

section 411, Indian Penal Code. The petitioner has already been for more than two years in jail. I, therefore, reduce the sentence of imprisonment to that already undergone. I also reduce the period of police surveillance under section 565, Criminal Procedure Code, to two years in all.

A. N. C.

*Revision accepted.*

*Sentence reduced.*

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HAYAT  
v.

THE CROWN.

ADDISON J.

### PRIVY COUNCIL.

*Present: Viscount Dunedin, Lord Salvesen and Sir John Wallis.*

PUNJAB COTTON PRESS CO., LTD. AND ANOTHER  
APPELLANTS

*versus*

THE SECRETARY OF STATE, RESPONDENT.

Privy Council Appeals Nos- 39, 40 and 41 of 1925.

(High Court Civil Appeal No. 2440 of 1917).

*Indian Limitation Act, IX of 1908, Article 2: Suit for compensation for damage caused by act of Canal Officer—Limitation—necessity of deciding whether the Act comes within the purview of section 15 of the Northern India Canal and Drainage Act, VIII of 1873.*

A suit by a mill-owner against the Secretary of State for compensation for damage, alleged to have been caused (more than 90 days prior to date of suit) as the result of action taken by the Canal authorities to protect a railway embankment, was dismissed by the High Court, as time-barred under Article 2 of the Indian Limitation Act, without arriving at a definite finding that such action was necessary to avoid an accident to the canal.

*Held*, that as upon the statement of the case as contained in the plaint this was an act which the defendants performed at their own hands and not under authority conferred on them by any statute, the suit ought not to have been dismissed under Article 2, unless the defendants could show that what

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was done fell within the provisions of the Northern India Canal and Drainage Act, that is to say, that it was really done, as section 15 of that Act says, in order to avoid accident to the canal.

*Appeal from the decree of the High Court (Harrison and Zafar Ali J.J.), dated the 31st May 1923 (1) affirming the decrees of the Senior Subordinate Judge, Lahore, dated the 21st May 1917, dismissing the plaintiffs' three suits.*

L. DEGRUYTHER and DUBE, for Appellants.

A. M. DUNNE and K. BROWN, for Respondent.

The judgment of their Lordships was delivered by—

VISCOUNT DUNEDIN.—These three suits have been consolidated and they have all been decided on the same plea by the learned Judges of the High Court at Lahore, but in truth they are in a very different position, because the first suit was brought before the expiry of two years and the other two suits were not brought until the expiry of the two years; in other words, the first suit is not hit by the limitation of Article 36 of the First Schedule of the Limitation Act, which reads as follows: "For compensation for any malfeasance, misfeasance, or nonfeasance, independent of contract and not herein specially provided for, limitation two years." But the two other suits are hit and, therefore, in so far as the two latter suits were dismissed, the judgment was right, although their Lordships do not think it went upon the right ground, because it was put upon Article 2 of the Limitation Act, instead of upon Article 36. The first suit, however, was brought within two years and, therefore, so far as limitation is concerned, it is either hit under

Article 2 or not at all. Article 2 is: " For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India " and the period is ninety days.

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What is complained of here is that the Government, who are the people in charge of the canals, constructed a vast set of irrigation canals in the neighbourhood of the Ravi River. The Ravi River was prone to frequent floods and these canals not only acted as irrigation canals, but they also acted to a certain extent as relievers of the river in flood; but the river had been apt to flood to an extent which the canals could not relieve, and accordingly spilt water came upon certain land on either side of the canal, and, at a certain place, in order to deal with this spilt water and let it away to the ordinary level of the country, the officials, first of all, cut three cuts through the canal at a place marked M. on the map. The result of that was to let water down from one side of the canal, namely, the side nearest the Ravi River, to the other side and then down the water tumbled; then there became a great accumulation of water lower down and, in order to let that water away, the configuration of ground being such that the Ravi River at this place was in a position well to the left of the canal, looking the way that the water is flowing, they recently cut two other cuts, letting the water back again to its old side next the Ravi River. They cut at a place which is marked A on the plan, a cut quite close to where the railway passes on a high embankment, and they did so as alleged really because they were afraid, if this accumulation went on, the railway embankment and the railway might be injured. The result of that, as the plaintiffs say, was to injure

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their mills. It is quite clear that, upon the plaintiffs' showing, this was an act which the defendants performed at their own hands, and which, so far as statutes were concerned, they do not seem on the statement contained in the plaint in a position to justify. No doubt, if they can show that what was done falls within the provisions of the Canal Act, that is to say, if they can show that it was really done, as Section 16 (? 15) of the Canal Act says, in order to avoid accident to the canal, then they will come straight within the clause already mentioned, Article 2 of the Second Schedule. But their Lordships think the lower Court has strayed into an error, in that they have taken that as if it were proved against the averment of the plaintiffs. The plaintiffs' case as it stands does not show that the action was done for any purpose of protecting the canal, but only for the purpose of protecting the railway and letting the water away. Accordingly, a determination of it at this stage depending upon Article 2 cannot stand; but, at the same time, when the case goes back, the learned Judge of first instance having gone into the facts, if the High Court, on taking up those facts, consider that it is proved as a matter of fact that the operation was really for the protection of the canal and that, consequently, it falls within Section 16 (?15) of the Canal Act, no doubt the plea of limitation will apply. In other words, the judgment is not necessarily wrong in applying the plea of limitation under Article 2, but it is wrong, because it has applied it to a case which is contrary to what is averred by the plaintiffs before it has come to a determination on the facts. The case will, therefore, have to go back, and their Lordships will humbly advise His Majesty accordingly.

As there has been divided success, there will be no costs awarded to either party.

*Appeal accepted in one case.*

*Case remanded.*

N. F. E.

*Solicitor for Appellants*, S. L. POLAK.

*Solicitor for Respondent*, SOLICITOR, India Office.

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**FULL BENCH.**

*Before Justice Sir Alan Broadway, Mr. Justice Addison  
and Mr. Justice Tek Chand.*

KIRPA SINGH (DEFENDANT) Appellant

*versus*

AJAIPAL SINGH AND OTHERS (PLAINTIFFS)

Respondents.

**Civil Appeal No. 2630 of 1923.**

*Sikh Gurdwaras (Punjab) Act, VIII of 1925, sections 29, 32—Act coming into force during pendency of appeal from decree regarding management of Gurdwara—Jurisdiction of High Court to hear appeal—Interpretation of statutes—Vested rights (including rights to appeal) must be respected—Retrospective effect of statute—Act taking away jurisdiction of superior Court—Words “suits” and “proceedings”—meaning of.*

*Held*, that the enactment of the Sikh Gurdwaras (Punjab) Act and the issue of a notification under the provisions of the said Act declaring a *Gurdwara* to be a Sikh *Gurdwara* do not bar the jurisdiction of the High Court to deal with an appeal against the decree of a Subordinate Court passed in a suit under section 92 of the Civil Procedure Code in respect of the *Gurdwara*, which appeal was pending when the Act came into force or the notification was issued.

The High Court must hear and decide the appeal, though in view of the imperative provisions of section 31 of the Gurdwaras Act it may not be possible for it to grant all the reliefs claimed.

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June 23.