

## APPELLATE CIVIL.

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*Before Mr. Justice Harrison and Mr. Justice Zafar Ali.*

THE PUNJAB COTTON PRESS, COMPANY  
(PLAINTIFF), Appellant,

*versus*

THE SECRETARY OF STATE FOR INDIA,  
(DEFENDANT) Respondent.

Civil Appeal No. 1305 of 1921.

*Northern India Canal and Drainage Act, VIII of 1873, sections 6, 15—suit for damages on account of construction of a branch Tail Distributary—Limitation—Indian Limitation Act, IX of 1908, Article 2.*

The plaintiffs claimed damages on account of the construction of the Raya Branch Tail Distributary of the Upper Chenab Canal in consequence of which it was alleged that the flood water was driven on to the plaintiff's property in the high floods of 1917, and thereby caused them serious damage. They brought their suit more than 90 days of the date of the damage.

*Held*, that the action of the Canal Officers in constructing this channel came under section 6 of Act VIII of 1873, and whether that action was wise or unwise any suit for damages consequent thereon had to be brought within 90 days of the date of the damage, the suit was therefore barred by limitation.

*First appeal from the decree of Pandit Omkar Nath Zutshi, Subordinate Judge, 1st Class, Lahore, dated the 11th March 1921, dismissing the plaintiff's suit.*

TEK CHAND, B. R. PURI AND UMAR BAKHSH, for Appellant.

JAI LAL, Government Advocate, for Respondent.

The judgment of the Court was delivered by—

HARRISON J.—In the two suits which have given rise to these appeals (1305 and 1306 of 1921) the plaintiffs claimed damages on account of the construction of the Raya Branch Tail Distributary of the Upper Chenab Canal in consequence of which it is alleged that the flood water was driven on to the plaintiff's property in the high

floods of 1917 and caused serious damage. The suits have been dismissed as barred under Article 2 of the Limitation Act and the first point to be decided is whether that article applies.

The learned Government Advocate has pointed out that the action taken by the Canal Officers in constructing this channel comes under section 6 of Act VIII of 1873, and whether that action was wise or unwise any suit for damages consequent thereon had to be brought within 90 days of the date of the damage. It has not been contended that the necessary notifications precedent to the undertaking of this work were not duly issued, and in our opinion there can be no doubt whatever that the work done which is said to have caused the damage in this case is covered by the words "or do any other thing necessary for such application or use of the said water." If it be contended, and this is not the case as instituted, that the cause of action consists of the construction of the channel combined with the failure of the Canal Department to deal with the situation which arose in 1917 in consequence of flood, the action or failure to take action at this later stage would be covered certainly by section 15 and we think by section 6 also. Anyhow the suits are clearly barred and have rightly been dismissed.

We therefore dismiss the appeals with costs.

A. N. C.

*Appeals dismissed.*

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