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has applied order II, rule 2, to mesne profits between the date of the decree and the date of possession, relying on the authority of the two cases we have just quoted, and he held that the failure of the plaintiff to make a claim in the suit for mesne profits up to the date of possession prevents his putting it forward in a separate suit. We think it hard. It is entirely the result of loose pleading probably due to ignorance of the true methods and objects of pleading. Whether it can be described as negligence is rather doubtful when one recognizes how low the standard of pleading is in the inferior courts and the absence of any scientific training in the art. But, on the whole, we are not prepared to depart from the practice which appears to be established by the cases we have referred to. One day, perhaps, somebody who takes sufficient interest in the question may induce some Bench to appoint a larger Bench to consider these decisions, but we are not prepared to do so today. We must, therefore, allow the appeal and restore the order of the first court with costs in the two courts.

Appeal allowed.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Dalal.

JUGAL KISHORE (PLAINTIFF) *v.* CHARI AND COMPANY AND ANOTHER (DEFENDANTS).*

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Act No. IX of 1872 (Indian Contract Act), section 63—Undertaking by creditor not to take steps to recover debt within a time named—Consideration—Civil Procedure Code, order VI, rule 17—Amendment of plaint.

Held, on a construction of section 63 of the Indian Contract Act, that an undertaking given by a creditor to his debtor not to take steps to recover his debt before the expiry of a certain period is binding on the creditor and a suit

* First Appeal No. 159 of 1924, from a decree of Shamsuddin Khan, Subordinate Judge of Jhansi, dated the 17th of December, 1923.

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brought before the expiry of the period named must be dismissed as premature. *Davis* v. *Cundasami Mudali* (1) and *N. M. Firm* v. *Theperumal Chetty* (2), followed.

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

Dr. *Surendra Nath Sen* and Munshi *Haribans Sahai*, for the appellant.

The respondents were not represented.

MEARS, C. J., and DALAL, J.:—Lala Jugal Kishore, son of Lala Har Chand Rai, was the original proprietor of a firm, Bundelkhand Cycle and Motor Agency, at Jhansi, and Messrs. Chari & Co., Limited, is a firm carrying on business in Calcutta. Mr. Naidu was the manager in charge at Lalitpur.

The case made by the plaintiffs was that they had delivered goods to the first defendant through the agent of the first defendant, Mr. Naidu, of a total value of Rs. 12,731-12-0. A written statement was filed challenging the liability of the defendants, especially in relation to a large item of Rs. 11,336, alleging that the receipt relied upon by the plaintiffs was a forgery inasmuch as the figure "1" had been added in front of the "1,000," changing thereby the apparent liability from Rs. 1,336 to Rs. 11,336. After a great deal of delay there came a moment when the vakil for Mr. Naidu put forward to the court a letter signed by Sant Lal, dated the 15th of August, 1922. Now the 15th of August, 1922, was the date on which Mr. Naidu had acknowledged the receipt of goods of the value of Rs. 145 and Rs. 1,336 and, according to the plaintiffs, the receipt of goods of the value of Rs. 145 and Rs. 11,336, and on this 15th of August, 1922, in the absence of any agreement to the contrary, the law would presume that delivery and payment were concurrent conditions, and as regards the two items of

(1) (1896) I.L.R., 19 Mad., 398. (2) (1921) I.L.R., 45 Mad., 180.

the 15th of August, 1922, they became due and payable on that date, whilst other items were due and payable some months previously. In that condition of affairs Sant Lal, who was accepted by the Judge as the son of the plaintiff, Lala Jugal Kishore, and his duly authorized agent, wrote the following letter (presumably it is addressed to Mr. Naidu, but in the text given at page 10 no addressee is given) :—

" DEAR SIR,—

Your account up to date either against you or your company shall be recovered by me after two months from this date and, in the meantime, I shall not compel you for payment."

