

SMALL CAUSE COURT REFERENCE.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Mitter.

1880
May, 26.

NOBOCOOMAR MOOKHOPADHAYA *v.* SIRU MULLICK.*

Limitation Act (XV of 1877), sched. ii, arts. 66 and 116—Registered Bond—Compensation for Breach of Contract.

A suit to recover money due upon a registered bond is a suit for compensation for breach of contract in writing registered, within the meaning of art. 116 of sched. ii to Act XV of 1877, and must be brought within six years from the time when the period of limitation would begin to run against a suit brought on a similar contract not registered.

THIS was a suit to recover principal and interest due on a registered bond. The execution of the bond was admitted by the defendant, who pleaded that the suit was barred by limitation under art. 66 of sched. ii, Act XV of 1877, which provides a period of three years' limitation for a suit on a single bond, where a day is specified for payment, from ~~the day so specified~~. The plaintiff contended that the case was governed by art. 116 of sched. ii of the Act, as being a suit for compensation for the breach of a contract in writing registered, the period of limitation for which is six years from the time when the period of limitation would begin to run against a suit brought on a similar contract not registered. The Judge of the Small Cause Court at Chooadanga gave the plaintiff a decree subject to the opinion of the High Court.

No one appeared to argue the point.

The judgments of the Court (GARTH, C. J., and MITTER, J.) were as follow :—

GARTH, C. J.—I confess that I have considerable doubt as to the correctness of the judgment of the Court below; but as my learned colleague thinks that the judgment is right, and as I find

* Reference No. 4 of 1880, from Baboo Bolloram Mullick, B.L., Officiating Judge of the Court of Small Causes at Chooadanga, dated the 2nd February 1880.

that, on the Original Side of the Court, it has been held by Mr. Justice Wilson that, under the Act of 1877, six years is the proper period of limitation in the case of a registered bond, I am unwilling, where the meaning of the Legislature is really doubtful, to divide the Court upon a question of limitation.

In one sense, of course, every suit for a breach of contract is a suit for compensation; but I should have thought that, in ordinary legal parlance, a suit to recover money due upon a bond (especially having regard to the form of a single bond in this country), would be a suit for a debt or sum certain; whilst on the other hand, a suit for compensation for breach of contract (art. 116), meant a suit for unliquidated damages.

But there is no doubt that, under the Acts of 1859 and 1871, the period of limitation in the case of a bond, or other contract in writing registered, was six years; and that the people of this country have for years past understood that an unregistered bond must be sued upon within three years, and a registered bond within six years.

Unless, therefore, it appears clear from the Act of 1877, that the Legislature intended to change the period of limitation from six to three years in the case of a registered bond, I think that it would be unfair to persons placed in the position of the plaintiff to oblige them to sue within the shorter period; and as not only the Judge in the Court below, but also learned Judges of this Court, have satisfied themselves that a suit upon a bond is, properly speaking, a suit for compensation for breach of contract, I do not think it right, in the interests of justice, to press the opposite view.

MITTER, J.—I am of opinion that the plaintiff's claim in this case is not barred by limitation. I think the case comes within the art. 116 of the 2nd schedule of the Limitation Act of 1877. The article 66 is not applicable. It is true that the suit is "on a single bond where a day is specified for payment," but the bond, the basis of the suit, being registered, and the claim (for reasons which I shall presently state), being for compensation for the breach of the stipulated condition of payment, the suit falls under the art. 116. In this article, under the head "time from which period begins to run," it is enacted that "the

1880

 NOBO-
 COOMAR
 MOOKHO-
 PADHYA
 v.
 SIRU
 MULLICK.

1880

NOBO-
COOMAR
MOOKHO-
PADHYA
v.
SIRU
MULLICK.

period of limitation would begin to run against a suit brought on a similar contract not registered." Having regard to the words, "a similar contract not registered," it seems to me that a suit for compensation for the breach of the condition of a contract of the nature described in art. 66 would fall under art. 116 or 66, respectively, according as the contract is registered or unregistered.

It seems to me that, when a party to a contract commits a breach of its conditions, the aggrieved party has either of the two alternative civil remedies: he may either bring a suit for specific performance or for compensation. A suit for specific performance, by reason of the specified time for payment having already elapsed, has become impossible in this case.

This suit, therefore, falls under art. 116, and is not barred.

APPELLATE CRIMINAL.

Before Mr. Justice Morris and Mr. Justice Prinsep.

HOSSEIN BUKSH AND OTHERS v. THE EMPRESS.*

1880

June 24.

Charges, distinct and separate, tried simultaneously by a Jury—Parties opposed in rioting—Consent by Pleaders on behalf of Accused to irregular Procedure—Examination of Accused by Sessions Judge—Code of Criminal Procedure (Act X of 1872), ss. 243, 250, 264, 265.

Members of two opposing parties in a riot were, under two distinct commitments, sent up for trial before the Sessions Judge and a jury. After the close of the case for the prosecution in one of these cases, the Sessions Judge, with the consent of the pleaders representing the accused, postponed the taking of the evidence for the defence, and proceeded to examine the witnesses for the prosecution in the counter-case before the same Jury. The Court then took the evidence of the witnesses for the defence in the first, and in the counter-case in the order named, and after hearing the address of the various pleaders for the defence and the reply of the Government Pleader, proceeded to sum up the facts in both cases to the jury, who returned a verdict in respect of all the accused. *Held*, that the procedure resorted to by the Judge was a practi-

* Criminal Appeals, Nos. 266 and 324 of 1880, against the order of J. P. Grant, Esq., Sessions Judge of Hooghly, dated the 30th February 1880.