

In appeal No. 37 we are of opinion that the application of the two ladies, Tripura Sundari Chowdhraïn and Kheema Sundari Chowdrain, must also be dismissed. Gournath Chowdhry died forty years ago, and they now ask for a certificate under the provisions of Act XXVII of 1860 to collect the debts due to him which they assess at Rs. 1,000, without however setting out in their application from whom these debts are due. Looking to the time which has elapsed since the death of Gournath Chowdhry, we think that there could be now no debts due to him which could be recovered owing to the operation of the law of limitation, and these ladies are therefore not entitled to a certificate under Act XXVII of 1860.

This appeal will be decreed, but under the circumstances we will give no costs in either appeal.

Appeal decreed.

Before Mr. Justice L. S. Jackson and Mr. Justice Cunningham.

KOYLASHI CHUNDER DASS (PLAINTIFF) v. BOYKOONTO NATH CHUNDRA AND OTHERS (DEFENDANTS).*

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Limitation—Oral Agreement—Debt payable by Instalments—Act XV of 1877, Sched. II, art. 75.

A entered into a verbal agreement with B to pay a debt due in monthly instalments, B reserving to himself the right to claim payment of the whole sum due on default of three successive instalments. A failed to pay any instalment. Four years after the first instalment was due, B sued A to recover the sum due on the various instalments not barred by limitation. *Held*, that B was not bound to sue for the whole amount due directly on A's failure to pay the three successive instalments.

Semble.—Art. 75, Sched. II of Act XV of 1877, does not apply according to its strict terms to a suit brought upon a verbal contract.

CASE referred for the opinion of the High Court by the Judge of the Small Cause Court of Bishenpore, under s. 617 of Act X of 1877.

The plaintiff's case is, that, in execution of a decree, the defendant adjusted the decretal debt, and verbally contracted to pay Rs. 68, by instalments at Rs. 3 per mensem, from Pous 1280 (December

* Small Cause Court Reference, No. 412 of 1878, from an order of Baboo Ram Doyal Ghose, Munsif and Judge of Small Cause Court of Bishenpore, dated the 26th January 1878.

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1873) to Augran 1281 (November 1874); and at Rs. 2 per mensem from Pous 1281 (December 1874) to Choitro 1282 (March 1875); and on default in payment of three successive instalments the whole should be due. The defendants had not paid for any instalment, hence that portion which has been barred was relinquished, and the present suit is to recover the sum due for instalments from Pous 1281 (December 1874) to Cheyt 1282 (March 1875), being Rs. 35, and it was instituted on the 13th December 1877.

The defendants contend that, under the contract as alleged by the plaintiff, the whole sum became due on the default in payment of three successive instalments from Pous to Falgoon 1280 (December 1873 to February 1874), and the plaintiff's cause of action to recover the whole sum accrued in Cheyt 1280 (March 1874); and as this suit has been brought after the expiration of three years from the said date, so the claim is barred, as the provision of art. 75, second schedule, in Act XV of 1877, is not applicable to suit for money due under oral contract.

The plaintiff, in reply, contended that the said rule is general and equally applicable to oral contract.

Both parties applied to refer the case, under s. 617 of the Civil Procedure Code, Act X of 1877, for the decision of the following point by the Honorable High Court:—

The point referred for decision was, whether the provision of art. 75, second schedule, Act XV of 1877, is applicable to oral contracts or to written instruments only?

Baboo Gopal Chunder Sirkar for the plaintiff.

Baboo Sreenath Banerjee for the defendants.

JACKSON, J. (CUNNINGHAM, J., concurring).—Answering simply the question put to us, we think we are bound to say that art. 75 of the Indian Limitation Act of 1877 does not apply, according to its strict terms, to a suit brought upon a verbal contract. But it appears to us that the question does not really arise in the present suit, because we think the plaintiff was not bound, but only had the option, to avail himself

of the clause enabling him to sue at once for the whole amount due on the failure to pay the particular instalments, and in point of fact, the money did not otherwise become due except on the falling due or arrival of the date of the successive instalments.

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APPELLATE CRIMINAL.

Before Mr. Justice Markby and Mr. Justice Mitter.

IN THE MATTER OF BHOOBUNESHWAR DUTT, PETITIONER.*

1877

Refusal to give Receipt for Summons—Indian Penal Code (Act XLV of 1860), s. 173.

Dec. 14.

A refusal to give a receipt for a summons is not an offence under s. 173 of the Indian Penal Code.

Reg. v. Kalya bin Fakir (1) followed.

IN this case the prisoner was charged with refusing to give a receipt for a summons. The prisoner appealed, on the ground that the conviction was not warranted by law, inasmuch as refusing to acknowledge the receipt of a summons, either personally or by another person, does not constitute the offence under s. 173 of the Indian Penal Code.

Baboo *Amarendra Nath Chatterjee* for the petitioner.

MARKBY, J.—It appears to us that this conviction must be set aside. The charge against the petitioner was, that he had refused to give a receipt for a summons. This has been held by the High Court of Bombay in *Reg. v. Kalya bin Fakir* (1) not to be an offence under s. 173 of the Indian Penal Code, which is the section under which this conviction has been made. We concur in that decision.

This conviction will, therefore, be set aside; and the fine, if paid, will be refunded. If the petitioner is in jail, he will be released.

* Criminal Motion, No. 232 of 1877, against the conviction and sentence of H. A. D. Phillips, Esq., Officiating Joint Magistrate of Sub-Division Sewan, Zilla Sarun, dated 18th September 1877.

(1) 5 Bom. H. C. Rep., Cr. Cases, 34.