

APPELLATE JURISDICTION. (a)

*Referred Case No. 2 of 1863.*KARUPPANNA NAYAK *against* NALLAMMA NAYAK.

Where a bond was given to secure a debt which was to be repaid by seven annual instalments, and the bond provided that upon failure to pay a single instalment the whole principal sum secured should immediately become due and recoverable with interest :—*Held*, that the cause of action in respect of the principal and interest arose on failure to pay the first instalment.

CASE referred for the decision of the High Court by ^{1863.} *February 16.*
 R. Davidson, the Acting Judge of the Small Causes *R. C. No. 2*
 Court at Madura. The plaintiff sued on a bond of which of 1863.
 the following is a translation ;—“Debt-bond executed on the 3rd Ádi of Rachasa (16th June 1855) by Nattamai Nállamma Náyak, son of Rangappa Náyakan, residing in the village of Vedar Puliyangulam, to Karuppanna Náyakan son of Alagiri Náyakan, residing in the said village. I sold to you half a kare of land, &c. under stamp kadján deed of sale for Rupees 108-12-0 on the 7th Ádi of Virodikurutu, and received the amount immediately. But as I have no means to pay Rupees 52-8-0 to redeem the lands from the previous mortgagee, and as you have paid the amount, and at that sum has been paid to the previous mortgagee, as also for another debt-bond for which you stood security for me, I hereby promise to pay the said sum of Rupees 52-8-0 in seven instalments namely, on Rupees 7 on the 30th of Panguni next (10th April 1856), Rupees 7 on the 30th of Panguni Nala ; Rupees 7 on the 30th of Panguni of Pingala, Rupees 7 on the 30th of Káláyukti, Rupees 7 on the 30th of Panguni of Sittátri, Rupees 7 on the 30th of Panguni of Randri and Rupees 10-8-0 on the 30th of Panguni of Durmati, and thus credit such payments on the back of the bond. On failure of a single instalment, if you bring a suit for the amount including the principal and interest at the rate of one per cent. per mensem from the date of the bond after deducting any payment made for the principal, I shall pay the amount, with costs without defending it. Thus I Nallamma Náyak have executed the debt-bond with my free will to Karuppanna Náyakan.

(a) Present : Scotland, C. J. and Frere, J.

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of 1863.

More than six years elapsed between the time when the first instalment became due and the commencement of the Suit No. 1046 of 1862 out of which the present case arose. The defendant's vakil argued that the law of limitation ran from the 10th of April 1856, the date on which the first instalment was made payable, and that therefore the suit was barred. The Judge, however, held that the law of limitation only ran from the date at which the last instalments was made payable and accordingly decreed for the plaintiff, contingent upon the final decision of the High Court.

No counsel were instructed.

The following judgment was delivered by

SCOTLAND, C. J. :—The bond on which the plaintiff's claim in this case is based, was not of a nature capable of registration under Section 3, Regulation XVII of 1802, being a simple bond executed by the defendant to secure a debt, which was to be repaid by seven annual instalments. The enactment therefore in clause 10, Section 1, Act No. XIV of 1859, is inapplicable to this bond, and the period of limitation which must be held to govern the case is that contained in clause 16 of the same section. A decision to this effect was recently given in *Referred Case No. 3 of 1862*.

But it appears that a period of more than six years was allowed to elapse between the time at which the first instalment became due and the commencement of the suit; and considering the proper construction of the stipulation in the bond, as regards failure in payment of a single instalment, to be, that upon such failure the whole principal sum secured by the bond immediately became due and recoverable with interest, then the plaintiff's cause of action in respect of such principal sum and interest arose at the time of the failure to pay the first instalment, and consequently the Limitation Act operated, we think, as a bar at the commencement of the present suit. Allowing a further time for payment after default in payment of the first instalment was quite an optional forbearance and indulgence on the part of the plaintiffs.

NOTE.—See *Hemp v. Garland* 4 Q. B. 519. s. c. 12 L. J. Q. B. 134.