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time it is clear that they were pressing their suit and had attended court for that purpose, and the court might well have acceded to their request, passing a suitable order as to costs.

We, therefore, allow this appeal and set aside the order of dismissal of the suit, which the lower court will restore to its file and proceed to take up again at the point to which it had arrived when the order of dismissal was passed. The appellants will, however, whatever the result of their suit, bear their own costs of the application under order IX, rule 9, and of this appeal. In no case will these be recoverable from the respondent. The costs of the latter in this matter will abide the result of the suit.

Appeal allowed.

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

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March 21.

RAGHUBAR RAI AND OTHERS (DEFENDANTS) v. JAIJ RAJ AND ANOTHER (PLAINTIFFS) AND MUSAMMAT CHUNA (DEFENDANT).*

Contract—Covenant in sale-deed to discharge a debt due to a third party - Suit for compensation for breach—Actual damage not necessary to support suit—Cause of action—Limitation—Act No. XV of 1877 *(Indian Limitation Act), schedule II, article* 116.

On a sale of immovable property the vendees covenanted with the vendors to pay a certain sum of money on account of a mortgage debt due by the vendors. They did not pay in accordance with the covenant, and the mortgagee thereupon brought a suit upon his mortgage and obtained a decree.

Held on suit by the vendors for compensation for breach of the covenant, that it was not necessary that the vendors should have suffered any loss before they could bring their suit; and that, as no time was specified in the sale-deed for the payment of the mortgage money, limitation began to run from the date of the execution of the deed. *Lethbridge* v. *Mytton* (1), *Carr* v. *Roberts* (2), *Loosemore* v. *Radford* (3), *Ashdown* v. *Ingamells* (4), *Dorasinga Tevar* v. *Arunachalam Chetti* (5), *Raghunath Rai* v. *Brijmohan Singh* (6), *Kumar Nath Bhuttacharjee* v. *Nobo Kumar Bhuttacharjee* (7) and *Battley* v. *Faulkner* (8) referred to.

The facts of this case were as follows:—

On the 20th of April, 1895, the plaintiffs sold certain landed property to some of the defendants and left a sum of Rs. 708 with

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*Second Appeal No. 414 of 1911 from a decree of E. R. Neave, Additional Judge of Gorakhpur, dated the 9th of February 1911, reversing a decree of Gokal Prasad, Subordinate Judge of Gorakhpur, dated the 22nd of August 1910.

(1) (1831) 2 B. & Ad., 772.
(2) (1833) 5 B. & Ad., 78.
(3) (1842) 9 M. & W., 657.
(4) (1880) L. R., 5 Exch. D., 280.
(5) (1899) I. L. R., 23 Mad., 441.
(6) Weekly Notes, 1901, p. 14.
(7) (1898) I. L. R., 26 Calc., 241.
(8) (1820) 3 Barn. & Ald., 288; 22 R. R., 390.

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the vendees for payment to one Sanchi Ram, who was the mortgagee of some other property of the vendors. The vendees failed to pay, and Sanchi's heirs sued on the mortgage and obtained a decree, dated the 14th of January, 1910, for Rs. 1,769-4-8. The plaintiffs did not pay any money under the decree. They, however, on the 6th of June, 1910, brought an action against the defendants for the recovery of the money covered by the decree. The court of first instance treated the claim as one for the unpaid purchase money and held it to be barred by time. The lower appellate court took the suit to be one for damages for the breach of the covenant to pay Rs. 708 to Sanchi; found that it was not barred by time, and reversed the decree of the first court. The defendants appealed to the High Court.

Mr. *Abdul Raoof*, for the appellants.

Babu *Surendra Nath Sen* and Munshi *Parmeshar Dayal*, for the respondents:—

KARAMAT HUSAIN and TUDBALL, J.J.—The suit out of which this appeal arose was one for recovery of money. The plaintiffs' case was as follows:—

On the 20th of April, 1895, the plaintiffs sold certain landed property to some of the defendants and left a sum of Rs. 708 with the vendees for payment to one Sanchi Ram, who was the mortgagee of some other property of the vendors. The vendees failed to pay, and Sanchi's heirs sued on the mortgage and obtained a decree, dated the 14th of January, 1910, for Rs. 1,769-4-8. It is admitted that the plaintiffs have not yet paid any money under the decree. They, however, on the 6th of June, 1910, brought an action against the defendants for the recovery of the money covered by the decree. The court of first instance treated the claim as one for the unpaid purchase money and held it to be barred by time. The lower appellate court took the suit to be one for damages for the breach of the covenant to pay Rs. 708 to Sanchi, found that it was not barred by time and reversed the decree of the first court. In second appeal it is urged that the plaintiffs have no cause of action, and that if they have, the suit is barred by time. Notwithstanding the fact that the pleadings of the parties do not clearly disclose the nature of the suit, the learned counsel for the appellants and the learned vakil for the respondents are agreed that the suit is for damages consequent on the breach

of the covenant to pay Rs. 708 to Sanchi Ram. Such being admittedly the nature of the suit, the first point for determination is whether, in the absence of an actual loss, the plaintiffs have a cause of action on the breach of the covenant. The contention of the learned counsel for the appellants is that so far only a decree has been obtained against the plaintiffs; that they have paid no money under it, and that, as they have suffered no actual loss, their suit is premature.

