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to the members of his own family who had taken or sanctioned the proceedings in lunacy against him.

For these reasons, their Lordships think that the judgment of the High Court is right; and they will therefore humbly advise Her Majesty to affirm it, and with costs.

Solicitors for the appellant: Messrs. *W and A. Ranken Ford.*

Solicitor for the respondent: Mr. *T. L. Wilson.*

1880
November 8.

CIVIL JURISDICTION.

Before Mr. Justice Pearson and Mr. Justice Straight.

GAURI SHANKAR (PLAINTIFF) v. SURJU (DEFENDANT).*

Registered Bond for the payment of money—Suit for compensation for the Breach of a Contract in writing registered—Act XV of 1877 (Limitation Act), sch. ii, Nos. 66, 116.

The defendant, having borrowed money from the plaintiff, gave him a bond, dated the 4th July, 1872, for the payment of such money, with interest, within two years, or on certain contingencies contemplated and defined in such bond. Such bond did not specify a day for payment. It was duly registered. On the 30th June, 1880, the plaintiff sued the defendant, stating in his plaint that he had lent the defendant such money; that it was payable on the 4th July, 1874; that on that day he had demanded payment; that the cause of action arose on that day, as the defendant did not pay; and that he claimed such money accordingly. The plaint did not make any mention of such bond. *Held* that the suit was not one which fell within the scope of No. 66 of sch. ii of Act XV of 1877, but one to which No. 116 of that schedule was applicable, and it might proceed on the plaint without any amendment thereof.

THIS was a reference to the High Court by Mr. R. D. Alexander, Judge of the Small Cause Court at Allahabad, under s. 617 of Act X of 1877. The facts which gave rise to this reference were as follows:—On the 4th July, 1872, one Sarju executed a bond for Rs. 200 in favour of one Gauri Shankar and one Mata Prasad, the terms of which were to the following effect:—"I, Sarju, son of Gopal Panik, by caste *pragwal*, resident of mohalla Daraganj at Allahabad, having borrowed and brought into use the sum of Rs. 200 of the current coin, half of which sum is Rs. 100,

* Reference, No. 7 of 1880, by R. D. Alexander, Esq., Judge of the Small Cause Court, Allahabad.

bearing interest at two per cent. per mensem, to be repaid in two years, from Gauri Shankar and Mata Prasad, goldsmiths, residents of the said mohalla, hereby agree that I shall repay the principal amount and interest without objection to the above-named goldsmiths within the agreed time, and the interest on the above sum shall be paid in every year in the month of Magh : I shall cause the entries of the payments to be made on the back of this bond ; should I produce any receipt, or acquittance, or the evidence of witnesses, it shall be considered false : if within the time aforesaid any one bring a suit or execute a decree against me, and bring my property to sale, or if the interest is not paid in the month above-mentioned, under any one or all of the above circumstances, the above-named goldsmiths are entitled, without the expiry of the period, to realize their money (principal and interest) from myself and my moveable and immoveable property by bringing a suit, and I shall raise no objection." This bond was duly registered. On the 30th June, 1880, the obligees of this bond sued the obligor in the Court of Small Causes at Allahabad, the plaint in the suit stating as follows:—“(i) That on the 4th day of July, 1872, the plaintiffs lent to the defendant, at Allahabad, the sum of Rs. 200 payable on the 4th July, 1874 ; (ii) that the defendant has not paid the amount claimed, except Rs. 50 paid on account of interest on the 16th November, 1874 ; (iii) that on the 4th July, 1874, the plaintiffs, at Allahabad, demanded the payment of the amount now claimed, on which date the cause of action arose, since the defendant did not pay the amount : (iv) the plaintiffs pray judgment for Rs. 200 principal, and Rs. 189-12-0 interest from the 4th July, 1872, up to the 4th July, 1874, at two per cent., and from the 5th July, 1874, up to the 30th June, 1880, at one per cent.; total Rs. 389-12-0 after deducting Rs. 50 the amount received.”

