

regards the prisoner now before us, it is unnecessary for us to determine that point. The sanction given by the Sessions Judge, after the case had been committed, and the prisoner pleaded to the charge, and the trial had actually commenced, is clearly not a sanction contemplated by the law.

Such being the case, we think that the proceedings taken against the prisoner before us must be quashed, and the prisoner discharged.

Conviction quashed.

APPELLATE CIVIL

*Before Mr. Justice Norman, Officiating Chief Justice, Mr. Justice Macpherson,
and Mr. Justice Mitter.*

BHAGIRATH ADHIKARI (PLAINTIFF) v. TARINI CHANDRA PAK-
RASI (DEFENDANT).*

Cause of Action—Limitation—Surety.

The plaintiff executed a bond jointly with a servant of the defendant's on 10th July 1861. The proceeds were expended for the defendant. Only 30th August 1861 the creditor obtained a decree upon the bond for principal and interest, which the plaintiff satisfied by two payments made on 4th July 1866 and 30th June 1868 respectively. He brought a suit against the defendant for the amount on 2nd June 1869. *Held*, that the plaintiff could maintain his suit against the defendant for the amount paid by him, and that the suit was not barred by the law of Limitation.

In this case the plaintiff alleged that one Kali Chandra Bhattacharji, a general manager in behalf of the defendant, had been deputed by the latter to purchase certain articles which were required for the marriage of the defendant's daughter; that the funds at his disposal not being sufficient for the purpose, he asked the plaintiff to lend him his credit in raising a loan to meet this deficiency. The plaintiff, in consideration

* Appeal No. 6 of 1871, under section 15 of the Letters Patent, against the decree of Mr. Justice Loch, dated the 23rd July 1870, in Special Appeal No. 817 of 1870, decided by Mr. Justice Loch and Mr. Justice E. Jackson.

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of his being on all occasions employed by the defendant as his pleader, joined Kali Chandra in borrowing a sum of Rs. 200 from one Tarachand Mitter, on a bond dated 27th Asar 1268 (10th July 1861).

The plaintiff also stated that he saw that the requisite articles were purchased with the money so raised, and despatched to the defendant.

On the 30th August 1864, Tarachand Mitter obtained a decree on the bond against the plaintiff and Kali Chandra Bhuttacharji jointly for Rs. 671-14-5, being principal and interest, which in execution were realized from the plaintiff alone.

The plaintiff therefore sued to recover the money realized from him by Tarachand Mitter in execution of the said decree, together with an additional amount for expenses incurred, and damage sustained by him.

The plaint was filed, 22nd June 1869.

The defendant in his written statement urged that the suit was barred by the law of Limitation; that the plaint was defective as not showing the date of the accrual of the cause of action, and that he was not liable to the plaintiff, as he had given the latter no permission to borrow money on his account.

Among other issues, the two following were fixed:—

1.—“From what time should the plaintiff's cause of action be considered to have arisen, and is this suit barred by the Law of limitation?” and

2.—“Whether the amount decreed against the plaintiff was his debt, or whether it was a debt due from the defendant?”

On the first of these issues as to the cause of action, the Court held that it arose on the 30th August 1864, the date of the decree obtained by Tarachand Mitter against the plaintiff, on the ground that the plaintiff could have no right to sue for the money until he had been compelled to pay it. As to the suit being barred, the Court held that, as the suit was not brought on any express contract entered into by the parties, six years was the period within which a suit could be brought.

On the other issue, the first Court was of opinion that, though on the face of the decree obtained by Tarachand Mitter, Kali Chandra Bhuttacharji and the plaintiff alone were liable, yet it

was open to the plaintiff to prove that, as a matter of fact, the money which he (plaintiff) had been compelled to pay under the decree was a sum which really ought to have been paid by the defendant, and that as the latter had been cited as a witness by the plaintiff to prove this fact, and had wilfully neglected to appear to give his own evidence, the Court, under the provisions of Act VIII of 1859, ss. 126 and 170, decided this issue against the defendant. The Court accordingly passed a decree in favour of the plaintiff.

