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plaintiff's age was 18, on the ground that he had attained his majority at that age. This was done in violation of the provisions of s. 3 Act IX. of 1875. The fact, however, that a guardian was appointed under Act XL. of 1858 brings the plaintiff under the operation of s. 3, Act IX. of 1875, and he must be deemed to have attained his majority when he completed his age of 21 years, and not before. The removal of the guardian appointed under Act XL. of 1858, before the minor attained the age of 21, cannot take his case out of the operation of s. 3, for it is sufficient to give effect to the provisions of that section as to the age of majority that a guardian has been appointed for the person or property of a minor by a Court of Justice. As the plaintiff had not attained his majority when the suit was instituted, he was incompetent to maintain it, and the proceedings must be set aside. We decree the appeal and dismiss the suit with costs.

Appeal allowed.

FULL BENCH.

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March 9.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

HUSAIN ALI KHAN (PLAINTIFF) *v.* HAFIZ ALI KHAN (DEFENDANT).

Registered bond—Act XV of 1877 (Limitation Act), sch. ii, No. 116.

Held that No. 116, sch. ii of Act XV. of 1877, is applicable to a suit on a registered bond for the payment of money.

THIS was a reference to the High Court by Mr. R. M. King, District Judge of Saháranpur, under s. 617 of Act X. of 1877. The claim in the suit which gave rise to this reference was one to recover Rs. 258-12-0, principal and interest, on an instrument dated the 11th July, 1876, described as a "bond." That instrument was to the following effect: "I, Hafiz Ali, do hereby declare that I have taken a loan of Rs. 300, half from Husain Ali, and half from Khurshed Ali, Asghar Ali, and Ahmad Ali: I agree to repay the said sum with interest at ten annas per cent. per mensem on demand: whatever payments are made shall be endorsed on this bond, and without such endorsement the allegation of a payment shall be invalid." This instrument was duly registered. The plaintiff, Husain Ali, claimed his moiety of the principal sum,

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and the one-third share of Ahmad Ali in the other moiety. The Court of first instance, the Munsif of Muzaffarnagar, was of opinion that the period of limitation applicable to the suit was that provided in No. 116, sch. ii of Act XV of 1877, but, as the District Court had previously decided that the limitation applicable to a suit on a registered money-bond payable on demand was not that provided in No. 116, but in No. 59, the Munsif, following that decision, held that the period of limitation applicable to the suit was that provided in No. 59, and that, as more than three years had elapsed from the date of the loan to the date on which the suit was instituted, the suit was barred by limitation. On appeal by the plaintiff the District Court, being doubtful whether the period of limitation provided in No. 116, sch. ii of Act XV of 1877 was not applicable to the suit, referred to the High Court, under s. 617 of Act X of 1877, the following question for decision:—"Does a registered money-bond come under No. 116, sch. ii. of Act XV. of 1877?"

The reference was laid before Spankie, J., and Straight, J., who referred the question to the Full Bench. The order of reference was as follows:—

SPANKIE, J.—We have been asked whether a registered money bond was subject to a term of three years' limitation under arts. 57, 58, 59, sch. ii, Act XV of 1877, or whether it was subject to a term of six years under art. 116 of the same schedule. The instrument upon which the suit has been brought has the character of a promissory note, and one not accompanied by any writing restraining or postponing the right to sue. It is one of those documents not required by s. 17 of the Registration Act to be registered, but of which the registration is optional under letter (*f*), s. 18 of the Act. The instrument is registered. At the hearing of the reference Mr. Dwarka Nath Banarji brought to our notice a case in the Presidency Court, being a reference from a Small Cause Court Judge,—*Nobocoomar Mookhopadhaya* v. *Siru Mullick* (1). The decision in this case supports Mr. Dwarka Nath Banarji's arguments that art. 116 of sch. ii of the Limitation Act applies to the claim now before us. The same question has been

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raised in other cases, and if we accept the conclusion at which the Court below has arrived, we must change our rulings. I would, therefore, refer the question to the Full Bench of this Court for decision.

