

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Beaman.

1913.
June 24.

LALCHAND NANCHAND GUJAR (ORIGINAL PLAINTIFF), APPELLANT, v.
NARAYAN HARI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Limitation Act (IX of 1908), schedule I, articles 110, 116—Registered lease—Suit to recover arrears of rent—Limitation.

Article 116, schedule I of the Limitation Act (IX of 1908), applies to suits for debts or sums certain due upon registered instruments.

SECOND appeal against the decision of H. L. Hervey, District Judge of Sholapur, confirming the decree of V. P. Raverkar, Subordinate Judge of Barsi.

This action was instituted by the plaintiff on the 4th July 1910 to recover Rs. 136-8-0 due under three registered rent-notes passed by defendant 1 on the 20th September 1904, 16th September 1905 and 10th October 1906 respectively for Rs. 45-8-0 each for every year, the money having become payable on the 5th April 1905, 25th March 1906 and 13th April 1907.

The defendants admitted the rent-notes in suit but pleaded satisfaction and limitation.

The Subordinate Judge dismissed the suit as time-barred on the authority of *Ram Narain v. Kamta Singh*⁽¹⁾.

On appeal by the plaintiff the District Judge confirmed the decree.

The plaintiff preferred a second appeal.

N. V. Gokhale, for the appellant (plaintiff).

There was no appearance for the respondents (defendants).

* Second Appeal No. 917 of 1912.

(1) (1903) 26 All. 138.

SCOTT, C. J. :—This was a suit brought in July 1910 for arrears of rent falling due under registered leases, the due dates being the 5th April 1905, 25th March 1906 and the 13th April 1907.

If Article 110 of the schedule to the Limitation Act, which specifically provides for suits for arrears of rent, applies the suit is barred. If, however, Article 116 is comprehensive enough to cover such a suit the claim is within time. The lower Courts have followed a decision of Mr. Justice Burkitt at Allahabad, *Ram Narain v. Kamta Singh*⁽¹⁾, and holding that Article 110 and not 116 applies have dismissed the suit.

If the matter were *res integra* we should take the same view as Mr. Justice Burkitt, but having regard to the long series of authorities to the contrary effect and the fact that the legislature in re-enacting and amending the Limitation Act in 1908 has made no alteration in the Article 116 which had been interpreted generally by the Indian High Courts in the most comprehensive sense, we are unable to hold that Article 110 is applicable.

In 1871 the question came before the Privy Council whether the words 'breach of contract' in the Limitation Act of 1859 were used for the purpose of distinguishing actions to recover unliquidated damages for breach of contract from actions to recover debts, but their Lordships did not think it necessary or advisable that they should attempt to lay down what was the proper construction of those words as applicable to all cases: see *Oukur Pershad Bustooree v. Mussamut Foolcoomaree Bebee*⁽²⁾. The passing of the Act of 1877, which altered the wording of the Article in the Act of 1871 corresponding with Article 116, forced the Indian Courts to come to definite conclusions upon the point in 1880 and 1881: see *Nobocomar Mookhopadhya v. Siru Mullick*⁽³⁾;

⁽¹⁾ (1903) 26 All. 138.

⁽²⁾ (1871) 14 Moo. I. A. 134.

⁽³⁾ (1880) 6 Cal. 94.

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Vythilinga Pillai v. Thetchanamurti Pillai⁽¹⁾; *Husain Ali Khan v. Hafiz Ali Khan*⁽²⁾; and *Ganesh Krishn v. Madhavrav Ravji*⁽³⁾. In all these cases it was held that Article 116 covered suits for debts or sums certain due upon registered instruments. In the Madras⁶ case, Article 110 was held to be inapplicable to a suit for arrears of rent due on a registered instrument as Article 116 gave a period of six years and this view was adopted in *Umesh Chunder Mundul v. Adarmoni Dasi*⁽⁴⁾ and *Kesu Shivram v. Vithu Kanaji*⁽⁵⁾.

We think this body of authority must be accepted. We, therefore, reverse the decree of the lower Court and remand the case for trial on the merits and order that costs in this Court and in the Court of Appeal be paid by the respondents and that the appellant's costs in the first Court be costs in the cause.

Decree reversed.

G. B. R.

(1) (1880) 3 Mad. 76.

(3) (1881) 6 Bom. 75.

(2) (1881) 3 All. 600.

(4) (1887) 15 Cal. 221.

(5) (1884) 9 Bom. 320.

CRIMINAL APPELLATE.

Before Mr. Justice Batchelor and Mr. Justice Shah.

EMPEROR v. SANALAL LALLUBHAI AND EMPEROR v.
GORDHANDAS KESHAWLAL.*

1913.
June 25.

Indian Penal Code (Act XLV of 1860), sections 213, 214—Screening offence—Restitution of property for screening offence—The offence screened must be shown to have been committed before the screening could be punished.

G gave certain jewellery to M by way of *jangad*. M pledged the same with S under circumstances which constituted such pledging an offence of criminal breach of trust. The jewellery was later returned by S to G on the

* Criminal Appeals Nos. 223 and 224 of 1913.