

## CIVIL REVISIONAL.

1883  
February 15.*Before Mr. Justice Oldfield and Mr. Justice Brodhurst.*

RAMESHAR CHAUBEY (PLAINTIFF) v. MATA BHIKH (DEFENDANT)\*.

*Act X V. of 1877 (Limitation Act), sch. ii, No. 48.*

*R* sued *M* for a certain sum of money on the ground that he had given such sum to *M* to deliver to his (*R*'s) family; that *M* had not delivered the money and that when this fact became known to *R* and he demanded the money *M* denied having received the same. Held that the limitation law applicable to the suit was that provided by No. 48, sch. ii of the Limitation Act, 1877, and the time from which the period of limitation began to run was when *B* first learnt that *M* had retained the money in his possession instead of paying it as directed.

THE plaintiff in this suit claimed to recover Rs. 160 from the defendant on the ground that he had given that amount to the defendant to deliver to his (plaintiff's) family; that the defendant had not delivered the money; and that when this fact became known to the plaintiff and he had demanded the money, the defendant had denied having received the same. It appeared that more than three years had elapsed from the date of the alleged receipt of the money by the defendant, and the date of the institution of the suit, and that, according to the plaintiff's allegation, he had learnt that the money had not been delivered to his family some four or five months before the latter date. The Court of first instance dismissed the suit, holding that, as it had not been brought within three years from the date of the alleged receipt of the money, it was barred by limitation. The plaintiff applied for revision of the decree of the Court of first instance, contending that No. 48, sch. ii. of the Limitation Act, 1877, was applicable to it, and as three years had not elapsed from the date when the plaintiff first learnt that the money was in the defendant's possession, the suit was within time.

Munshi *Kashi Prasad*, for the plaintiff.

The defendant did not appear.

The Court (OLDFIELD and BRODHURST, JJ.) delivered the following judgment:—

OLDFIELD, J.—We are of opinion that the limitation law applicable to this suit is art. 48, and the time from which the period of

\* Application No. 293 of 1882, for revision under s. 222 of the Civil Procedure Code of a decree of *Maulvi Zaid-ul-Ahlin*, Subordinate Judge of Mirzapur, exercising the powers of a Court of Small Causes, dated the 8th September, 1882.

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limitation will begin to run is when the plaintiff first learnt that the money was retained in the possession of the defendant, instead of being paid to the person to whom he directed it to be paid. The lower Court must dispose of the point of limitation accordingly, and if the suit is not barred, decide it on the merits. We reverse the decree and remand the case accordingly. Costs to be costs in the cause.

*Case remanded.*

## APPELLATE CIVIL

1883

February 15.

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

GULAB SINGH (DECREE HOLDER) v. PEMIAN (JUDGMENT-DEBTOR).\*

*Execution of decree—Decree for enforcement of mortgage—Execution limited to mortgaged property—Equity.*

*K* brought to sale in execution of a simple decree for money which he held against *P* certain property and purchased it himself. The property was subject to a mortgage at the time it was sold. Subsequently a decree was obtained against *P* enforcing this mortgage, of which *K* became the holder. *K* sought to have this decree executed, not against the mortgaged property, but against other property belonging to *P*.

*Held* that if *K* purchased the property knowing that it was mortgaged, or if in consequence of the mortgage he purchased it for a less sum than it would otherwise have fetched, it would be inequitable to allow him to obtain satisfaction of the decree out of the other property of *P*.

CERTAIN persons known as Khwajas Muhammad Husain, Ahmad Husain, and Muhammad Ismail applied for execution of a simple decree for money which they held against the respondent to this appeal, and certain immoveable property belonging to her was brought to sale on the 20th November, 1879, and was purchased by the Khwajas. At the time they purchased this property it was mortgaged to one Kishori Lal. The latter sued to enforce this mortgage, and obtained a decree against the respondent for the recovery of the amount of the mortgage-money from the respondent personally and by the sale of the property. This decree he assigned to Gulab Singh, appellant in this case. There being a surplus of proceeds of the sale of the 20th November,

\* Second Appeal No. 86 of 1881, from an order of W. H. Hudson, Esq., Judge of Aligarh, dated the 20th August, 1881, reversing an order of Munsif Mata Prasad, Munsif of Aligarh, dated the 20th May, 1881.