STRAIGHT, J.—I concur in the proposed reference to the Full Bench.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), Pandit *Ajudhia Nath*, and Shah *Asad Ali*, for the plaintiff.

Mr. *Leach*, for the defendant.

The following judgments were delivered by the Full Court:—

STUART, C. J.—The document referred to in this reference to us by Spankie, J., and Straight, J., is as follows:—"I, Shaikh Hafiz Ali, son of Fazal Husain, resident of pargana Jansath, zila Muzaffarnagar, do hereby declare that I have taken a loan of Rs. 300 of the Queen's coin, half of which is Rs. 150, from Shaikh Husain Ali Khan, son of Akbar Ali Khan, owner or lender of a moiety, and Khurshed Ali Khan, Asghar Ali Khan, and Ahmad Ali Khan, sons of Asbah Ali Khan, the lenders of the other moiety, in equal halves, residents of Jansath, zila aforesaid, for the payment of the revenue, &c., and brought it into my own use: I agree to repay the said sum with interest at 10 annas per cent. per month at the time of the demand to the said creditors: whatever payments shall be made at different occasions, the same shall be endorsed on this bond, without which the allegation of any payment shall be invalid: hence this bond: dated 11th July, 1876." This document was registered and the question submitted to us is whether it was subject to a term of three years' limitation under articles 57, 58, 59, sch. ii of the present Limitation Act XV. of 1877, or whether a term of six years' limitation under art. 116 of the same schedule applied to it. The document is clearly in the nature of a contract, and, in fact, is on the face of it a contract; and, for the purpose of the question referred to us, it is perhaps unnecessary to say more in regard to its legal character, but I may be allowed to state the opinion I have formed on this subject. I was under the impression at the hearing that it might be regarded as a promissory note, and there can be no doubt that it has some of the leading characteristics of

such an instrument, for the sum is certain and the debt must be paid at a time certain, *viz.*, time of demand; but, on the other hand, the document provides for payments towards the debt acknowledged by it, which are to be evidenced by endorsements on the note, and this peculiar quality in my opinion takes it out of the category of promissory notes and notes of hand. I rather incline to hold that the document is in the nature of a bond (which, indeed, it calls itself) or an agreement for money lent to be payable on demand within the meaning of No. 59, sch. ii; and, therefore, if it had not been registered, the period of limitation would have been three years from the date of the loan. Whether, however, the document be regarded as a promissory note or an agreement for money lent, it clearly is a contract, and, in my opinion, one within the meaning of No. 116 of the same schedule; and, being registered, the period of limitation that applies to it is six years from the date when the loan was made, being the date provided by No. 59 of the schedule for a money agreement. No doubt registration of this document was not required by law to give it validity. Its registration, however, although permissive, was valid and effectual, and is provided for by (*f*), s. 18 of the Registration Act III. of 1877, and it is therefore entitled to the privilege allowed to registration by No. 116 of the same schedule, the intention of the law evidently being to favour all documents actually registered by giving them a longer period to run before being overtaken by the law of limitation; the period of limitation in the present case being double of that which would have applied had the contract not been registered, that is six instead of three years. This is my answer to the reference submitted.

SPANKIE, J.—The defendant in this case, on the 11*th July*, 1876, executed a document in which he acknowledged that he had taken a loan of Rs. 300 from the plaintiffs for the payment of revenue; that he agreed to repay the said sum with interest at ten annas per cent. per mensem and on demand; and that all payments on every occasion of payment were to be endorsed on the back of the bond, or no payment would be admitted. The document was registered. The defendant admitted the execution of the document, but contended that the claim was barred, as the

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District Court had ruled that the limitation was three years under art. 59, sch. ii, Act XV. of 1877. The Munsif had held in some other case that art. 116 of sch. ii applied to a document of the same nature as in this case, because it was registered; but nevertheless he considered himself bound by the Judge's view of the law in the case referred to by the defendant. He therefore dismissed the claim. There was an appeal to the District Judge, who has referred to this Court the point whether a registered money-bond was subject to a term of three years under arts. 57, 58, 59, sch. ii, Act XV. of 1877, or whether it was subject to a term of six years under 116 of the schedule. At the first hearing of the reference Babu Dwarka Nath Banarji brought to our notice a late decision of the Presidency Court—*Nobocoomar Mookhopadhaya* v. *Sirw Mullick* (1)—which we cite in our referring order. The Judges who recorded their opinions were the learned Chief Justice and Romesh Chunder Mitter, J. In the opinion of these learned Judges the document being registered fell under art. 116 of the schedule.

