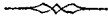


sonable to expect that a debtor should find out his creditor, unless any particular place were agreed on for payment to be made there.”

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PER CURIAM (COUCH, C.J., and NEWTON, J.) :—The Judge is to be informed that the cause of action arose at Pádshá, and the Judge's attention is to be called to the erroneous statement regarding the contract in his statement of the case. He recites the agreement as for a delivery at Mazrod, whereas from the agreement itself, which has been sent up to the Court, the Court finds that the contract is for measurement at Mazrod and delivery at Padshá.

*Note.*—As to the meaning of the words “Cause of action,” and where it may be said to arise, see *DeSouza v. Coles*, 3 Mad. H. C. Rep. 384 (decided 21st Jan. 1868).—ED.

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*Referred Case.*

Jan. 28.

RA'MKRISHNA MAHA'DEV.....*Plaintiff.*  
BAYA'JI' bin SANTA'JI' *et al.* .....:.....*Defendants.*

*Limitation—Instalments—Bond—Waiver—Act XIV. of 1859, Sec. 1.*

*Suit* upon a bond executed by the defendants to the plaintiff for the payment of a sum of money by instalments. The bond contained a proviso that on default being made in the payment of any one instalment the whole amount should become due.

Default was made in the payment of several instalments, but subsequently payments were made by the defendants and accepted by the plaintiff on account of the unpaid instalments.

The defendants pleaded the law of limitation. The suit was brought more than three years after the first default in payment of an instalment had been made, but within three years from the time when, taking into account the payments that had been made, the first instalment claimed became due.

*Held* that these payments as regards both parties must be considered as if made at the time fixed; that the defendants could not rely upon the stipulation as making the whole debt due, and fixing the period from which the time of limitation ran; and that, the first of the instalments claimed having become due within three years, the suit was not barred.

CASE referred for the decision of the High Court, under Sec. 22 of Act XI. of 1865, by Janárdan Vásudevji, Judge of the Small Cause Court at Puñá.

“The plaintiff sues the defendants for the payment of Rs. 99-6-6 on a bond for Rs. 95, dated the 3rd of August

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1864, payable by daily instalments of four annas each, with a proviso, that on default being made in the payment of one instalment the whole debt should be paid at once.

“The following are the particulars of this claim:—

“Principal Rs. 95, Interest Rs. 48-12 = Rs. 143-12-0; Paid Rs. 44-6-6, Balance Rs. 99-6-6.

“All the defendants enter appearances, and put in different pleas. One of them, the defendant No. 1, pleads the law of limitation. He contends that the payments given credit for by the plaintiff were not made as each instalment became due; that his (the plaintiff's) right of action accrued from the first default, which took place on the 6th of August 1864; and that, reckoning the period of limitation from that date, the claim is beyond three years, and is, therefore, barred.

“The plaintiff admits that the payments were not made regularly as each instalment became due, but that each of these payments was made after several had remained unpaid, and without reference to the amount of those instalments. He nevertheless contends that those payments were accepted by him to meet the convenience of the defendants, and are sufficient to cover instalments which will bring the claim within the law of limitation. In support of his argument the plaintiff cites 5 Calc. W. Rep., Civ. R. 45.”

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court is of opinion that although the instalments were not paid by the defendants at the times fixed for payment, yet the defendants having paid the money on account of them, and the plaintiff having accepted it, the payments must be considered, as regards both parties, as if made at the times fixed; and the plaintiff cannot take advantage of the stipulation that the whole sum should become due on failure to pay any instalment, or the defendants rely upon it as making the whole debt due, and fixing the period from which the time of limitation ran. The first of the instalments claimed having become due within three years, the suit is not barred.