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There remains the question of sentence. Looking at all the features of the case I think the sentences have been unnecessarily severe.

I allow the appeal so far that I reduce the sentences passed to a sentence of three years' rigorous imprisonment, both in the case of Harkesh and Bhullan; the sentences served by them will be considered part of this sentence. So far and no further I allow their appeals.

Sentences reduced.

APPELLATE CIVIL.

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March, 19.

Before Mr. Justice Tudball and Mr. Justice Abdul Raoof.

DEOKINANDAN (PLAINTIFF) *v.* GAPUA (DEFENDANT) *

Act No. IX of 1908, (*Indian Limitation Act*), *schedule I, article* 120 *Hypothecation of movable property—Suit to recover money lent by sale of the hypothecated property—Limitation.*

Where a plaintiff who has lent money on the security of movable property seeks to recover the money by sale of the hypothecated property and does not ask for a personal decree against the debtor, the limitation applicable is that provided for by article 120 of the first schedule to the Indian Limitation Act, 1908. *Madan Mohan Lal* v. *Kanhai Lal*, (1) *Nim Chand Baboo* v. *Jagabundhu Ghose* (2) and *Mahalinga Nadar* v. *Ganapathi Subbier* (3) followed.

THE plaintiff sued on the basis of a bond, dated the 6th of September, 1911, for the recovery of the amount due thereon by enforcement of the hypothecation lien against eight buffaloes which had been pledged as security for a loan. The suit was instituted on the 20th of December, 1915. One of the pleas raised by the defendant was that of limitation. Both the courts below accepted this plea and dismissed the suit, holding that article 80 of the first schedule to the Indian Limitation Act, 1908, applied. The plaintiff appealed to the High Court.

Pandit *Narmadeshwar Upadhya* (with Dr. *Surendra Nath Sen*), for the appellant, submitted that the case was governed not by article 80 but by article 120 of the Limitation Act. The relief sought by the plaintiff was not a mere simple money

* Second Appeal No. 1097 of 1916, from a decree of D. R. Lyle, District Judge of Agra, dated the 10th of April, 1916, confirming a decree of Chatur Behari Lal, Munsif of Agra, dated the 16th of March, 1916.

(1) (1895) I. L. R., 17 All., 284. (2) (1894) I. L. R., 22 Calc., 21.
(3) (1902) I. L. R., 27 Mad., 528.

decree, but the recovery of money charged on movable property by enforcement of the hypothecation. Article 80 did not contemplate a suit like this. The only article applicable was article 120. The following cases were relied on :—*Madan Mohan Lal* v. *Kanhai Lal* (1), *Nim Chand Baboo* v. *Jagabundhu Ghose* (2), *Mahalinga Nadar* v. *Ganapathi Subbien* (3). The lower appellate court has relied upon the case of *Vitla Kamti* v. *Kalekara* (4) which was practically overruled by the Full Bench case in I. L. R , 27 Mad., 528.

Babu *Sital Prasad Ghosh* (for the Hon'ble Munshi *Narayan Prasad Ashthana*), for the respondent, submitted that the cases relied on by the appellant were cases in which jewelry or other such property had been pawned and were in the possession of the creditor, and so the creditor was able to enforce his lien against it ; whereas in the present case the pledged property consisting of eight head of cattle, without specific description and not in the creditor's possession ; a hypothecation decree, therefore, if passed, would not be executable. Practically it would only be a simple money decree. Secondly, there was nothing in article 80 itself to show that a suit like the present was beyond its purview. None of the cases cited by the appellant gave any reasons why article 80 could not be applied to suits upon bonds in which movable property was pledged without possession. That article covered all cases of bonds which were not expressly provided for by any other article. Unless it could be said that the present suit was not a suit on a bond at all, article 80 was applicable, and therefore article 120 could not be applied.

TUDBALL and ABDUL RAOOF, JJ. :—The question raised in this appeal is one of limitation. The plaintiff sued on the basis of a deed of the 6th of September, 1911, to recover from the defendant the sum of Rs. 283 principal and Rs. 447 interest, total Rs. 730, together with costs and interest *pendente lite* and for the future, by enforcement of the hypothecation lien against eight black buffaloes. The defendant raised several pleas in defence, among them was the plea that the suit was barred by limitation. The court of first instance found that the bond had

(1) (1895) I. L. R., 17 All., 284. (3) (1902) I. L. R., 27 Mad., 528.