I felt and feel the same difficulty in coming to this conclusion that appears to have been experienced by the Calcutta Court. The learned Chief Justice remarks that "in one sense, of course, every suit for a breach of contract is a suit for compensation; but I should have thought that, in ordinary legal parlance, a suit to recover money due upon a bond, (especially having regard to the form of a single bond in this country), would be a suit *for a debt or sum certain*; whilst, on the other hand, a suit for compensation for breach of contract (art. 116) meant a suit *for unliquidated damages*." The document in this case is one of the nature of a promissory note payable on demand, not accompanied by any writing restraining or postponing the right to sue, and I should have regarded a suit upon it as a claim to recover a debt or sum certain. Ss. 73 and 74, Chapter VI. of the Contract Act, seem to provide for those cases only in which the party who suffers from the breach of contract is entitled to receive from the party who broke the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or

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which the parties knew, when they made the contract, to be likely to result from the breach of it. In a word, the compensation is for loss and damage as yet uncertain and unascertained, and when the sum to be paid in case of breach of contract is named in the contract itself, whether or not the actual loss or damage is proved, *less* than the sum so named may be allowed, *i.e.*, reasonable compensation; and what is reasonable has to be determined. There is, doubtless, great force in the circumstance that in the Act of 1859 the period of limitation in the case of an engagement to pay or other contract in writing registered was six years. It was the intention of clauses 9 and 10 of Act XIV. of 1859 (1) to make one period for unregistered writing, and another, a longer one, for registered writing. It was also intended that these two periods of limitation should apply to actions to recover money lent or interest as well as to breaches of contract. The period of six years, though not named in cl. 10, is six years as provided in cl. 16 of s. 1 of the Act. It would seem that a suit to recover money lent or interest was regarded as a suit for compensation, inasmuch as the failure to pay a debt when it becomes due is a breach of the conditions upon which the money was lent. It further will be seen that, when Act IX. of 1871 was before the Legislative Council, it was fully intended that there should be no change of the law with regard to registered and unregistered documents. It was explained in the "Statement of objects and reasons" that "Part VIII. (second schedule) provides a period of two years for suits *for all wrongs independent of contract*: Part VIII fixes a period of three years for suits on contracts not in writing registered: where the contract is in writing and registered, the period will (under Part IX) be six years." Nothing can be clearer than this statement. All actions for any wrongs independent of contract were to be brought within

(1) Cl. 9.—To suits brought to recover money lent or interest, or for the breach of any contract—the period of three years from the time when the debt became due or when the breach of contract in respect of which the suit is brought took place, unless there is a written engagement to pay the money lent or interest, or a contract in writing, &c.

Cl. 10.—To suits brought to recover money lent or interest, or for the breach of any contract in cases in which there is a written engagement or contract, and in which such engagement or contract could have been registered—* * * the period of three years from the time when the debt became due, or when the breach of contract in respect of which the action is brought first took place, unless such engagement or contract shall have been registered within six months from the date thereof.

