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execution of the original decree. Then so much being granted the question arises what is the limitation article applicable to such an application? The appellants contend that the article applicable is 179, while for the respondents it is argued that Art. 178 applies. Now Art. 179 is an article which provides a period of limitation for an application "for the execution of a decree or order of a Civil Court." It seems to us that the application we are considering, namely one to obtain a decree under section 90, cannot by any straining of language be considered to be an application "for the execution of a decree" under section 88. Neither in substance nor in form does such an application ask for execution of that decree. What it does ask is that, certain events being ascertained to have occurred, a subsidiary decree for money may be passed, in execution of which the amount still remaining due on the principal decree under section 88 may be recovered. But as we have before remarked, such an application, though undoubtedly an application in an execution proceeding, is not an application "for the execution" of the principal decree. We hold therefore that this application is not governed by the limitation rule to be found in Art. 179. That being so, the only other article of the Indian Limitation Act applicable is Art 178, and there can be no doubt in this case that, that article being applicable, the present application is time-barred. We therefore dismiss this appeal with costs.

Appeal dismissed.

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June 30.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.

HAR LAL (PLAINTIFF) *v.* MUHAMDI (DEFENDANT).*

Act No. IV of 1882 (*Transfer of Property Act*), *section* 55, *sub-section* 4(*b*) *Vendor's lien—Suit to enforce charge against the property—Limitation—Act No. XV of* 1877 (*Indian Limitation Act*), *Sch. II, Arts.* 132, 111.

Held, that a suit by a vendor of immovable property to enforce against the property his lien for the unpaid purchase-money under section 55, sub-section 4

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* Second Appeal No. 78 of 1897, from a decree of Pandit Rajnath Saheb, Subordinate Judge of Moradabad, dated the 15th December, 1896, modifying a decree of Babu Sheo Prasad, Munsif of Bijnor, dated the 12th September, 1896.

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(*b*) of the Transfer of Property Act, 1882, falls within Art. 132 of the second schedule to the Indian Limitation Act, 1877. *Virchand Lalchand* v. *Kumaji* (1) and *Chunilal* v. *Bai Jethi* (2) followed. *Natesan Chetti* v. *Soundararaja Ayyangar* (3) dissented from. *Ramdin* v. *Kalka Pershad* (4), *Sutton* v. *Sutton* (5), and *Toft* v. *Stevenson* (6) referred to.

THE facts of this case sufficiently appear from the judgment of the Chief Justice.

Pandit *Moti Lal*, for the appellant.

Mr. *Amiruddin*, for the respondent.

STRACHEY, C. J.—This was a suit by a vendor of immovable property to recover the balance of unpaid purchase-money by enforcement of the lien or charge conferred by section 55, sub-section 4 (*b*) of the Transfer of Property Act, 1882. The Court of first instance found that only Rs. 149 of the purchase-money remained unpaid. That Court held that the claim, so far as it sought to enforce the lien by sale of the property, was barred by Art. 111 of the second schedule of the Limitation Act, 1877. But it also held that the claim for a personal remedy was not barred, as it fell within Art. 116, the sale-deed being a registered instrument. It therefore gave the plaintiff a personal decree for Rs. 149. On appeal the lower appellate court held that Art. 111 was equally applicable to the claim for the personal remedy and to the claim to enforce the charge against the land, and accordingly dismissed the whole suit. The plaintiff now appeals against that decision.

The sale-deed was executed on the 7th of June, 1893. The suit was brought on the 17th of July, 1896. The question is whether Art. 111 or Art. 132 prescribes the limitation applicable to a suit by a vendor to enforce has lien by sale of the property to which the lien attaches. In the former case the suit is barred, in the latter it is within time. In this Court there appears to be no authority in point. In the case of *Baldeo Prasad* v. *Jit Singh* (7), to which the lower appellate Court refers, there is no ruling on the point with which we have to deal, and the Court evidently

(1) (1892) I. L. R., 18 Bom., 48.
(2) (1897) I. L. R., 22 Bom., 846.
(3) (1897) I. L. R., 21 Mad., 141.
(4) (1884) L. R., 12 I. A., 12.
(5) (1882) L. R., 22 Ch. D. 511.
(6) (1854) 5 De. G. M. and G., 735.
(7) Weekly Notes, 1891, p. 130.

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found it extremely difficult to determine the real nature of the suit. On the question before us there is a conflict of authority between the High Court of Bombay and the High Court of Madras. In *Virchand Lalchand* v. *Kumaji* (1) and in *Chunilal* v. *Bai Jethi* (2) the Bombay High Court held in effect that a suit by the vendor to enforce his charge against the land falls within Art. 132, while his suit for the personal remedy falls within Art. 111. I gather from the report of the argument in the latter case that the same view was taken in two unreported cases published in the printed judgments of the Court. On the other hand, the Madras High Court has held in *Natesan Chetti* v. *Soundararaja Ayyangar* (3), dissenting from the first of the Bombay cases, that the suit to enforce the charge against the land falls within Art. 111 and not Art. 132. We have now to decide which of these conflicting views we ought to adopt.

