

APPELLATE CIVIL.

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. 2440 of 1917.

Northern India Canal and Drainage Act, VIII of 1873, sections 6, 15 and 58—suit for damages for injury caused to plaintiff's property by the action of the Canal Officer in dealing with a flood—Limitation—Indian Limitation Act, IX of 1908, article 2.

In 1914, a large amount of water collected at more than one point in the Raya Branch Tail Distributary of the Upper Chenab Canal. The Canal Officer cut the channel in various places to allow this surplus water to escape on to the lower lands on the west of the Distributary. In spite of this action, or according to plaintiff's allegations because it was not efficiently and thoroughly carried out, the flood water was held up and diverted from its natural course and eventually injured the property of the plaintiff, who brought the present action for damages on the 18th August 1915. Admittedly the cause of action accrued on the 23rd and 30th of July 1914. The question was whether the suit was within limitation.

Held, that all that is necessary to bring a suit within the purview of article 2 of the Indian Limitation Act, is that a public officer should have done what he did with the honest intention of acting as the Statute authorized.

Held also, that the action taken by the Canal Officer in this case, whether wise or unwise, came within the purview of sections 6 and 15 of the Northern India Canal and Drainage Act and the suit was consequently barred by article 2 of the Indian Limitation Act.

First appeal from the decree of Lala Jaswant Rai, Senior Subordinate Judge, Lahore, dated the 21st May 1917, dismissing the plaintiff's suit.

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

JAI LAL, Government Advocate, for Respondent.

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May 31.

The judgment of the Court was delivered by—

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HARRISON J.—Three suits against the Secretary of State claiming damages on account of the action taken by the Canal Department, which is said to have caused the high floods in the river Ravi in the years 1914 and 1917 to injure the property of the plaintiff, have been dismissed. The three appeals being Nos. 2440 of 1917 and 1305* and 1306 of 1921 have been argued together by the same counsel, as the preliminary point involved is almost identical in all the three. The facts, however, are not the same, and we think it better to take the two appeals of 1921 together and the earlier appeal, 2440 of 1917, separately. These two suits have both been dismissed as barred by Article 2 of the Limitation Act, and that with which we are now dealing 2440 of 1917 has been dismissed on the merits and also on the finding that it is barred by limitation under section 9 of Act VIII of 1873. The learned Government Advocate contends that this suit also is barred by Article 2, and the first question to be decided is whether this contention is correct.

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* Before the year 1914 the Raya Branch Tail Distributary of the Upper Chenab Canal was constructed both for irrigation purposes and to prevent the water which remained in the natural bed from causing unnecessary damage. The bank of this distributary nearest the river was made specially strong with a view to the latter purpose. In 1914, the first year of the working of this channel, a large amount of water collected at more than one point and the Canal Officer cut the channel in various places to allow this surplus water to escape on to the lower lands on the west of the Distributary. In spite of this action, or, as plaintiff says, because it was not efficiently and thoroughly carried out, the flood water was held up and diverted from its natural course and eventually reached the property of the plaintiff, and injured it. The position, therefore, as put by counsel is that the damage was caused both by the unscientific construction of the channel and the injudicious action taken in dealing with the flood. It is admitted by both sides that whatever be the Article of the Limitation Act which governs the suit, the cause of action accrued on the 23rd and 30th of July 1914. If, therefore, Article 2 applies, the suit which was instituted on

* See page 432 *infra*.

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the 18th of August 1915, is hopelessly barred for it is fully established that the *terminus a quo* in calculating limitation is the date of the damage and not the date of the construction of the work which caused the damage. The Government Advocate points out that the action taken, whether wise or unwise, was so taken under sections 6 and 15 and possibly under section 58 also of Act VIII of 1873. Section 15 runs as follows :—

“In case of any accident happening or being apprehended to a canal, any Divisional Canal Officer or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal and may execute all works which may be necessary for the purpose of repairing or preventing such accident.”..

Balshahi Tek Chand for the appellants contends that the words :

“May execute all works which may be necessary for the purpose of repairing or preventing such accident ”

are ancillary to and dependent on the preceding words :

“ may enter upon any land adjacent to such canal .”

He states that it is not shown that the Canal Officer first entered upon any land adjacent to the canal and therefore any work executed by him is not covered by the section, and further that the cutting of the banks cannot be held to have been a work necessary for the purpose of repairing or preventing such accident. We are of opinion that the words “ may execute all works, etc.” are independent of the preceding words and, anyhow, it is impossible to execute any work on a canal without entering upon the land adjacent and thereby reaching it.

So far as the actual cutting of the banks is concerned *Balshahi Tek Chand* points out that it did not prevent the accident and he urges that he is prepared to show on the merits that it did not repair it, inasmuch as he contends that it aggravated instead of alleviating the damage caused. We do not think there is any force in this contention, for the word “ repairing ” covers any attempt to minimize the natural consequences of the accident and the cutting of the banks

could only have been undertaken with a view to preventing further damage. Whether it achieved that purpose or not is quite immaterial, for all that is necessary in order to bring a suit within the purview of Article 2 is that a public officer should have done what he did with the honest intention of acting as the Statute authorized. We are therefore of opinion that the action taken in dealing with the flood is covered by section 15 and the suit is therefore barred.

As far as section 6 is concerned, it is contended that the place at which this section is to be found coupled with the use of the words "in this behalf" in line 2 show that the section only applies to action taken at the time of construction. The place of the section between sections 5 and 7 lends some support to this contention as also does the repetition in section 15 of the authorization of canal officers to take action on running canals. We are, however, of opinion that the place at which the section is to be found and the heading of the Chapter (of the application of water for public purposes) are not sufficient reasons for placing an interpretation on the plain words of the section which is not justified by those words themselves, and, whether section 15 be wholly tautologous or not, the expression "in this behalf" applies to the application or use of the said water and the word "use" coupled with the preceding words covers all actions necessary both for construction and maintenance and whether taken at the time of construction or later.

¶ So far as section 58 is concerned, we are of opinion that it does not apply to the facts of the present case. It contemplates permanent work, for the carrying out of which the Local Government has previously authorized some of its officers, and any acts committed by them after that definite authorization are covered by the section. Here there is no question of any permanent work but of the immediate action required to deal with a sudden emergency in the shape of an unexpected flood. We find that the suit is governed by Article 2 and we therefore dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

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