

ORIGINAL CIVIL.

Before Mr. Justice Pontifex.

NOCOOR CHUNDER BOSE v. KALLY COOMAR GHOSE.

1876

May 22.

Limitation—Act IX of 1871, Sch. II, No. 72—Promissory Note payable on Demand.

The defendant gave the plaintiff a promissory note on the 5th August 1869, payable on demand with interest at 5 per cent. per annum. No sum either in respect of principal or interest was paid on the note, and payment was demanded for the first time in November 1875. Act XIV of 1859 contains no provision as to the date of the accrual of the cause of action in a suit on a promissory note payable on demand, but Act IX of 1871, which repeals Act XIV of 1859, and which applies to suits brought after the 1st April 1873, provides that the cause of action in such a suit shall be taken to arise on the date of the demand. In a suit brought on the note after the demand, held that the cause of action arose at the date of the note, and as a suit on it would have been barred under Act XIV of 1859 if brought before the 1st April 1873, the subsequent repeal of that Act would not revive the plaintiff's right to sue.

SUIT on a promissory note, payable on demand, dated the 5th August 1869, for Rs. 5,603 with interest at the rate of 5 per cent. per annum.

The plaint stated that the plaintiff for the first time demanded payment of the note on the 14th November 1875, and submitted that his cause of action arose at that date, and therefore the suit was not barred by limitation. It was admitted by the plaintiff that no payment, either in respect of principal or interest, had been made on the note. The defendant filed a written statement, in which he submitted that the suit was barred by limitation, but he did not appear at the hearing of the suit.

Mr. *Bonnerjee*, for the plaintiff, contended that the suit was not barred: it was brought after the 1st April 1873, and therefore Act IX of 1871 would apply. By No. 72 of Schedule II of that Act, the cause of action on a promissory note payable on

demand, would arise on the demand being made, and that having occurred within three years, the suit is not barred.

Even under Act XIV of 1859, which was repealed by Act IX of 1871, the suit would not have been barred: it is submitted a demand would have been necessary, and that limitation would not begin to run until such demand had been made. Act XIV of 1859 contains no provision as to the date of the arising of the cause of action on a promissory note payable on demand. There are conflicting cases on the point. In *Parbati Charan Mookerjee v. Ramnarayan Matilal* (1), it was held that where it was agreed that a sum of money should be repaid on demand, and that a monthly sum should be paid on it in the meantime, the cause of action arose from the date of the agreement to repay and not from the date of the demand; but in a subsequent and similar case—*Brammamayi Dasi v. Abhai Charan Chowdry* (2)—it was held that the cause of action arose from the date of the demand. [PONTIFEX, J.—Is there not a decision that if the suit were barred under Act XIV of 1859, the subsequent repeal of the Act would not revive it.] Yes, the case of *Thakoor Kapilnauth Sahai Deo v. Government* (3) is on that point in favor of the defendant, see p. 460.

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PONTIFEX, J. (after shortly stating the facts as above, continued):—I was referred to two cases said to be conflicting with one another. One *Parbati Charan Mookerjee v. Ramnarayan Matilal* (1) decided by Macpherson, J., and the other *Brammamayi Dasee v. Abhai Charan Chowdry* (2) decided by Norman and Phear, JJ. In each of these cases interest had been paid up to within a short time of the date of suit. And in the second case, Phear, J., expressly held that limitation did not apply, however interest had been paid. “As long,” he said, “as the plaintiff forebore to make demand of the principal, and the defendant at the stipulated periods paid the monthly sums by way of interest, so long it was, as it seems to me, impossible in reason to say that the plaintiff had any cause of suit.” In my opinion, both of the cases cited are adverse to the plaintiff’s claim, and, if additional authority was necessary, I might refer

(1) 5 B. L. R., 396.

(2) 7 B. L. R., 489.

(3) 13 B. L. R., 445.

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to the case of *Hempammal v. Hanuman* (1). In the present case neither principal nor interest has been paid since the 5th of August 1869, and if the plaintiff had instituted his suit on the 6th of August 1872, it must have been dismissed as barred by limitation.

It is impossible for me to hold that he is not barred now because he has deferred the institution of his suit until after the first day of April 1873, the date mentioned in s. 1 of the Limitation Act of 1871 (2).

I must, therefore, dismiss the plaintiff's suit, but, as the defendant does not appear, without costs.

Suit dismissed.

Attorney for the plaintiff: Baboo *Kallynath Mitter*.

Attorney for the defendant: Baboo *Troylucknath Roy*.

PRIVY COUNCIL.

P.C.*

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Feb'y. 1, 2,
3, & 4.

MOUNG SHOAY ATT (DEFENDANT) v. KO BYAW (PLAINTIFF).

[On appeal from the Special Court of British Burma.]

Duress—Imprisonment—Avoidance of Contract.

An agent employed by the plaintiff to purchase timber for him in the Siamese territory was imprisoned by an officer of the Siamese Government, on a charge brought against him by the defendant of stealing timber. In order to obtain his release he contracted to purchase from the defendant, for the plaintiff, the timber which he was charged with stealing, at a price much beyond its value. *Held*, that the plaintiff might repudiate the contract as obtained under duress.

(1) 2 Mad. H. C. Rep., 472.

Manche Reddy, Id., 298; and *Chinnar-*

(2) See *Venkatashella Mudali v. sami Iyengar v. Gopalacharry, Id.*, *Sashagherry Rau*, 7 Mad. H. C., 392; but see *Madhavbhai Shiv-* 283; *Molakatella Naganna v. Pedda bhai v. Fattasang Nathubhai*, 10 Bom. *Narappa, Id.*, 288; *Venkataramanier v. H. C.*, 487.

* *Present*:—SIR J. W. COLVILLE, SIR B. PEACOCK, SIR M. E. SMITH, AND SIR R. P. COLLIER.