

## APPELLATE CIVIL.

1901  
July 6.

Before Mr. Justice Aikman.

IDU MIAN (PLAINTIFF) v. RAHMAT-ULLAH (DEFENDANT).\*

*Act No. XV of 1877 (Indian Limitation Act), Sch. ii, arts. 29 and 42—  
Limitation—Suit for compensation for wrongful seizure of movable  
property under legal process—Suit for compensation for injury caused  
by an injunction wrongfully obtained.*

The defendant on the 18th of February, 1898, attached in execution of his decree certain country soap as being the property of his judgment-debtor. The plaintiff intervened claiming the soap as his, and his objection was allowed. The defendant thereupon instituted a suit under section 283 of the Code of Civil Procedure for declaration of the title of his judgment-debtor, but was defeated, and his appeal in that suit was dismissed on the 23rd of March, 1899. At the time of the institution of this suit the defendant applied for and obtained an injunction directing that the soap should not be made over to the plaintiff. Ultimately the plaintiff, on the 17th of June, 1899, after the dismissal of the defendant's appeal, obtained possession of the soap. He then sued the defendant to recover damages for the loss of part and the deterioration of the rest of the soap while under the defendant's attachment. *Held* that article 42, and not article 29 of the second schedule to the Indian Limitation Act, 1877, applied, and that the suit was not barred by limitation.

THE facts of this case are fully stated in the judgment of the Court.

Mr. *Ishaq Khan* for the appellant.

Mr. *Amir-ud-din* for the respondent.

AIKMAN, J.—The following are the facts out of which this suit has arisen. The respondent, Sheikh Rahmat-ullah, held a decree against one Ghurbīn, in execution of which, on the 18th of February, 1898, he attached upwards of twenty maunds of native soap as the property of his judgment-debtor. Idu Mian, the plaintiff in this case, intervened and claimed the soap as his own. His objection was sustained, and the soap was ordered to be released from attachment. Sheikh Rahmat-ullah immediately instituted a suit under section 283 of the Code of Civil Procedure, to have it declared that the soap was the property of his judgment-debtor, Ghurbīn. This suit was instituted on the 10th of August, 1898. On the same day Sheikh Rahmat-ullah put in an application to the Court, asking that the order for the

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\* Second Appeal No. 742 of 1900, from a decree of Rai Anant Ram, Subordinate Judge of Ghazipur, dated the 26th April, 1900, reversing a decree of Babu Chandi Prasad, Munsif of Rasra, dated the 30th January 1900.

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release of the soap in Idu Mian's favour should not be carried out, and that the soap should be retained in the possession of the person to whom it had been made over until the decision of the suit which he (Rahmat-ullah) had instituted. The Munsif granted this application. In the result the suit of Rahmat-ullah under section 283 was dismissed on the 21st of December, 1898, and that decision was affirmed on appeal on the 23rd of March, 1899. The result of this litigation, therefore, shows that the attachment of the plaintiff's soap by the respondent, Rahmat-ullah, was wrongful. It is admitted that Idu Mian did not get back his soap until the 17th of June, 1899. The plaintiff states that when he got it back, he found that it was not only diminished in quantity, but greatly deteriorated in quality. He accordingly sues to recover Rs. 273-11-0 for damages caused by this wrongful attachment. The defendant denies that the plaintiff has suffered any damage. The Court of first instance gave the plaintiff a decree, assessing the damage at Rs. 113-12-0. Both parties appealed. On appeal the learned Subordinate Judge dismissed the suit, holding that it was barred by the provisions of article 29 of schedule ii of the Indian Limitation Act, which provides a period of one year's limitation running from the date of the seizure for a suit for compensation for wrongful seizure of movable property under legal process. The plaintiff comes here in second appeal. It is argued that the case is one which falls properly under article 42 of schedule ii of the Limitation Act, which provides a period of three years' limitation for a suit for compensation for injury caused by an injunction wrongfully obtained, the time beginning to run from the date when the injunction ceases. It appears to me that it would be unjust to apply the provisions of article 29 to a suit of this nature when the plaintiff got back his property upwards of a year after the date of the seizure. Until he recovered his property, it was impossible for him to say whether the property had or had not been damaged. Again, the length of time during which the plaintiff is kept out of his property is an element in assessing the damage. This consideration leads me to think that article 42 should be applied to this case. It was owing to the action of the defendant that an injunction was issued by the Court which prevented the order for the release of

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the property in the plaintiff's favour being carried out. The facts of this case are similar to those in the case of *Haji Pir Muhammad v. Thakur Das* decided by the Chief Court of the Panjab on the 2nd of February, 1881—*vide* number 40 of the Civil Judgments of 1881. The learned Judges there held that the continuance of the attachment under the order of the Court must be treated as an injunction under section 492 of the Code of Civil Procedure, and an injunction wrongfully obtained by the defendant. They accordingly applied article 42 to the case. It is quite true that the plaint in this case has not been artistically framed. Still it clearly sets forth the wrongful attachment of the soap, and alleges that "the defendant by means of continued litigation did not allow it to be released for sixteen months." As stated above, it was not until the date of the release that the plaintiff was in a position to estimate the damage which he had suffered. He instituted his suit within a little more than three months from the date of the release, and within six months of the date of the final dismissal of the defendant's suit under section 283. This being so, it appears to me impossible to hold that the plaintiff's suit was out of time. I allow the appeal, and, setting aside the decree of the Court below, remand the case to that Court under section 562 of the Code of Civil Procedure for disposal of the remaining grounds raised in the memorandum of appeal to it. The plaintiff will have the costs of this appeal in any event. The other costs will abide the result.

*Appeal decreed and cause remanded.*

## REVISIONAL CRIMINAL.

1901,  
October 1.

*Before Mr. Justice Knox.*

KING-EMPEROR v. FYAZ-UD-DIN.\*

*Criminal Procedure Code, sections 110 et seqq. and 437—Security for good behaviour—Power of District Magistrate to reopen proceedings on the same record after the discharge of the person called upon to show cause by a Magistrate of the first class.*

*Held* that it is competent to the Magistrate of the District, in the case of a person who has been called upon, under section 110 of the Code of Criminal

\*Criminal Revision No. 659 of 1901.