The defendant confessed judgment on the 6th August, 1880. The Judge of the Small Cause Court, *suo motu*, took up the question of limitation, and the nature of his proceedings will appear from the following extract from his order referring the case to the High Court:—“The suit has been brought as for money lent, Form No. 1, sch. iv, Act X of 1877. The plaintiff alleged that, under No. 116;

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sch. ii, Act XV of 1877 (Indian Limitation Act), the period of limitation for the above suit was six years, it being virtually a suit for compensation for the breach of a contract in writing registered, and not three years under No. 66 of the same, which applies to a suit on a simple bond where a day is specified for payment. He further asked for leave to amend the plaint as brought from a suit for money lent to one for compensation for breach of a contract in writing registered, and stated that, as there was no Form in sch. iv which would meet the latter kind of suit, he had felt bound to use Form No. 1. Under Act IX of 1871 suits on a promise or contract in writing registered were under No. 117, sch. ii, given a limitation of six years, but under No. 116, sch. ii, Act XV of 1877, the suit must be for compensation for breach of a contract in writing registered, and the former wider provisions of the law would appear to me to have been restricted by the present Act. For suits on bonds of the kind in suit too a special provision of limitation has been made by No. 66, sch. ii. of the present Act; so though a bond is a contract which may be registered and of which there may be a breach, I feel doubtful if, when there is a special provision for limitation for bonds of this kind, a suit could be brought under No. 116 so as to defeat the special limitation of No. 66. Again, assuming that a suit can be brought so as to secure the extended limitation under No. 116, sch. ii, I feel doubtful whether, this suit having been brought in the form for money lent, I can allow the plaint to be amended, so that the suit may run for compensation for breach of contract, without acting contrary to the proviso of s. 53, Act X of 1877; for it would appear to me that, by doing so, I should allow a suit of one character to be converted into a suit of another, and, as it appears to me, inconsistent character. I, therefore, under s. 617, Act X of 1877, refer the following points to the Hon'ble the High Court for decision :—(i) To a suit on a registered bond such as the one in suit, do the provisions of No. 66 or 116, sch ii, Act XV of 1877, apply, as to limitation? (ii) Assuming that the answer to the above be that No. 116, sch. ii, Act XV of 1877, will apply, if the suit is properly brought, has this Court power in the present case to allow the plaint to be amended so that the suit may run as

one for compensation for breach of a contract in writing registered? I may add that, as to the first point, I feel, though with a good deal of doubt, of opinion that, when there is a special provision for limitation as in No. 66, it should bar the provisions of No. 116; and, as to the second, that, if the suit should have been originally brought for compensation for breach of contract, and not for money lent, that I have no power to allow the plaint to be amended now, owing to the proviso to s. 53, Act X of 1877."

The parties did not appear.

The High Court (PEARSON, J., and STRAIGHT, J.,) made the following order:

PEARSON, J.—It appears to us that this is not a suit which falls within the scope of art. 66, sch. ii of the Limitation Act XV of 1877. No day is specified in the bond for payment of the money lent. Under the terms of the bond the loan might have been repaid on any day before the expiry of two years, and might have been claimed before then on certain contingencies contemplated and defined. The plaint makes no mention of the bond, but alleges with sufficient distinctness a failure of payment within the stipulated period, or, in other words, a breach of contract, and claims the amount remaining due under the bond, which is virtually the measure of the compensation due for the alleged breach of contract. This being so, we are of opinion that the article 116, sch. ii of the Limitation Act, is applicable to the suit which may proceed upon the plaint without any amendment thereof. The Small Cause Court Judge may be advised accordingly.

FULL BENCH.

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

EMPRESS OF INDIA v. ABDUL KADIR.

Causing disappearance of evidence of an offence—Act XLV of 1860 (Penal Code), s. 201.

Held that it is necessary, in order to justify a conviction under s. 201 of the Indian Penal Code, that an offence for which some person has been convicted or is criminally responsible should have been committed.

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