have already stated, the learned counsel for the appellant did not press this point. But the learned counsel for the appellant has argued that art. 80, sch. ii of the Act applies, and, after full consideration of the point, I come to the conclusion that there is something more in the bond than meets art. 66. It is a single bond, and there is a day specified for payment, but there is also a liability for immediate demand of the entire amount due before the expiration of the term of the bond on the occasion of default of payment. This provision may, and, I think, does take the bond out of art. 66, and, in the absence of any provision for it in the schedule, places it under art. 80, and the limitation would run from the date when the bill, note, or bond became due. This brings us to the

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very serious contention as to the date when the cause of action accrued. Whether this be or be not a bond payable by instalments, it is urged that the right to sue accrued when the default occurred, and that limitation began to run from that date. The authorities cited to us and already referred to relate to bonds payable by instalments, but it is argued that the principle laid down in the Indian cases and in *Hemp* v. *Garland* (1) applies equally to any bond in which the right to sue is given on the occurrence of a default. It is laid down that if a plaintiff chose to wait till all the instalments became due, no doubt he might do so. But that which was optional on the part of the plaintiff would not affect the right of the defendant, who might well consider the action as accruing from the time the plaintiff had a right to maintain it. On the principle that every person is bound to sue when there is a complete present cause of action, the question in this case would be, when did the cause of action arise? When the defendant failed (if he did fail) to pay the interest on the first half-year and premia, or when the bond became payable on the 15th August, 1877? The bond certainly recites that in the event of failure of the payment on due date of the interest and premia the defendants were liable to pay the full amount of the bond, or such portion or balance as might be found to be due according to plaintiff's account. But the third clause leaves it optional with plaintiff to claim his money at once, and if necessary to sue for the full amount due on the bond, on the failure of any one or more stipulated payment, or he might sue when the term of repayment fixed by the bond had fully expired. But it is contended on the further authorities cited (2) that "if to an action for the original cause of action the Statute of Limitations is pleaded, upon which issue is joined, proof being given that the action did clearly accrue more than six years before the commencement of the suit, the defendant, notwithstanding any agreement to inquire, is entitled to the verdict." In the Full Bench ruling of five Judges of the Presidency High Court (3), it was ruled by a majority of four Judges, one Judge alone dissenting, that no arrangement between parties could be recognised which enlarged the period of limitation allowed by law for the execution of decrees, and it was observed in that decision: "If a man having a

(1) 12 L. J., N. S., Q. B., 134.
(2) *The East India Company* v. *Oditchurn Paul*, 5 Moore's Ind. App. 43.
(3) *Krishna Kamal Singh* v. *Hira Sirdar*, 4 B. L. R., F. B. 101.

cause of action against another to recover immoveable property, or to recover money, or to recover damages for a trespass upon his land, or for an assault, should say, 'I will not sue you for twenty years,' he would not acquire a right to sue after the period of limitation fixed by law: if he does not intend to give up his right to sue at all he must take care not to bind himself beyond the time within which the Law of Limitation allows him to sue." This Court also recognised the force of this ruling in the case of *Stowell* v *Billings* (1)

It is true that by the terms of the contract between the parties an option is given to the plaintiff either to take his money at once on the occasion of default or to postpone his suit until the full term of the bond has expired, and the contract in this respect may be supposed to represent the true meaning of the parties and might not unreasonably be construed in favour of the plaintiff, who was at liberty to elect which of the two courses he would adopt. But the Act of Limitation would still control his choice. Mr. Justice Story has remarked on the Statute of Limitation that "it was intended to be a statute of repose. It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against stale demand after the true state of the transaction may have been forgotten, or be incapable of explanation by reason of the death or removal of the witnesses." The Indian Law of Limitation certainly insists upon the peremptory strictness with which its provisions are to be enforced, and it fixes upon the Courts an obligation to dismiss all suits, appeals and applications made after the period of limitation as prescribed in sch. ii of the Act, although limitation has not been set up as a defence. The words, therefore, already cited from the Presidency Full Bench ruling (2), "If he does not intend to give up his right to sue at all, he must take care not to bind himself beyond the time within which the Law of Limitation allows him to sue," may be quite relevant to this case. For if it can be established that there was a default on which a right of action was given to the obligee to sue, there would be a good defence on the plea of limitation.

(1) I. L. R., 1 All., 350.

(2) *Krishna Kamal Singh* v. *Hira Sirdar*, 4 B. L. R., F. B. 101.