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two years. Where the matter between the parties was dependent on contract, the suit, where there was no registered writing, must be brought in three years, and where the writing was registered, in six years. It was upon this footing that the Act was finally passed. Art. 115, sch. ii, was extended to all contracts express or implied. The words are: "For the breach of any contract, express or implied, not in writing registered, and not herein specially provided for." The corresponding article, No. 116, fixes six years for suits "on a promise or contract in writing registered." Here the word "promise," as distinct from "contract," was probably used to represent "engagement," as used in Act XIV of 1859, and as generally understood; for a promise is a voluntary engagement for the performance of some particular thing, and may be in writing or in words, *i.e.*, parol. It will be observed that the words "for the breach of any contract," used in art. 115, are left out in art. 117; but whenever a suit was brought on a promise or contract in writing registered, the limitation was six years, and it cannot be denied that the article covered all registered documents, including what we call bonds and engagements to pay money. When the present Limitation Act was before the Legislature, and up to March, 1877, the wording of the article was the same "on a promise or contract in writing registered." But between March, 1877, and the following July, the words were altered into "compensation for the breach of a contract in writing registered." As no explanation was ever offered why the change was made, it was probably due to the circumstance that the word "promise" in the Contract Act IX. of 1872 is expressly defined. A proposal when accepted becomes a promise [s. 2 (*b*)] and every promise, and every set of promises, forming the consideration for each other, is an agreement [s. 2 (*e*)]; and an agreement enforceable by law is a contract [s. 2 (*h*)]. Promise having been defined, it was not necessary to use the word. It is also probable the word compensation was used because it is used in ss. 73, 74, and 75 of the Contract Act IX. of 1872. It is not so easy to explain why the words "for breach of contract" were added. The words are used both in arts. 115 and 116. We have seen that not only in 1859, but in 1871, the period of six years was assigned to all suits brought to recover money on promises or for breach of contract, provided the promise or con-

tract was in writing registered: and it is difficult to understand why the Legislature should in 1877, and without any explanation, deprive the people of this country of the benefit of a provision in the limitation law which they have enjoyed for so long a period, and which is neither injurious to creditor or debtor, to the money-lender or the borrower. The former has the additional security which registration offers. The latter has a longer time to satisfy his creditor. The use of the word compensation as already observed is a difficulty. Not the less, however, does a debt arise out of a contract, and a breach of the engagement to pay the money on a certain day is, practically, a breach of contract. But it is said that the debt as a remedy "lies to recover a sum certain or capable of being reduced to certainty by calculation, payable in respect of a direct and immediate liability by a debtor to a creditor," and therefore is not a form adopted to claims sounding in damages. But interest in our Courts can in some cases be recovered as damages when it cannot be claimed as a part of the debt; and by s. 209 of the Civil Code, when the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment. So also Act XXXII. of 1839, under certain conditions, allows interest at the current rate of the day to be paid from the date when the debt was made payable by virtue of a written instrument, or if payable otherwise from the time of demand of payment and notice that interest will be required. Here the additional interest is paid as damages, and in the Court of Common Pleas, in an action against the drawer of a bill of exchange for £200 with £10 per cent. interest, it was held that the holder might recover interest at £10 per cent. from the time when the bill became due, as well as for the time during which it was running. It was observed by Willes, J., that the jury were not bound to give interest, but may give it according to the circumstances of the case. But Cockburn, C. J., said that "interest is given as damages for the detention of the debt, and here the parties have fixed what the

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rate of damage shall be," *i.e.*, the agreement was to repay £200 with interest at £10 per cent. twelve months after date, and that sum was the measure of the damages from the time the money was due and was not paid. The rest of the Court concurred in the remarks of the Chief Justice.—*Keene* v. *Keene* (1).

Again, it may be said that, if the interest is given as damages, the suit to recover the money is one for compensation, inasmuch as no man can recover what he actually advances, but he can and does recover what is satisfaction or an equivalent, in fact compensation. There is a contract between the parties who lend and accept a loan, respectively, and by s. 73, where the contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it; such compensation, however, is not to be given for any remote and indirect loss or damage sustained by reason of the breach. The compensation which a party can recover from the party who breaks his contract to repay money lent is an equivalent for the money advanced and all interest that may be due for the detention of the debt. Illustration (*n*), s. 73, is an instance where there can be no compensation for indirect and remote injury resulting from the breach; but the party who committed the breach is liable for the principal sum he failed to pay, with all interest that may be due. I am further disposed to attach weight to Mr. Justice Mitter's remarks regarding the particular words cited by him from the last column in art. 116 of the schedule of the Limitation Act. The words are "when the period of limitation would begin to run against a suit brought on a similar contract not registered." The similar contract not registered in the case before him he referred back to art. 66:—"On a single bond where a day is specified for payment." Thus if the similar contract was one for which, if unregistered, a period of three years was allowed, it would follow, where the document was registered, that the period would be six years. There remains the further consideration that

(1) 27 L. J., N. S., C. P., 88.

