

a petty nature, and that in affecting his rescue from the chaukidar the applicants did not use violence, but were only guilty of a technical assault. The applicants have been in jail for upwards of six weeks, and this we think a sufficient punishment. Therefore, whilst affirming the convictions, we reduce the terms of imprisonment imposed on the accused to the terms already undergone. The result is that the bail upon which the applicants have been enlarged is discharged and they need not surrender.

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 APPELLATE CIVIL.

 1907
 May 27.

Before Mr. Justice Aikman and Mr. Justice Griffin.

RAM LAL (PLAINTIFF) v. GHULAM HUSAIN AND ANOTHER
 (DEFENDANTS). *

Act No XV of 1877 (Indian Limitation Act), schedule II, articles 48, 90, 115, 120—Limitation—Suit to recover money given to defendant to be delivered to a third person.

A. gave Rs. 300 to B. in order that it might be delivered to C., who had, a few days previously, executed a mortgage in favour of A. B. also executed a bond guaranteeing the repayment of the loan by C. On suit by A. against B. and C., which was decided on the 15th of January 1901, it was discovered that B. had never paid the money to C. On the 1st of December 1904 A. sued B. to recover the Rs. 300 paid to him as above described. *Held* that the rule of limitation applicable was that provided for by article 48, if not by article 90 or 115 of the Indian Limitation Act, 1877, and the suit was time-barred. *Rameshar Chanbey v. Mata Bhikh*, (1) referred to.

THE facts out of which this appeal arose are as follows :—

On the 12th of April 1894 the plaintiff Ram Lal made over to the defendant Ghulam Husain a sum of Rs. 300 to be paid over to one Narotam. The plaintiff took from Ghulam Husain a stamped receipt. The money was to be lent to Narotam on the security of a mortgage which Narotam had executed in plaintiff's favour five days previously. Ghulam Husain also executed in favour of the plaintiff a bond guaranteeing repayment by Narotam of this loan of Rs. 300. On the 23rd of February 1900 the plaintiff sued both Narotam and Ghulam Husain to recover this

*Second Appeal No. 664 of 1905, from a decree of L. H. Turner, Esq., District Judge of Shahjahanpur, dated the 25th of April 1905, confirming a decree of Babu Nihal Chandar, Subordinate Judge of Shahjahanpur, dated the 5th of January 1905.

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advance on the basis of the mortgage-deed and the security bond. The suit was ultimately dismissed as against both the defendants. In that suit it was found that Ghulam Husain had never handed over the Rs. 300 to Narotam. That suit was decided on the 15th of January 1901. On the 1st of December 1904, that is, nearly four years afterwards, the plaintiff brought the suit out of which this appeal arises to recover from Ghulam Husain the Rs. 300 with interest. The suit was dismissed by the Court of first instance (Subordinate Judge of Shahjahanpur), and this decree was confirmed on appeal by the District Judge. The plaintiff thereupon appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* and Mr. *G. W. Dillon*, for the appellants.

Maulvi *Muhammad Ishaq*, for the respondents.

AIKMAN and GRIFFIN, JJ.— We are of opinion that this appeal must fail. On the 12th of April 1894 the plaintiff Ram Lal made over to the defendant Ghulam Husain a sum of Rs. 300 to be paid over to one Narotam. The plaintiff took from Ghulam Husain a stamped receipt. The money was to be lent to Narotam on the security of a mortgage which Narotam had executed in plaintiff's favour five days previously. Ghulam Husain also executed in favour of the plaintiff a bond guaranteeing repayment by Narotam of this loan of Rs. 300. On the 23rd of February 1900 the plaintiff sued both Narotam and Ghulam Husain to recover this advance on the basis of the mortgage-deed and the security bond. The suit was ultimately dismissed as against both the defendants. In that suit it was found that Ghulam Husain had never handed over the Rs. 300 to Narotam. That suit was decided on the 15th of January 1901. On the first of December 1904, that is, nearly four years afterwards, the plaintiff brought the suit out of which this appeal arises to recover from Ghulam Husain the Rs. 300 with interest. The suit was dismissed by the learned Subordinate Judge and his decree was confirmed on appeal by the learned District Judge. The plaintiff comes here in second appeal.

The first difficulty in the plaintiff's way is one of limitation. On the plaintiff's behalf it is contended that no article of the Limitation Act applies and that the suit is within time under

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section 120 of the Limitation Act, having been brought within six years from the time when he became aware of Ghulam Husain's misfeasance. In our opinion this plea cannot prevail. It has been held by this Court in a somewhat similar case, namely, *Rameshar Chaubey v. Mata Bhikh* (1) that a suit like the present falls within article 48 of the second schedule to the Limitation Act. That provides a period of three years for a suit for specific moveable property lost by dishonest misappropriation or conversion or for compensation for the same, the time to run from the date when the person having a right to the possession of the property first learns in whose possession it is. It may be open to argument whether a suit for money could properly be considered to be a suit for "specific moveable property," but we are bound by that decision. Moreover, if article 48 does not apply, the present suit might be held to fall within article 90, which covers the case of suits by principals against agents for neglect or misconduct, and allows a period of three years within which to sue from the time when the neglect or misconduct becomes known to the plaintiff. It might fairly be contended that in this case Ghulam Husain was the plaintiff's agent for the purpose of handing the money over to Narotam. Or the suit might possibly fall within article 115, which provides a period of three years for a suit "for compensation for the breach of any contract, expressed or implied, not in writing and registered and not herein specifically provided for." In this case it might be said that there was an implied contract on the part of Ghulam Husain to hand over the money to Narotam.

In any view the suit was in our opinion time-barred when it was brought. The result is that we dismiss the appeal with costs.

Appeal dismissed.

(1) (1883) I. L. R., 5 All., 341.