The reply of the learned vakil for the respondents is that that the breach of a covenant is sufficient to create a cause of action and that an actual loss is unnecessary. He refers us to the following cases:—*Lethbridge* v. *Mytton* (1), *Carr* v. *Roberts* (2), *Loosemore* v. *Radford* (3), *Ashdown* v *Ingamells* (4); *Dorasinga Tevar* v. *Arunachalam Chetti* (5), and *Raghunath Rai* v. *Brijmohan Singh* 6). The cases cited by the learned vakil for the respondents fully support the proposition that the breach of a covenant without any actual loss gives a sufficient cause of action. Following the above-mentioned cases we hold that the plaintiffs, notwithstanding the fact that they have not paid any money under the decree, dated the 14th of January, 1910, have a cause of action in consequence of the breach of the covenant to pay Rs. 708 to Sanchi Ram. The next question is as to the date on which the said cause of action arose. In the registered sale-deed, dated the 20th of April, 1895, no time for the payment of Rs. 708 to Sanchi Ram was fixed, and the cause of action, therefore, arose on the date of the sale, *i. e.*, the 20th of April, 1895. It arises on the date of the breach if a date is fixed for the performance of a contract, but when no date is fixed for the performance the dates of the breach and the promise coincide.

The sale-deed being a registered document, article 116 of the Limitation Act applies and limitation began to run when the contract was broken on the 20th of April 1895. There are no successive breaches, for they happen in those cases only in which there is a promise to perform periodically, such as payment of rent or of annuity; nor is there any continuing breach, which, in the words of Mr. Shephard, applies only to "contracts obliging one of the parties to adopt some given *course* of action during

(1) (1831) 2. B. & Ad., 772.
(2) (1833) 5 B. & Ad, 78.
(3) (1842) 9 M. & W., 657.
(4) (1880) L. R., 5 Ex., D., 280.
(5) (1899) I. L. R., 23 Mad., 441.
(6) Weekly Notes, 1901, p. 14.

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the continuance of the contractual relation." (Mitra on Limitation, Vol. I, p. 304, 7th Ed.). Hence it was held in *Mansab Ali Gulab Chand* (1) that upon failure to pay the principal and interest secured by a bond upon the day appointed for such payment breach of the contract to pay is committed, and there is no "continuing breach" within the meaning of section 23 nor "successive breaches" within the meaning of Article 115 of the Limitation Act (Act XV of 1877).

The breach in the case before us occurred on the 20th of April, 1895, and the action for compensation was brought on the 6th of June, 1910, and it was, therefore, barred by six years' limitation under Article 116 of the Limitation Act. There is no substance in the suggestion that the obtainment of the decree of the 14th of January, 1910, gives the plaintiffs a fresh starting point of limitation. The law of limitation has prescribed certain modes which give a fresh starting point of limitation and the obtainment of a decree is not one of those.

In *Kumar Nath Bhuttacharjee* v. *Nobo Kumar Bhuttacharjee*, (2), which was regarded as a suit for compensation for the breach of a covenant and which was defended on the plea of limitation, a Bench of the Calcutta High Court, after discussing the cases of *Loosemore* v. *Radford* (3) and *Lethbridge* v. *Mytton* (4), remarked :—"These cases, therefore, show that in a certain class of cases, even before an injury is done or damage takes place, the plaintiff may bring an action in order that the person making the covenant may place him in a position to meet the liability he has taken on the latter's behalf. No authority has been shown to the effect that such a suit may not be brought for damages subsequent to injury sustained. The causes of action in the two classes of cases are different. In the one there is a right to bring an action to have the plaintiff put in a position to meet the liability cast upon him, in the latter to be indemnified after the plaintiff has met the liability. We think, therefore, that the plaintiffs were not bound to bring their action within six years from the date of the mortgage; that their cause of action arose when they were damnified, that is, when they paid the mortgage debt to Srinath Roy in 1893....."

(1) (1887) I. L. R., 10 All., 85 (92.)
(2) (1898) I. L. R., 26 Calc., 241.
(3) (1842) 9 M. & W., 657.
(4) (1831) 2 B. & Ad., 772.

With great respect to the learned Judges the rule laid down by them cannot be defended on principle. One breach of a contract can only furnish one cause of action and no more. Actual loss when it occurs is only one of the results of the breach, and is not an act of the party who breaks a contract and can, therefore, create no second cause of action. It is a pity that the case of *Battley* v. *Faulkner* (1) was not brought to the notice of the learned Judges. That case is a clear authority for the proposition that consequential damage arising from the breach gives no new cause of action. The claim in that case was for compensation for a breach of contract brought within six years from the date on which damages occurred, but beyond six years from the breach. The suit was held to be barred by time. BAYLEY, J., said:—"If the plaintiff in this case had released the defendant from the breaches of contract, that release would have been a bar to the present action for the special damages subsequently occurring, and this shows that the foundation of the action is the breach of contract. It was, therefore, from the period when the contract was broken that the cause of action accrued, and as that happened more than six years before the commencement of the present action, I think the non-suit was right." HOLROYD, J., said:—"It is said, however, that although the action might be maintained upon the breach of promise, yet the damage sustained forms a substantive ground of action, but cannot be so considered in this form of action."

The point, that the date on which actual damage was sustained gave the plaintiffs a second cause of action, does not arise inasmuch as the plaintiffs have not yet paid any money to the heirs of Sanchi Ram.

To sum up. The suit is one for compensation for the breach of contract. The breach took place on the 20th of April, 1895, and a cause of action arose on that day. The suit is, therefore, barred by limitation under Article 116 of the Limitation Act.

The point that a second cause of action will arise when the plaintiffs will sustain actual loss, is not before us.

The result is that we allow the appeal, set aside the decree of the lower appellate court and dismiss the plaintiffs' suit with costs.

Appeal allowed.

(1) (1820) 3 Barn. & Ald., 288; 22 R. R., 390.