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the Legislature has nowhere expressly provided that in future registered and unregistered engagements to pay money should in respect to limitation be on an equal footing. On the contrary, art. 115 assigns the same limitation of three years to suits for compensation for the breach of any contract, *express* or *implied*, not in writing registered, that it does to all breaches of contract specially provided for in other preceding articles. Thus they all are treated alike, and it is unreasonable to infer that any change was intended with regard to contracts in writing registered, which were allowed a period of three years in addition to that provided for similar contracts unregistered. It is the more unreasonable to infer a change, when, as I have already noticed, there is a sufficient explanation of the withdrawal of the word "promise" from the new Act and the, so to call it, amalgamation in the Contract Act of all promises into agreements, and the declaration that an agreement enforceable by law is a contract.

Looking, therefore, upon the question from this point of view, and upon the considerations set forth above, I would reply to the reference that art. 116 should be applied, and the limitation is six and not three years.

STRAIGHT, J.—I concur generally in the judgment of Mr. Justice Spankie, and I agree in his view that the limitation period mentioned in art. 116 of Act XV of 1877 is applicable to suits upon registered money-bonds. The introduction of the word "compensation" has perhaps not unnaturally given rise to some difficulty, but I cannot so interpret it as to hold that the longer period of limitation, of which registered instruments had the advantage before Act XV of 1877 became law, was thereby summarily abridged. Nor upon consideration does it appear to me that the expression compensation is so wholly inapplicable or inappropriate to suits in respect of bonds and promissory notes, as might at first sight seem to be the case. Every bond and promissory note is a contract, by which the obligor or promisor agrees to pay money, either upon a particular date, or upon demand, and such contract can be performed either upon the specified date, or when the demand is made. If payment is refused, or is not forthcoming, then there is a breach, and the suit against the defaulting

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obligor or promisor is, not to make him do something in furtherance of the contract, for the time for its performance is passed, but is in reality one for damages for the breach of it, the measure of which will be the amount of the debt with interest. It is true that there are various articles in the Limitation Act of 1877 making provision in terms for suits for "money lent" or upon "bonds," or in respect of "promissory notes." And art. 115 would not be applicable to them because they are "herein specially provided for." But it seems to me that art. 116 was intended to have a general application to all suits upon registered contracts, and to leave the limitation period in reference to them exactly as it was under art. 117 of Act IX. of 1871. I would therefore answer the question put by this reference in the affirmative.

PEARSON, J.—I concur generally in the remarks which have been recorded by my hon'ble colleagues Spankie, J., and Straight, J., and in the conclusion at which they have arrived.

OLDFIELD, J.—I agree with my hon'ble colleagues in holding that art. 116, Act XV of 1877, applies to suits brought on registered bonds.

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March 9.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

ALU PRASAD (DEFENDANT) *v.* SUKHAN (PLAINTIFF).*

Mortgage—Conditional Sale—Pre-emption—Wajib-ul-arz—Cause of action—Compound Interest.

On the 12th May, 1871, *B* mortgaged, by way of conditional sale, a share of a village to *A*, a stranger. Such mortgage having been foreclosed, *A* sued *B* for possession of such share, and obtained a decree on the 16th April, 1878, in execution of which he obtained possession of such share on the 9th September, 1878. On the 1st September, 1879, *S*, a co-sharer, sued *A* and *B* to enforce his right of pre-emption in respect of such share, founding his suit upon the following clause in the administration-paper of the village:—"When a share-holder desires to transfer his share, a near relative shall have the first right; next the share-holders of the other pattis; if all these refuse to take, the vendor shall have power to sell and mortgage, *etc.*, to whomsoever he likes."

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*Second Appeal, No. 377 of 1880, from a decree of P. White, Esq., Deputy Commissioner of Jalaun, dated the 31st January, 1880, affirming a decree of Mirza Muhammad Jafar Bakht, Extra Assistant Commissioner of Jalaun, dated the 15th December, 1879.