

1924.

March, 6.

## APPELLATE CIVIL.

Before Das and Ross, J.J.

SAIYID HASAN IMAM

v.

DEBI PRASAD SINGH.\*

*Limitation Act, (Act V of 1908), Schedule 1, Article 89—failure of an agent to render accounts—whether amounts to “refusal”—“Putting off”, meaning of.*

The question whether the failure of an agent to render accounts amounts to a refusal within the meaning of Article 89 of the Limitation Act, 1908, depends upon the circumstances of each case.

Where, in a suit for accounts against a *tahsildar*, the plaintiff adduced evidence to shew that the defendant had been requested to furnish accounts but that the latter “went on putting off the matter”, held, that there had been no refusal to render accounts.

*Nawab Choudhury v. Lok Nath Singh*(1), followed.

*Bhabatarini Debi Chowdhurani v. Sheikh Bahadur Sarkar*(2), referred to.

The facts of the case material to this report are stated in the judgment of Ross, J.

*S. M. Mullick and Shineshar Dayal*, for the appellants.

*L. N. Sinha and Syed Nurul Hassan*, for the respondent.

Ross, J.—The learned Subordinate Judge has dismissed the major part of the plaintiffs’ claim for accounts against the defendant on the ground of limitation. The defendant was the *tahsildar* of Karanpura, a village in the estate represented by the plaintiffs from 1900 until the 14th December, 1917. The suit was brought on the 5th December, 1919. The

\*Appeal from Original Decree No. 67 of 1921, from a decision of Babu Shiva Nandan Prasad, Officiating Subordinate Judge of Patna, dated the 21st December, 1920.

(1) (1918) 43 Ind. Cas. 570.

(2) (1919) 30 Cal. L. J. 90.

learned Subordinate Judge has limited the account to the year 1917 and the plaintiffs filed the present appeal.

The suit is governed by Article 89 of Schedule I of the Limitation Act. The period of three years limited by that Article begins to run when the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates. Time would, therefore, begin to run in the present case from the 14th December, 1917, unless, during the continuance of the agency, an account was demanded and refused. The material parts of the pleadings on this question are as follows. In paragraph 5 of the plaint it is said that :

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" some days before he was dismissed the Rai Sahib asked him to render account; but he went on putting off the matter from day to day and did always promise that he would render account."

Paragraph 1 of the written statement is that the suit has not been properly framed and is barred by limitation and in paragraph 10 it is said that on the expiry of the year this defendant used to render accounts. Now, the plea of limitation is a plea in bar and there are no facts stated to raise a substantive defence of limitation. Therefore paragraph 1 of the written statement must be read as meaning that on the face of the plaint the plaintiffs' suit is barred. This plea manifestly fails because the allegation in the plaint is that the defendant promised to render accounts. Moreover the substantive defence, which has been disbelieved by the learned Subordinate Judge, is that in fact accounts were rendered. In the words of the Judicial Committee in *Nobin Chandra Barua v. Chandra Madhab Barua* (1) " the statement of objections on the part of the respondent does not allege that there has been any demand and refusal of accounts ". The learned Subordinate Judge, however, has based his decision on certain statements of the plaintiffs' witnesses. Plaintiffs' witness No. 3 said in cross-examination :

" Before the trust, defendant was asked several times to render accounts but I can't give any exact idea of the demand, it may be 5 or

(1) (1917) I. L. R. 44 Cal. 1, P. C.

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6 years before. I think some *parwana* was sent to him to render accounts. In my presence defendant was asked to render accounts some time."

In re-examination he said :

"Defendant was asked to render account repeatedly and he put it off but never refused to render account."

Plaintiffs' witness No. 5 also says that :

"defendant was asked to render account but he went on putting off the matter."

If it is open to the defence to raise this substantive plea of limitation on these statements of the plaintiffs' witnesses, the effect of these statements must be taken to be merely this: that demands were made and the defendant put the matter off. The learned Subordinate Judge has relied upon *Madhusudhan Sen v. Rakhal Chandra Das Busak* (1). In that case the defendant was called upon to explain his papers and did not respond to the call. Apparently he did nothing and kept silent and this was construed as a refusal. In *Bhabatarini Debi Chowdhurani v. Sheikh Bahadur Sarkar* (2) it was pointed out that the question whether the failure of an agent to render accounts amounts to a refusal within the meaning of Article 89, depends upon the circumstances of each case. In my opinion there was in this case no refusal by the defendant. The expression "putting off" has been interpreted by this Court in *Nawab Choudhury v. Lok Nath Singh* (3) as equivalent to postponement; and postponement is by no means tantamount to refusal: on the contrary it implies an admission that an account is due and will be rendered.

In my opinion, therefore, limitation in this case runs from the date of the termination of the agency and the suit is within time.

On the merits of the case it was argued on behalf of the respondent that the defendant had actually submitted accounts; and reference was made to the evidence. This matter has been fully discussed by the learned Subordinate Judge and his reasoning is so

(1) (1916) I. L. R. 43 Cal. 248. (2) (1919) 30 Cal. L. J. 90.

(3) (1918) 43 Ind. Cas. 571.

convincing that it is unnecessary to go into the evidence. All the proofs that might have been expected to be forthcoming if account had in fact been rendered are absent in this case; and the learned Vakil for the respondent did not meet any of the arguments of the learned lower Court.

I would, therefore, decree this appeal and decree the plaintiffs' suit in full. There will be a preliminary decree for accounts from 1307 to *Aghan* 1324 instead of for the limited period allowed by the Subordinate Judge and the Commissioner will take the accounts for the entire period claimed.

The plaintiffs are entitled to the costs of this appeal.

DAS, J.—I agree.

*Appeal decreed.*

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## APPELLATE CRIMINAL.

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*Before Adami and Bucknill, J.J.*

KING-EMPEROR

*v.*

ARTU RAUTRA.\*

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*Animals feræ naturæ—trespasser killing wild buck on the land of another—ownership of carcass—right to possession.*

When a person kills a wild animal on the property of another the carcass does not belong to the killer but to the proprietor of the property, and the latter, either himself or by his duly authorised agent, is entitled to demand and, if refused, seize the carcass from the possession of the killer; and such persons as help him to exercise his right are doing

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\*Government Appeal No. 5 of 1923, from a decision of S. B. Dhavle, Esq., I.C.S., Sessions Judge of Cuttack, dated the 27th July, 1923, reversing an order of G. E. Owen, Esq., I.C.S., District Magistrate of Puri, dated the 12th March, 1923.