The defendant appealed to the Zilla Judge, who reversed the decision of the Subordinate Judge, and dismissed the plaintiff's suit, on the ground that it was barred by the Law of Limitation. The Judge held that the plaintiff's cause of action accrued from the 27th Asar 1268 (10th July 1861), the date of the execution of the bond given to Tarachand Mitter. He said:—
 “The case, looking at it from an ordinary common sense point of view, is nothing more than a suit to recover money advanced by the plaintiff for the defendant's accommodation. The latter had no privity with Tarachand Mitter, or with the decree which he obtained against the plaintiff, and is, if liable at all, responsible only to the plaintiff for the sum which he advanced for the purchase of the articles required by the defendant. The plaintiff's suit ought, therefore, to have been brought within three years of the 27th Asar 1268 (10th July 1861).”

In special appeal (before Loch and E. Jackson, JJ.) the plaintiff among other grounds urged that the Court below was wrong in holding that the period of limitation, applying to his case, was three years, or that it ran from the 27th Asar 1268 (10th July 1861).

Baboo *Mohini Mohan Roy* for appellant.

Baboo *Ambika Charan Banerjee* for respondent.

LOCH, J.—The plaintiff's statement is this:—

The defendant, who is a zemindar in the Rajshahye district, required certain articles for his daughter's marriage, and required his agent, Kali Chandra Bhattacharji, to procure them. Kali

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Chandra not having any ready cash, borrowed the sum of Rs. 200 from Tarachand Mitter, for which Kali Chandra gave a bond, to which also the plaintiff, at the the request of Kali Chandra, and as a pleader employed by the zemindar, put his name. The bond is dated the 27th Asar 1268 (10th July 1861). The articles required were purchased with the money so borrowed, and sent by Kali Chandra to his master.

On the 30th August 1864, the creditor, Tarachand Mitter, obtained a decree for the amount of the loan, with interest against Kali Chandra and Bhagirath Adhikari, the plaintiff in the present suit ; and in spite of the plaintiff's application to the defendant, for whose benefit the money had been borrowed, the plaintiff had to pay the whole amount of the decree, which he did in two instalments, viz., Rs. 281 on 4th July 1866, and Rs. 390 on 30th June 1868 ; and being unable to obtain the money from the defendant, notwithstanding his promises to pay, the plaintiff brings the present action to recover it.

The suit is brought on 22nd June 1869, eight years after the money was borrowed, and made over, in the shape of articles purchased, to the zemindar, and about five years after the decree was passed against the plaintiff and Kali Chandra, who died in 1867, and within a year after the liquidation of the sum decreed.

The Judge in appeal has held that the suit is barred by limitation ; that it is in fact a suit to recover money advanced by the plaintiff for the defendant's accommodation ; that when the plaintiff advanced that money he entered into a *quasi* contract with the defendant, that the latter would re-pay him ; and that in the absence of any promise in writing from the defendant promising to pay the debt, the plaintiff was out of Court.

It appears to me that the Judge is right, as between the defendant and the original money lender, Tarachand Mitter, there is no privity. The defendant has nothing to do with the money-lender. The plaintiff is in the position of a party who has advanced his own money to purchase the articles required by the defendant and looks to the latter to recoup him ; and if this be the case, there is an implied contract between the parties, and the breach of it took place when the defendant refused to pay the amount

on the plaintiff's applying to him for it; and this occurred according to the plaintiff's own showing between the years 1270 (1863) to Asar 1276 (July 1868), during which period, he says, he addressed several letters to the defendant asking for payment. Now, the end of 1270, to take the demand, no further back corresponds with April 1863, and this suit was not instituted till June 1869, or more than six years after the first demand, supposing that to have been made on the last day of 1863.

Concurring therefore with the view taken by the Judge, I think the special appeal should be dismissed with costs.