The difficulty arises from the fact that both Art. 111 and Art. 132 use language sufficiently wide to cover a suit of this description. No doubt the words in Art. 111 "to enforce his lien for unpaid purchase-money" would, in the ordinary sense of the expression "enforcement of lien," include a suit to enforce it against the land as well as against the defendant personally: but a suit limited to a claim for the personal remedy would undoubtedly answer the description. Now it is noticeable that Art. 111 is placed in Part VI of the schedule among a number of articles, all of which relate exclusively to suits for a personal remedy, and prescribe the same period of limitation, that is a period of three years. In *Ramdin* v. *Kalka Pershad* (4) the Privy Council say:—"The second schedule places simple money demands generally under the three years' limitation. The twelve years' period is made applicable principally to suits in respect of immovable property." And they add that Art. 132 has reference only to suits for money charged on immovable property to raise it out of that property. There can be no doubt (See Darby and

(1) (1822) I. L. R., 18 Bom., 48.
(2) (1897) I. L. R., 22 Bom., 846.
(3) (1897) I. L. R., 21 Mad., 141.
(4) (1884) L. R., 12 I. A., 12.

Bosanquet's Law of Limitation, 2nd edition, pp. 170—175), that in England a suit to enforce a vendor's lien would come within section 8 of the Real Property Limitation Act, 1874, which prescribes a period of twelve years for a suit "to recover any sum of money secured by any mortgage, judgment, or lien or otherwise charged upon or payable out of any land or rent at law or in equity." That closely corresponds, both in language and in regard to the period prescribed, to Art. 132 of the second schedule of the Limitation Act. The difference is, that whereas in England the twelve years' limitation has been held to apply both to suits for the personal remedy and to the remedy against the land—see *Sutton* v. *Sutton* (1), in India, Art. 132 has been held to apply only to suits for the recovery of the money out of the property charged, while suits for the personal remedy fall within the limitation applicable to simple money demands. As pointed out by Mr. Whitley Stokes and Mr. Mitra, the third column of Art. 111 is based on *Toft* v. *Stevenson* (2), the effect of which it states almost in the exact terms of a passage at p. 175 of Darby and Bosanquet's work; but the vendor's claim which the first column of Art. 111 describes as one "to enforce his lien for unpaid purchase-money," is in the passage in Darby and Bosanquet called the right of a vendor to receive his purchase-money which is secured by his lien on the land sold. It seems probable that the first column of Art. 111 was intended to have the same effect as these words, which, however, point rather to a personal claim to receive the purchase-money than to a claim to realize it by sale of the property. On the other hand, it seems improbable that the Legislature should have intended by Art. 132 to give all other charges on land the same twelve years' limitation as in England, but to exclude therefrom the vendor's remedy against the land, which in England has been expressly held to fall within the same category and to be covered by the same words. It also seems improbable that a vendor should have a shorter period of limitation than is given to every other charge-holder, while under section 100 of the

(1) (1882) L. R., 22 Ch. D., 511. (2) (1854) 5 De G. M. and G. 735.

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Transfer of Property Act all charge-holders are put as nearly as possible on the same footing as a mortgagee. There can be no doubt, for instance, that the limitation applicable to a suit for enforcement against the land of the purchaser's charge conferred by section 55, sub-section 6 (*b*) of the Transfer of Property Act would be governed by Art. 132, and so would all other charges on land under the Transfer of Property Act or otherwise. It is difficult to see why the vendor should have a shorter time for suing than the purchaser and the other charge-holders mentioned. Again, in all other cases provided for by the Limitation Act, where there is a charge against land and also a personal remedy, a longer period of limitation is allowed for the claim against the land than for the merely personal claim. On the construction adopted by the Madras High Court, either both claims stand on the same footing under Art. 111, or else a longer period is allowed for the personal remedy, in the case of a registered instrument, for instance, under Art. 116. For some reason which does not appear from the report, the Madras High Court, while dismissing the suit before them, so far as regards the charge, as barred by Art. 111, confirmed the first Court's personal decree against defendant No. 1, though the suit was brought more than three years from the date mentioned in the third column of Art 111. To apply Art. 111 to suits like the present might lead to various difficulties and anomalies. Apart from the difficulty of applying to ordinary sales in the mofassil the second date mentioned in the third column—the date of the acceptance of the title—cases might occur in which the first date, "the time fixed for completing the sale," could not be applied without absurdity or injustice. It must be remembered that under section 55 (4) (*b*) of the Transfer of Property Act the vendor's charge does not arise, as in England, as soon as there is a valid contract for sale, though there may be no actual conveyance, and the time for completing the sale has arrived without payment of the purchase-money. It arises only "where the ownership of the property has passed," that is, not until the actual completion of the sale by (where the property is worth Rs. 100

or upwards) a registered instrument. If, for any reason, the sale were not completed, and if consequently the charge did not arise until more than three years after "the time fixed for completing the sale," the effect of applying Art. 111 would be that the remedy was barred before the right had come into existence. In many, if not most, cases the right would not come into existence until some part at least of the prescribed period had elapsed. On the whole, although there are difficulties in the way of either interpretation, I have come to the conclusion that that adopted by the Bombay High Court is supported by stronger reasons and involves fewer anomalies than that of the Madras High Court. In this view of the case I think that the decree of the lower appellate Court dismissing the suit was wrong, that this appeal should be allowed, the decree of the lower appellate Court set aside, and the case remanded to that Court under section 562 of the Code of Civil Procedure for disposal of the appeal on the merits. The appellant to have his costs of this appeal. Other costs will abide the result.

BANERJI, J.—I concur in the order proposed by the learned Chief Justice and in the reasons by which it is supported. The question is not one free from difficulty; but any other conclusion would create anomalies which we are not justified in assuming the Legislature contemplated.

Appeal decreed and cause remanded.