That is a letter written by a man not very well versed in the English language, and we must, therefore, try to ascertain for ourselves whether we agree with the construction which has been put upon it by the Subordinate Judge. He regards it as a promise or an undertaking by the plaintiffs through their agent Sant Lal to give Naidu or the company or both two months' credit from the 15th of August, 1922, and we think that that was the meaning of the letter. The phrase " and in the meantime I shall not compel you for payment " must mean that whilst the two months were running I shall not compel you to pay. In the same way " your account shall be recovered by me after two months " means that Mr. Naidu and the company are to have two months' credit before any steps are taken to recover the money. We, therefore, agree with the learned Subordinate Judge on the construction put on the document, and inasmuch as the suit was commenced on the 26th of August, a point was raised that the suit was premature and it is on that ground that the learned Judge has dismissed the action altogether. We are of opinion that the learned Judge is right and the only point that can be

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urged, apart from the proper construction of the letter on which we have already expressed our opinion, is that the letter is not supported by any consideration, and that, therefore, it was a mere *nudum pactum* or a promise which the plaintiff firm were at liberty to disregard immediately after it was given or at any moment during the currency of the two months if it seemed convenient to them to do so. We are of opinion that section 63 of the Indian Contract Act was drafted with the definite object of making an alteration in the law from that which prevailed in England in regard to the doctrine of consideration. In our opinion section 63 does enable a defendant, who has got such a letter in his hands, to plead that although the letter is not supported by any consideration, it is nevertheless a binding extension of time and prevents any action being taken within the period of credit given. There are two cases, one of *Davis* v. *Cundasami Mudali* (1), which is an authority directly and clearly in point, and another Madras case of *N. M. Firm* v. *Theperumal Chetty* (2). Mr. Justice ODGERS, while discussing section 63, refers to the authority of other cases and says that there is authority for saying that section 63 "not only modifies but is in direct antagonism to the law in England." We are satisfied that in a case of this character section 63 can be relied upon and that the learned Subordinate Judge came to a proper decision when he dismissed the suit as premature. Although it is not a necessary part of our decision, we cannot help remarking that it is strange that the plaintiff should not have preferred to have commenced another suit immediately upon the dismissal of this action in December, 1923, at which date the defence of the premature suit could not have been taken. It has been pressed before us that this

(1) (1896) I.L.R., 19 Mad., 398. (2) (1921) I.L.R., 45 Mad., 180.

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was a proper case for an amendment either by the Subordinate Judge himself or by this Court, but we have pointed out that there can be no amendment in a case of this kind, where the whole foundation is sought to be destroyed by the allegation that the action itself is premature. If the action is found to be premature, amendment cannot cure a defect of that character.

The result is that this appeal must be dismissed. The defendants do not appear. The appeal is, therefore, dismissed without costs.

Appeal dismissed.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

RAM RATAN LAL (DEFENDANT) *v.* ABDUL WAHID KHAN (PLAINTIFF).*

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February, 15.

Act No. IX of 1908 (*Indian Limitation Act*), *schedule I, article* 83—*Limitation—Agreement to pay money to a third party—Cause of action*—Terminus a quo.

If *A* undertakes to pay money to *C* on behalf of *B*, but no time is specified within which the payment is to be made, no cause of action arises against *A* until payment is demanded by either *B* or *C*. If then—*A* having made default in payment—*C* sues *B* and recovers from him, limitation in respect of a suit by *B* against *A* will not begin to run until *B* has been compelled by *C* to pay. *Kedar Nath* v. *Har Govind* (1), followed. *Raghubar Rai* v *Jaij Raj* (2), referred to.

THE facts of this case were, briefly, as follows:—Jafri Begam mortgaged certain property to Yusuf Ali in 1902. Abdul Wahid, the heir of Jafri Begam, sold a portion of this property on the 22nd of June, 1907, to Ram Ratan, and out of the sale price he left with Ram Ratan a sum sufficient to pay off the whole of the amount due on the mortgage and directed him

* First Appeal No. 134 of 1926, from an order of Raghunath Prasad, District Judge of Farrukhabad, dated the 9th of June, 1926.

(1) (1926) 24 A.L.J., 550. (2) (1912) I.L.R., 34 All., 429.