E. JACKSON, J.—I regret to differ from my learned colleague, but I am of opinion that, if the plaintiff can prove all the facts alleged by him in his plaint and written statement, his suit is not barred by limitation, and that he has a cause of action against the defendant. This allegation is that the defendant's agent at Tirhoot purchased for the defendant a quantity of necessary articles for the defendant's daughter's marriage; and that to enable him to do so, the defendant's agent borrowed money from a money-lender, and that the plaintiff stood security for the re-payment of that money; that the money-lender has since, by decree of Court, recovered that money from the plaintiff; and that the defendant has, on repeated applications made to him by the plaintiff, admitted his liability to re-pay that money, and has agreed to repay it. The plaintiff has, I think on such a state of facts, a cause of action against the defendant, and his cause of action, in my opinion, arose at the time when he was forced to pay up the money which had been borrowed for the defendant. If I am right in this view, it is admitted that the plaintiff is within time. I think it is clear, upon the facts stated by the plaintiff, that he was in the position of a surety. He lent his name as security to the money-lender. It may be that on trial, the plaintiff will not be able to make out all the facts he alleges, and it will depend on what he can prove, and what the defendant can disprove, whether the plaintiff can obtain any decree against the defendant. All I would decide now is that, on the facts alleged by the plaintiff,

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1871 he is not barred by limitation, and the Appellate Court should go
 BHAGIRATH into the merits of the case.
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v. The judgment of Mr. Justice Loch, as that of the senior
 TARINI CHAN- Judge prevailed.
 DRA PAKRASHI,

Against it, the plaintiff appealed under section 15 of the Letters Patent.

Baboo *Mohini Mohan Roy*, for the appellant, was not called upon by the Court to argue the case of the appellant.

Baboo *Ambika Charan Banerjee*, for the respondent, contended that the period of limitation applicable to this case was three years, and that the cause of action, if any, arose on the date of the execution of the bond to Tarachand Mitter; that there was no privity between the plaintiff and the defendant; it did not fall within the scope of plaintiff's duty, as pleader for the defendant, to make purchases for him. He further contended that neither the decree obtained by Tarachand Mitter, nor the payment made by the plaintiff in execution of that decree, gave the latter any cause of action against the defendant.

NORMAN, C. J. (after reading the statement of facts as set out in the judgment of Mr. Justice Loch continued):—Now the position of the parties on that statement of Mr. Justice Loch, which is borne out by the statement of Mr. Justice E. Jackson, and of the two lower Courts, does not show either that the plaintiff lent any money to the zemindar, or that he sold the articles, procured and forwarded by Kali Chandra, to the zemindar. Therefore, upon that bond and on the transaction as it took place in 1861, the plaintiff had no cause of action against the defendant, either for money lent, or goods sold. I may add, as confirming this view of the fact, that there is not a suggestion that the plaintiff was to get any profit by the sale of the goods, or any interest for the money which he would have stipulated for, had he advanced the money.

On the 30th August 1864, the creditor, Tarachand Mitter, obtained a decree for the amount of the loan with interest against Kali Chandra, and the plaintiff appears to have made

repeated applications to the defendant, "for whose benefit," as Mr. Justice Loch says, "the money had been borrowed" for the amount; but the defendant having failed to pay it, the plaintiff had to pay the whole amount of the decree, which he did in two instalments, namely, Rs. 281 on the 4th July 1866, and Rs. 390 on the 30th June 1868, and he brings this suit against the defendant for the recovery of the money so paid on his (defendant's) account.

The cause of action which the plaintiff appears to have had on this statement of facts, and on such evidence as there is in the record was a cause of action as a surety who had paid a debt, for which, as between the plaintiff and the defendant, the defendant alone was liable. It is wholly immaterial that, upon the form of the contract as between the plaintiff and the lender of the money, the plaintiff appeared to be the principal. Until the plaintiff paid the money due upon the bond, he had no right of action against the defendant. The first instalment was paid by the plaintiff on the 4th July 1866. This action is brought within three years from that time, namely, on the 22nd June, 1869. It appears to me quite plain that the action is not barred by any provisions in the Limitation Act XIV of 1859.

That being so, I am of opinion that the decision of Mr. Justice Loch, and also the decision of the lower Appellate Court, must be reversed, and the decree of the first Court must be restored and affirmed. The defendant to pay the plaintiff's costs in all the Courts.

MACPHERSON, J.—Considering that the transaction was such as it is held to be by Mr. Justice E. Jackson, namely, that the defendant's agent, Kali Chandra, borrowed the money, and the plaintiff merely stood security for the re-payment of the money, I agree with the learned Chief Justice, and concur in the decree which he proposes to make.

MITTER, J.—I also concur.

Appeal allowed.

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