

enforcing his lien, the mortgage being a simple mortgage. It appears to us that a suit of this description falls within the terms of Art. 147, and that the suit was consequently not barred. Many other points apparently arise, which on second appeal we are not competent to decide, and in directing the trial of the appeal before the lower Appellate Court, we think that all those points may be raised and properly decided there. The costs will abide the result.

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Appeal allowed.

Before Mr. Justice Field and Mr. Justice O'Keefe.

UPENDRA LAL MUKHOPADHYA (PLAINTIFF) v. THE COLLECTOR OF RAJSHAHYE AND ANOTHER (DEFENDANTS.)*

1885
 June 2.

Limitation (Act XV of 1877), Sch. II, Art. 120—Suit to recover deposit.

Where *A* made a deposit as security for the discharge of his duties as Manager of an estate under the Court of Wards, which deposit was liable for all sums not accounted for by *A*; and a suit was, after his dismissal from his appointment, brought for the recovery of the deposit; held, that the period of limitation allowed was certainly not less than six years, and began to run not from the date of his dismissal, but from the time when the account of charges due against the deposit was made and sent in to him.

THIS was a suit for the recovery of a sum of money deposited with defendant No. 1, the Collector of Rajshahye, by one Raj Kristo Banerji, as security for the proper performance of his duties as Manager of an estate belonging to defendant No. 2, at that time under the management of the Court of Wards. Plaintiff, who claims under a *kobala* executed by the heirs of the said Raj Kristo, alleges that the latter was released by the Government from all liability in December 1879, but that the deposit has never been returned to him.

Defendant No. 1 denied that Raj Kristo had been released, and also pleaded that the suit was barred by limitation. On the second point the Subordinate Judge held that Art. 120 applied, and that the suit was not barred. On the merits, however, he dismissed the suit with costs. On appeal the Officiating Judge held

* Appeal from Appellate Decree No. 47 of 1884, against the decree of B. H. Greaves, Esq., Judge of Rajshahye, dated the 28th of September 1883, affirming the decree of Baboo Gonesh Chunder Chowdhuri, Subordinate Judge of that District, dated the 25th of September 1882.

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that the suit was barred under Art. 62, on the ground that Raj Kristo was removed from his appointment in 1875, and the suit was not brought till 1882, whereas the money became due as soon as he was discharged, and the suit ought, under the above article, to have been brought within three years from that date.

The appeal was therefore dismissed.

Plaintiff appealed to the High Court.

Baboo *Rash Behari Ghose*, and Baboo *Harendra Nath Mukerji*, for the appellant.

Baboo *Anoda Pershad Banerji*, Baboo *Mohesh Churider Chowdri*, and Baboo *Kishori Mohun Rai*, for the respondents.

The High Court (FIELD and O'KINEALY, JJ.) delivered the following judgments.

FIELD, J.—The plaintiff in this case is the assignee of the heirs of one Raj Kristo Banerji, who was employed upon the establishment of the Court of Wards. He brings this suit to recover certain money which was deposited by Raj Kristo Banerji as security for the due discharge of the duties of his office. The suit is brought against the Collector as representing the Court of Wards, and against Surnomoyi Debya, widow of the lato Madhub Chunder Sanyal, who now represents the estate which was formerly under the management of the Court of Wards, and upon the establishment for the management of which Raj Kristo was employed.

It is contended before us on behalf of the lady that the plaintiff has no cause of action as against her, and we concur in this contention. We think, therefore, that the suit as against her must be dismissed with costs both in this Court and in the lower Courts.

The suit as against the Collector, the Judge below has held to be barred by limitation. We are unable to concur in this finding. The contract under which the money was deposited has not been put in and proved specifically. We are, therefore, not exactly informed as to what the express stipulations were, subject to which the money was deposited. The Collector's contention was, however, that he was entitled to deduct from the deposit all sums for which Raj Kristo Banerji had not accounted; and his case.

is that in March 1878 an account was drawn up, and upon that account it appeared that Raj Kristo was liable to account, and had not accounted, for certain sums, which very nearly covered the amount of the deposit; and that in accordance with the terms of the security contract he was entitled to deduct, and had deducted, these sums from the amount of the deposit.

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Upon this allegation we think that the cause of action arose in March 1878, when the account was prepared. And we think that the period of limitation applicable to the case is certainly not less than six years, according to the provisions of Art. 120, Sch. II of the Limitation Act. It may be—and authority is not wanting for this view—that the amount was a deposit, which comes under Art. 145, and that the plaintiff had thirty years from the date of the deposit. But we think it unnecessary in this case to decide this question in the affirmative, because we are satisfied that no specific rule is applicable which would reduce the period of limitation to less than six years as provided for by Art. 120.

Under the circumstances we are of opinion that the Court below was wrong in dismissing the suit against the Collector on the ground of limitation. We set aside the order of dismissal, and remand the case for trial on the merits.

Costs to abide result.

O'KINEALY, J.—I also am of opinion that the suit is not barred.

Appeal allowed and case remanded.

Before Mr. Justice Field and Mr. Justice O'Kinealy.

HEM CHUNDR A CHOWDHARI (ONE OF THE DEFENDANTS) v. OHAND
 AKUND (PLAINTIFF).*

1885
 June 18.

*Right of Occupancy—Bengal Act VIII of 1869, s. 6—Suit to recover land—
 Non-payment of rent.*

Where a ryot had been in possession of land, but had been dispossessed, and for some years previous to suit had failed to pay rent, held that at the time of the institution of a suit for recovery of possession, he had no subsisting title, and consequently his suit must fail.

* Appeal from Appellate Decree No. 1269 of 1884, against the decree of Baboo Parbati Kumar Mitter, First Subordinate Judge of Mymensingh, dated the 3rd of May 1884, reversing the decree of Baboo Krishnadhun Chowdhuri, Rai Bahadur, Munsiff of Jamalpur, dated the 30th of April 1883.