

## CIVIL JURISDICTION.

1881  
November 14.*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Brodhurst.*

KHUNNI (PLAINTIFF) v. NASIR-ÜD-DIN AHMAD (DEFENDANT).\*

*Registered bond for the payment of money—Act XV of 1877 (Limitation Act), sch. ii, No. 116.*

*Held*, following *Husain Ali Khan v. Hafiz Ali Khan* (1), that a suit on a registered bond for the payment of money, which has not been paid on the due date, is a suit for compensation for the breach of a contract in writing registered, and therefore the limitation applicable to such a suit is that provided by No. 116, sch. ii of the Limitation Act.

The principle on which the ruling that a suit on a bond which has not been paid on the due date is a suit for compensation explained by *STUART, C. J.*, and *Nobocoomar Mukhopadhaya v. Siru Mullick* (2) referred to.

THE plaintiff in this suit claimed Rs. 160, the principal amount and interest due on a registered bond, dated the 21st August, 1873. By the terms of this bond the principal amount was payable within six months from the date thereof, and the interest month by month. The suit was instituted on the 5th January, 1880. The appellate Court dismissed the suit, on the ground that it was barred by limitation, holding that No. 80 of sch. ii of Act XV of 1877 was applicable to it, and not No. 116 of the same schedule.

The plaintiff applied to the High Court to revise the decree of the appellate Court under s. 622 of the Civil Procedure Code, contending that the suit was within time, No. 116 of sch. ii of Act XV of 1877 being applicable to it.

Munshi *Hanuman Prasad*, for the plaintiff.

Mr. *Niblett*, for the defendant.

The Court (STUART, C. J., and BRODHURST, J.) delivered the following judgments:—

STUART, C. J.—This is an application for revision under s. 622, and the question raised appears to be the same as that which was

\* Application, No. 67 of 1881, for revision under s. 622 of Act X of 1877 of a decree of Maulvi Sultan Hasan, Subordinate Judge of Agra, dated the 8th June, 1880, reversing a decree of Sayyid Munir-ud-din Ahmad, Munsif of Muntra, dated the 11th February, 1880. Reported under the orders of the Hon'ble the Chief Justice.

(1) *Husain Ali Khan v. Hafiz Ali Khan*, I. L. R., 3 All. 600. (2) I. L. R. 6 Calc. 94.

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decided by a Full Bench ruling of this Court in a reference by Spankie, J., and Straight, J., where we unanimously held that the limitation period to be applied was six years under No. 116, sch. ii of the present Limitation Act (1). I do not appear in my judgment in that case to have gone very fully into the argument maintained in the present case, contenting myself with holding that the document there, whatever its form, was clearly a contract of the kind contemplated by No. 116. The other Judges, particularly the two referring Judges, give reasons for their opinion that the suit should be regarded as really one for compensation, and an English case decided by the Court of Common Pleas was referred to as showing that the addition to the demand on a bond of unascertained interest was sufficient to make it an unliquidated claim, and therefore recoverable only in a suit for damages. But the true principle to be applied to a case like the present is referred to in a judgment of Mitter, J., in a Calcutta case—*Nobecoomar Mukhopadhaya v. Siru Mullick* (2)—where his opinion manifestly was that the time conditioned for by the bond having gone by before the suit was brought specific performance was impossible, and the only remedy was for compensation or damages. It has also been explained to us that that is the principle usually applied in similar cases on the original side of the Calcutta Court. And I am satisfied it is the right principle. In the present case the bond sued on is dated so far back as the 21st August, 1873, and it provided that the obligor should pay the money or principal sum to the obligee within six months, and the interest month by month, yet the suit on such a bond is not instituted till the 5th January, 1880, when the possibility of its exact performance was passed and gone. The suit therefore can only be regarded as one for compensation or the equivalent for the debt in damages. No. 116, sch. ii of the Limitation Act, clearly applies, and the limitation period is six years. I would therefore allow the revision applied for, and set aside the judgment of the lower appellate Court, and remand the case for disposal on the merits by the Subordinate Judge.

BRODHURST, J.—I concur with the learned Chief Justice that the judgment of the lower appellate Court must be set aside, and

(1) *Husain Ali Khan v. Hafiz Ali Khan*, I. L. R., 3 All. 600.

(2) I. L. R. 6 Calc. 94.

that the case must be remanded for trial on its merits as it is not barred by limitation, being governed, not by art. 80. but by art. 116, sch. ii, Act XV of 1877, as found by the Court of first instance.

*Cause remanded.*

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## APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice Brodhurst.*

BAHRAICHI CHAUDHRI (DEFENDANT) v. SURJU NAIK AND  
ANOTHER (PLAINTIFFS.)\*

*Mortgage—Decree enforcing Lien—Suit against purchaser to enforce decree—Act X of 1877 (Civil Procedure Code), s. 43*

The obligee of a bond for the payment of money, in which certain property was mortgaged as collateral security, sued the obligor for the money due on such bond, claiming the enforcement of such mortgage. At the time the suit was brought such property was in the possession of a third person, who had purchased it at a sale in execution of a money-decree against the obligor of such bond. The obligee did not make the purchaser a defendant to the suit. He obtained a decree in the suit for the sale of such property. Being resisted in bringing it to sale by the purchaser, he sued the purchaser to have it declared that such property was liable to be sold under his decree. *Held* that such second suit was not barred by the provisions of s. 43 of the Civil Procedure Code.

On the 21st January, 1878, the defendant in this suit purchased the rights and interests of six brothers in an eight annas share of a village called Kukrali, which were put up for sale in execution of a decree for money dated the 1st February, 1877. Of these six brothers three had, prior to the date last mentioned, given a bond for money to the plaintiffs in this suit, hypothecating their rights and interests in such share. On the 8th November, 1878, the plaintiffs in this suit brought a suit on such bond against the obligors and obtained a decree thereon against them and the hypothecated property. They subsequently caused the eight annas share in Kukrali to be attached in execution of this decree. The defendant objected to the attachment and sale of such share, and his objections were allowed. Thereupon the plaintiffs brought the present suit against the defendant to have it declared that such share was liable to be sold in execution of their decree. Both the lower Courts gave the plaintiffs a decree.

\* Second Appeal, No. 378 of 1881, from a decree of R. F. Saunders, Esq., Judge of Gorakhpur, dated the 7th January, 1881, affirming a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 22nd July, 1880.

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