

ing the accused to a further ordeal and expense to which the Crown has no right to expose him. It is not the function of a Court of Justice to supplement the deficiencies of the prosecution, and the subject cannot be made to suffer because of the neglect or omissions of the Crown in the mode in which it conducts a criminal proceeding.

In my judgment the appeal should be dismissed.

SCOTT-SMITH, J.—I agree.

Appeal dismissed.

C. H. O.

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Moti Sagar.

NARAIN DAS (PLAINTIFF) Appellant,

versus

MIRAN BAKHSH AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 445 of 1921.

Indian Limitation Act, IX of 1908, article 67—and Punjab Act, I of 1904—Balances struck, mentioning that interest is payable at the Sahukara rate—Whether bonds or mere acknowledgments.

The plaintiff advanced grain and money to the defendants, who struck balances in the books of the plaintiff. If the balances were bonds the suit of the plaintiff was within time (the period of limitation laid down in article 67 of the Limitation Act having been extended to 6 years by Punjab Act I of 1904), while if they were mere acknowledgments the suit in respect of the grain advances was barred by time.

Held, that although the entries in question did not contain express promises to pay the principal they made mention of interest being payable at the *Sahukara* rate, and this implied a promise to pay the principal. The entries, which were attested by witnesses, were therefore bonds and the whole suit was within time.

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Daula v. Gonda (1), *Ladhu Shah v. Fazl Dad* (2), and *Bhola Ram v. Nanak Chand* (3), referred to.

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NARAIN DAS
v.
MIRAN BAKSH.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Amritsar, dated the 19th November 1920, modifying that of Khan Faiz Muhammad Khan, Subordinate Judge, 2nd Class, Amritsar, dated the 5th February 1920.

M. L. PURI and HAZARA SINGH, for appellant.

KANWAR NARAIN, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU, J.—The plaintiffs advanced grain and money to the defendants, and they sue for the amount due to them. The defendants raised a plea of limitation in answer to the claim in respect of the grain advances, and its decision depends upon the question whether the book entries of the balances struck by the defendants, which are attested by witnesses, are bonds or only acknowledgments. If they are bonds the suit is governed by article 67 of the first schedule to the Limitation Act, and by the operation of the Punjab Loans Limitation Act, 1904, the period of limitation is six years and the suit is within time, whilst if they are only acknowledgments article 67 does not apply, the period of limitation is 3 years, and the suit in respect of the grain advances is barred.

The first Court held that the entries were bonds, and that the whole suit was within time. The District Judge took the opposite view and gave a decree only for the amount due in respect of cash advances. The plaintiffs have preferred a second appeal.

Although the entries in question do not contain express promises to pay the principal they make mention of interest being payable at the *sahukara* rate,

(1) 35 P. R. 1903 (F. B.).

(2) 72 P. R. 1879.

(3) 136 P. W. R. 1910.

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and this in our opinion implies a promise to pay the principal. *Daula v. Gonda* (1) is a case in point. The fact that the entry in that case contained the words *baki lena*, whilst the words in the entries in the present case are *baki khare* appears to us to be immaterial. The important point is that in the entries in both cases mention is made of the rate of interest payable. *Ladhu Shah v. Fazal Dad* (2), which was referred to in *Daula v. Gonda* (1) and *Bhola Ram v. Nanak Chand* (3) are also rulings in the plaintiffs' favour. As the entries in dispute contain implied promises to pay the amount due they are bonds, and the whole suit is within time.

The case will have to be remanded, as the trial Court reduced the interest and the cross-objections lodged by the plaintiffs in the Lower Appellate Court have not been disposed of.

We accordingly accept the appeal, set aside the decree of the lower appellate Court, and remand the case to that Court under Order XLI, rule 23, Civil Procedure Code, for fresh disposal. The Court-fee paid on the memorandum of appeal in this Court will be refunded, and other costs will be costs in the cause.

A. R.

Appeal accepted.

Case remanded.

(1) 35 P. R. 1903 (F. B.). (2) 72 P. R. 1879.

(3) 135 P. W. R. 1910.