Before Mr. Justice Sulaiman and Mr. Justice Kendall.

PARBATI (DEFENDANT) *v.* SARUP SINGH (PLAINTIFF).* 1928 *February*, 2.

Act No. IX of 1908 (*Indian Limitation Act*), *schedule I*, *article* 116—*Suit for damages for breach of contract in writing registered—Limitation—Contract evidenced by registered* qabuliat *only, without a* patta.

A suit for damages for breach of contract based upon a registered *qabuliat* signed by the lessee and accepted by the lessor, but no *patta* having been executed, is governed as to limitation by article 116 of the first schedule to the Indian Limitation Act, 1908. *Apaji* v. *Nilkantha* (1), *Ambalavana Pandaram* v. *Vaguran* (2), *Kotappa* v. *Vallur Zamindar* (3), *Girish Chandra Das* v. *Kunja Behari Malo* (4), *Bouwang Raja Chellaphroo Chowdhuri* v. *Banga Behari Sen* (5) and *Tricomdas Cooverji Bhoja* v. *Gopinath Jiu Thakur* (6), referred to.

THIS was a defendant's appeal arising out of a suit brought by Sardar Sarup Singh for damages for breach of a contract. There was a contract, oral at first, between Musammat Parbati on the one hand and Sardar Tara Singh, the father of the plaintiff, on the other, under which it was agreed between the parties that Musammat Parbati would grant a lease of certain house property for six years on a certain rent. The lease money was to be payable in instalments, and nearly half of it was to be paid at the very beginning. On the 17th of March, 1918, Musammat Parbati executed a receipt for a sum of Rs. 3,300, acknowledging that she had received that amount on account of lease money in respect of the houses and the shops for the period mentioned. On the next day, viz., the 18th of March, 1918, Sardar Tara Singh executed a document called a *thekanama*, which was really a *qabuliat* or the counterpart of a lease,

* First Appeal No. 57 of 1925, from a decree of Joti Sarup, Second Subordinate Judge of Saharanpur, dated the 7th of January, 1925.

(1) (1901) 3 Bom. L.R., 667.
(2) (1895) I.L.R., 19 Mad., 52.
(3) (1901) I.L.R., 25 Mad., 50.
(4) (1908) I.L.R., 35 Calc., 683.
(5) (1915) 20 C.W.N., 408.
(6) (1916) I.L.R., 44 Calc., 759.

1928

PARBATI v. SARUP SINGH.

under which he undertook to take the property on lease on the conditions mentioned above. This document was duly registered. On behalf of the defendant it was urged that as a matter of fact only Rs. 2,950 had been paid in cash and the balance of Rs. 350 remained outstanding, though a receipt was given for the whole amount, and that it was on account of the failure to pay the balance that the defendant did not execute the *patta*. It was further pleaded that the claim was barred by the three years' rule of limitation.

The court of first instance held that the full amount of Rs. 3,300 had been paid when the receipt was executed. It was further of opinion that the breach was committed by the defendant, particularly as the payment of Rs. 350 had been made. It also found that the claim was not barred by limitation, but was saved by the provisions of article 116 of the Indian Limitation Act.

The plaintiff's suit was accordingly decreed, and the defendant appealed.

Mr. *Nihal Chand*, Dr. *Surendra Nath Sen* and Mr. *B. Malik*, for the appellant.

Sir *Tej Bahadur Sapru* and Babu *Harendra Krishna Mukerji*, for the respondent.

The judgement of the Court (SULAIMAN and KENDALL, JJ.), after setting forth the facts as above, thus continued :—

As regards the question of fact which was in dispute in this case, we are in agreement with the learned Subordinate Judge that the Rs. 350 had been paid. Even if it had not been paid in time, the time of its payment not being of the essence of the contract, there would be no breach committed on the part of the plaintiff so as to entitle the defendant to avoid the contract. The execution of the *patta* by Musammat Parbati was entirely

a matter within her power, and if she wanted to perform her part of the contract, there could possibly be no obstacle in her way. Under these circumstances the breach was undoubtedly committed by the appellant.

The only question, and by no means an easy one, which remains for decision is whether the claim was barred by limitation. It is wholly unnecessary in this case to consider the question whether the transaction of lease can be validly completed by the execution and registration of a *qabuliat* without any registered *patta*. On this point there has been a conflict of opinion between this High Court and the other High Courts. We have not to consider the question whether any complete conveyance took place or not. We have only to consider whether there was a contract for the grant of a lease and whether that contract has been broken. That there was a contract and there has been a breach cannot now be disputed. The only question is whether the present suit can be described as a suit for compensation for breach of a contract in writing registered, within the meaning of article 116 of the Indian Limitation Act. The learned advocate for the appellant contends in the first place that the terms of the *qabuliat* do not show any undertaking on the part of Musammat Parbati, and therefore the document does not embody any complete contract which has been broken. It is obviously the document which was intended to be executed by the lessee, and the language is only in the first person. But there can be no doubt that it embodies all the terms of the lease and the conditions under which it was to be taken by the lessee and granted by the lessor. We are therefore unable to hold that the complete terms of the contract of lease are not embodied in this document.