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It has been argued below by appellant's counsel that the third clause in the bond contemplates the occurrence of default of payment either of interest or premia as giving rise to an immediate cause of action, and that it is not necessary that the default should be in the payment both of interest and premia, although there had been default of this nature as a matter of fact: on the other hand, it is contended by respondent's counsel that the words in the third clause "any one or more stipulated payment" refer to the terms of the second clause "in the event of failure in the payment on due date of the interest and premia," and, therefore, there must be a default in the payment both of interest and premia, and that it is solely on condition of both these events happening that the obligors made themselves liable to an immediate demand of the entire sum due. It seems to me that the terms of the bond in the second and third clauses read together, and they must be so read in order to understand the real meaning of the parties, provide for the default both of interest and premia, and that in the event of default in the payment either of interest or premia only, and not of both, the obligee is not called upon to choose whether he will at once demand the amount due, or postpone his suit until the full term of the bond has expired. I therefore would hold that if the default does not extend beyond the interest or premia, a complete and present cause of action has not arisen. It is admitted that no interest has been paid on the bond, but it has not been established that there has been any default in respect of the premia. The bond is very carelessly or inaccurately expressed in words: "Interest on the same at the rate of 8 per cent. per annum being payable half-yearly, namely on the 30th June and 31st December, in each calendar year, and premia on life policies to be endorsed to the said Christopher William Stowell periodically, according to the rules of the Insurance Company." But owing to the form and position of the words used and to the punctuation, there is some ambiguity. It has been argued that the premia on life policies are, by the terms of the bond, to be endorsed to the obligee periodically, but this is not to my mind the meaning of the bond or the intention of the parties. The meaning doubtless is that the interest and premia are to be payable, the former half-yearly, on the dates named, the latter periodically, according to the rules of the

Insurance Company. This may be gathered from the succeeding clause which shows what is to be regarded as a default: "In the event of failure in the payment on due date of interest and premia." These are the words. The punctual payment of the premia is necessary to keep the policies alive. There was no necessity to endorse the receipts for premia. The life policies, in order to make the security more perfect, might be formally assigned to the obligee; but it was no part of the condition, the breach of which would give to the obligee the right of calling in his money at once. If the words "being payable" had been added to "premia," thus, "and premia being payable on life policies to be endorsed to the said Christopher William Stowell periodically, according to the rules of the Insurance office," there would have been no room for doubt as to what was meant. The life policies, though not endorsed to plaintiff, were nevertheless in his possession and were filed by him and are on the record of this case. There has been no default in the payment of the premia. The plaintiff has filed the evidence of the regular payment of the half-yearly renewal premia required by the Company's rules. There are on the record receipts for such premia on Stowell's life-policy, dated 13th May 1876, 13th November, 1875, and 5th December, 1876, respectively. There is a joint receipt to Messrs. Ball and Stowell of payment of the half-yearly renewal premia on Stowell's insurance due on the 10th day of May, 1878. There are receipts for the payment of the half-yearly premia on the life of Ball, dated 13th May, 1875, 13th November, 1875, and 5th December, 1876. These receipts show that there was no default in the payment of Stowell's premia up to the 10th May, 1878, or of premia on Ball's life up to the 13th day of November, 1876, consequently if there had been default after that date, and a cause of action had arisen, the suit would be within the period of limitation, assuming that the suit was one coming under art 80, sch. ii of the Limitation Act. Besides these receipts there are Positive Promissory Notes for Rs. 166-10-8 each under the policies both of Ball and Stowell payable to bearer three months after sight, and the death of Ball and Stowell respectively, and redeemable three days after presentation at the office of the Positive Government Security Life Assurance Company, Limited, according to the rules of the Company, which were in the possession of plaintiff. Of all

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these receipts and notes one only was filed by the defendant Ball. The promissory notes payable on the death of Ball are dated 13th November, 1874, 13th May, 1875, 17th November, 1875, 17th May, 1876, 8th December, 1876, and 18th June, 1877. Those payable on the death of Stowell are dated 18th November, 1874, 13th May, 1875, 17th November, 1875, 17th August, 1876, 8th December, 1876, 18th December, 1877, and 12th June, 1878. With this evidence before us which shows that there has been no default in the payment of premia, and entertaining the opinion that the default giving rise to a right of immediate demand for payment of the amount due on the bond before its expiration must be a default in respect of both interest and premia, I must come to the conclusion that there was no such default that gave to the plaintiff a complete and present cause of action. Therefore the contention that more than three years had elapsed from the date of default, and thereby the suit was barred, fails, the suit being within time, and the debt being acknowledged by one defendant and execution of the bond by the other, limitation alone being pleaded, the plaintiff would be entitled to a decree.

I have now considered all the points involved in the first to the fourth plea inclusive. There are two other pleas to be noticed, the fifth and sixth.

The fifth plea has no force, for if the interest had been barred by limitation, the suit must have been barred by the same limitation. The plea was not pressed before us, and I only notice it because it is on the memorandum of appeal. The sixth plea—that the Judge should have dismissed the suit with costs—is disposed of by this judgment.

I would dismiss the appeal, and affirm the decree of the lower Court, with costs.

Appeal dismissed.

APPELLATE CRIMINAL

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July 17.

Before Mr. Justice Spankie.

EMPRESS OF INDIA *v.* MURLI.

High Court, Powers of Revision—Act X of 1872 *(Criminal Procedure Code), s.* 297.

Held that great laxity in weighing and testing evidence is a material error in a judicial proceeding, within the meaning of s. 297 of Act X of 1872.