(2) (1894) I. L. R., 22 Calc., 21. (4) (1881) I. L. R., 11 Mad., 159.

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been executed and that the money was due, but it held that the suit was barred by limitation and on that ground it dismissed it. The plaintiff appealed. The lower appellate court held that the suit was one falling under article 80 of the second schedule of the Limitation Act, which allowed a period of three years from the date on which the bond became payable, and as the suit had been brought in the year 1915, it dismissed it as being barred by time. The plea taken before us is that under the rulings of this Court, of the Calcutta High Court, and also of the Madras High Court the article applicable to the present suit is article 120 of the second schedule, and attention is called to the rulings in *Mahalinga Nadar* v. *Ganapathi Subbien* (1), *Madan Mohan Lal* v. *Kanhai Lal* (2) and *Nim Chand Baboo* v. *Jagabundhu Ghose* (3). The ruling in 22 Calcutta was quoted before the lower appellate court, but it preferred to follow the ruling in *Vitla Kamti* v. *Kalekara* (4). Apparently its attention was not called to the fact that this had been overruled in the case of *Mahalinga Nadar* v. *Ganapathi Subbien* (1). Also the ruling of this Court appears not to have been quoted before it. We think that these rulings are applicable to the facts of the present case, for it is clear that the plaintiff does not seek by his suit to get a personal decree against the defendant, but only to enforce the payment of the money charged upon the buffaloes which were pledged as security. A claim against the person of the defendant is clearly barred by limitation, but the decision of this point is not quite sufficient for the decision of the suit. It is impossible to give the plaintiff a decree for his money recoverable by the sale of any eight buffaloes. It is by no means clear that these eight buffaloes are still in existence. It is clear that the only property which can be put to sale is the property which was actually hypothecated on the 6th of September, 1911. Before giving the plaintiff a decree we must have a finding from the court below on the following issue :—

Are the eight buffaloes which were hypothecated on the 6th of September, 1911, still in the possession of the defendant ? If so,

(1) (1902) I. L. R., 27 Mad., 528. (3) (1894) I. L. R., 22 Calc., 21.

(2) (1895) I. L. R., 17 All., 284. (4) (1887) I. L. R., 11 Mad., 153.

a clear and distinct description of the animals must be given so as to enable the court which executes the decree to execute it properly.

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Issue remitted.

Before Mr. Justice Tudball and Mr. Justice Abdul Raoof.

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GAURI SAHAI (PLAINTIFF) *v.* A. C. BAHREE (DEFENDANT).*

General Rules of the High Court (Civil), rules 21, 25—*Pleader's fee—Order on objection as to jurisdiction raised by defendant returning plaint for presentation to proper court—Costs.*

Held, that rule 21 of the General Rules (Civil), and not rule 25, applied to a case where a question as to the jurisdiction of the court, having been raised by the defendant, was decided against the plaintiff, and the plaint returned for presentation to the proper court.

ONE of the pleas in defence to a suit was that it was not within the jurisdiction of the court in which it was brought. At the request of the plaintiff's pleader the question of jurisdiction was taken up first, and it was decided against the plaintiff. The court ordered the plaint to be returned for presentation to the proper court, and awarded half the costs to the defendant. In the formal order pleader's fees were calculated at the usual rate of 5 per cent. The plaintiff objected that the calculation should be made at 1¼ per cent. The court overruled this objection. The plaintiff then filed an appeal from the order returning the plaint, but the appeal was confined to the question of the correctness of the costs. At the hearing of the appeal—

Mr. *Nihal Chand*, for the respondent, raised a preliminary objection and submitted that although an appeal lay under order XLIII, rule 1 (*a*), Civil Procedure Code, from an order *returning a plaint* for presentation to the proper court, yet inasmuch as the present appeal was not at all directed against the correctness of that order, but related merely to an order for costs, it was really not an appeal under order XLIII, rule 1 (*a*), and could not be brought in that garb.

Munshi *Lakshmi Narayan*, for the appellant, was not called upon to reply to the preliminary objection, but he mentioned the case of *Vasudev Ramchandra* v. *Bhavan Jivraj* (1).

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* First Appeal No. 148 of 1917 from an order of Gopal Das Mukerjee, Subordinate Judge of Budaun, dated the 24th of May, 1917.

(1) (1891) I. L. R., 16 Bom., 241.