The next contention is that it cannot be said to be a contract in writing registered, when it is purely a unilateral instrument. It is contended that unless there

1928

PARBATI v. SARUP SINGH.

is a mutual consent, there cannot be any agreement and consequently there cannot be any contract and that therefore the present suit is not based on the breach of a contract in writing registered and that the cause of action does not arise out of any registered contract. In support of this contention reference has been made to the case of *Apaji* v. *Nilkantha* (1) where the learned CHIEF JUSTICE expressed the view that the words "contract in writing" contemplate an agreement in writing signed by both the parties affected thereby, and that an agreement signed only by one of the parties does not satisfy the requirements of the law unless the assent of the other party appears in any way from the agreement itself. If the article were to be taken in its strict literal sense, there might be considerable force in this interpretation. On the other hand the view which prevails in Madras and Calcutta is that there is no justification for introducing into the article words like "executed by both parties" or "executed by the person sued against": *Ambalavana Pandaram* v. *Vaguran* (2), *Kotappa* v. *Vallur Zamindar* (3), *Girish Chandra Das* v. *Kunja Behari Malo* (4) and *Bouwang Raja Chellaphroo Chowdhuri* v. *Banga Behari Sen* (5). It seems to us impossible to hold that words like "executed by both parties" are deemed to be understood in this article. In India, where a large number of documents are executed by only one party and not the other, and where indentures signed by both parties are not common, it would cause great hardship if we were to interpret this article as applicable only to cases where both parties have signed the same document. In that view the article would also become wholly inapplicable to cases of registered sale-deeds, registered mortgage-deeds and registered bonds and agreements which are signed by only one party. We are also of opinion that there is no

(1) (1901) 3 Bom. L.R., 667.
(2) (1895) I.L.R., 19 Mad., 52.
(3) (1901) I.L.R., 25 Mad., 50.
(4) (1908) I.L.R., 35 Calc., 682.
(5) (1915) 20 C.W.N., 408.

justification for limiting this article to the case where the registered document is signed by the defendant only. The article does not contain those words and there is no reason why those words should be interpolated. If there is a valid contract evidenced by a registered document which, though signed by only one party, is complete because it has been accepted by the other, and breach of that contract has been committed, it seems to us that article 116 would be equally applicable to such a case. The Madras and Calcutta cases cited above were cases where the registered contract was signed by only one party and two of those cases were actually cases of a registered *qabuliat* without the *patta*. The courts held that article 116 was applicable. No case holding the contrary view has been cited before us. We have already pointed out that cases in which the question is whether the transaction of a lease is complete by the execution and registration of only the *qabuliat* are not cases which are directly in point.

In another case, viz., *Tricomdas Cooverji Bhoja* v. *Gopinath Jiu Thakur* (1), their Lordships of the Privy Council had to consider whether a suit brought for recovery of rent under a registered *qabuliat* was governed by article 116 or not. That was a case where a *patta* was executed, though it is not quite clear from the judgement or the report whether that *patta* was registered. The *qabuliat*, however, was undoubtedly registered and the suit was brought on the basis of that registered *qabuliat*. Their Lordships laid down that in view of a series of decisions all one way it must be held that article 116 was applicable and that breach of a contract in writing registered had been committed by non-payment of rent. That case may not be directly in point, but it does show that their Lordships took a liberal view of article 116 and applied it, although there was article 110

(1) (1916) I.L.R., 44 Calc., 759.

1928

PARBATI v. SARUP SINGH.

which specially refers to suits for arrears of rent. Having regard to this state of the authorities, we are of opinion that the view taken by the learned Subordinate Judge that the claim was not barred by limitation but was governed by the six years' rule of limitation as laid down in article 116 was correct.

The result, therefore, is that this appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

1928
February, 9.

EMPEROR *v.* SHEO JANGAL PRASAD.*

Criminal Procedure Code, sections 118, 121 *and* 514—*Security for good behaviour—Bond executed with sureties—Circumstances in which the surety's bond can be declared forfeited—Act No. XLV of* 1860 (*Indian Penal Code*), *section* 172—*Absconding to avoid a warrant of arrest.*

Absconding to avoid arrest under a warrant is not an offence within the meaning of section 172 of the Indian Penal Code, nor is it one of the offences specified in section 121 of the Code of Criminal Procedure, for the commission of which alone can a surety's bond be forfeited. *Udham Singh* v. *King-Emperor* (1), dissented from. *Queen* v. *Womesh Chunder Ghose* (2), *Majhi Mamud* v. *Emperor* (3), *Queen* v. *Zahoor Ali* (4) and *Queen* v. *Amir Jan* (5), followed.

THIS was a reference by the Sessions Judge of Mirzapur in a case where a surety's bond had been declared forfeited under the provisions of section 514 of the Code of Criminal Procedure. The facts of the case are fully stated in the order of the Court.

Mr. *T. A. K. Sherwani*, for the applicant.

*Criminal Reference No. 832 of 1927.

(1) (1913) Vol. 48 P.R. (Cr. J.), No. 15.
(2) (1866) 5 W.R., (Cr. R.), 71.
(3) (1905) 2 C.L.J., 625.
(4) (1872) 4 N.-W.P., H.C.R., 97.
(5) (1875) 7 N.-W.P.H.C.R., 302.