

## [APPELLATE CIVIL JURISDICTION.]

*Referred Case No. 126 of 1873.*1873.  
November 25.

MA'DHAVBHA'I SHIVBHA'I ..... *Plaintiff.*  
 FATTESING NATHUBHA'I ..... *Defendant.*

*Promissory note or bill of exchange payable on demand—Limitation—Act IX. of 1871, Schedule II., Art. 72.*

Under Act IX. of 1871, Schedule II., Article 72, limitation begins to run on a bill of exchange, or promissory note, payable on demand, (not accompanied by any writing, restraining, or postponing the right to sue,) at the time when the demand is first made; and if the first demand is complete and unqualified, the period of limitation must be regarded as beginning to run from the time of such first demand.

*Quære* whether the bringing of an action to recover the amount due on such bill, or promissory note, should be regarded as a sufficient notice?

*Jeáunnissá Ládlí Begam Sáheb v. Mánikjí Kharsetjí* (7 Bom. H. C. Rep. 36, O. C. J.) referred to and distinguished.

THE following questions were submitted for the consideration of the High Court by Gopálráv Hari Deshmukha, Judge of the Small Cause Court at Nariad:—

“1. Whether on the promissory note, of which a certified copy is annexed, the cause of action should be held to have arisen on the day on which the note was passed, or from the date on which demand for the money was made?”

“If the Court decide that the cause of action accrued on the latter date, the following further question will arise:—

“Whether or not the demand should be the first one made after the passing of the note?”

“2. The plaint in this suit was filed on the 1st August 1873, and the plaintiff asserts therein that his cause of action arose in the month of May 1872, when he first made a demand upon the defendant for the money. It will be seen that the bond sued upon was passed on the 20th June 1869. The defendant pleads that the claim is barred by the law of limitation; that the cause of action accrued immediately on the passing of the note, and the suit is brought after the lapse of more than three years from that date.

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“3. The plaintiff has produced two witnesses to prove that he made the demand in May 1872.

“4. In *Jeáunnissá Ládlí Begam Sáheb. v. Mánikji Kharsetji* (a) it was held by WESTROPP, J., that ‘in the case of ordinary notes payable on demand, the words “on demand” do not constitute a condition precedent, but merely import that the debt is due and payable immediately, and, therefore, on a bill or note payable on demand, the Statute of Limitation has been held to run from the date of the instrument, and not from the time of the demand: *Christie v. Fonsick* (b), Byles on Bills, p. 320, 8th Edn. This is so even where the note is made payable with interest, as here: *Norton v. Ellam* (c).’ Subsequently, however, to this decision, Act IX. of 1871 has come into operation, Article 58 of the second schedule (first division) of which enacts, that in suits ‘for money lent under an agreement, that it shall be payable on demand,’ the limitation of three years ‘begins to run when the demand is made;’ and the question is whether or not the ruling above quoted has been superseded by this statutory provision.

“5. In the case of *Poorno Chandra Dutt v. Gopal Chunder Dossebal* (d), the Calcutta High Court has held that in a case of promissory note payable on demand, the parties to which are Hindus, limitation begins to run from the date of the demand,’ and at p. 224 of 14 Calc. W. Rep., the same court has held that ‘where money is lent payable on demand with interest payable at a certain date, so long as the borrower observes his part of the contract, by paying interest, and so long as he is not apprised of the lender’s desire to have back his principal sum, there is no cause of action, and limitation does not begin to run.’

“6. It is, however, a question whether the parties to such notes really contemplate at the time of entering into the contract that the money lent shall be repayable on the making of a demand, and not before. The words ‘járe

(a) 7 Bom. H. C. Rep. O. C. J. 36.

(b) Selwyn’s N. P., p. 351, 9th Ed.

(c) 2 M. & W. 461.

(d) 17 Calc. W. Rep. Civ. R. 87.

*dhani máge tyáre apiye* ' (will pay whenever the lender shall demand) might be said to be merely formal ones, as they occur almost in all money bonds without exception, even in those in which a particular date is specified for re-payment.

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" My own opinion upon the questions is that the cause of action should be considered to have arisen from the date of demand as provided by clause 58, Schedule II. of the new Limitation Act; and the demand for this purpose should be no other than the first."

The reference was considered by WESTROPP, C.J., and PINHEY, J., on the 25th November 1873.

WESTROPP, C.J. :—The Judge of the Court of Small Causes at Nariad in substance inquires :—1st, whether the period of limitation prescribed by Act IX. of 1871 on the promissory note, a copy of which he has annexed to the case, runs from the date of the note, or from the time of the demand? The note was payable on demand. The phrase employed by the Judge "when *the cause of action* shall be held to have arisen" does not seem to be applicable to Act IX. of 1871: See Sec. 4. Article 72 in the second schedule (not Article 58 mentioned by the Judge) furnishes a conclusive answer to the Judge's first question. Article 72 provides that the period of limitation shall begin to run on a bill of exchange or promissory note, payable on demand, (and not accompanied by any writing, restraining, or postponing the right to sue,) at the time when the demand is made.

The Judge has referred to *Jeáunnissá Ládlí v. Mánikji Kharsetji* (*supra*). In that case, however, the defendant was a Pársi, resident in the island of Bombay, to whom English law, so far as it was not controlled by the Indian Legislature, was applicable. Act XIV. of 1859 made no special provision as to when the cause of action on a bill of exchange, or promissory note, payable on demand, should be regarded as having accrued. The English law is that, on a bill of exchange or promissory note, payable on demand, the

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statute of limitation runs from the date of the instrument, and not from the time of the demand. See the cases cited, in the above mentioned case in 7 Bombay H. C. R. 36, and *Dick v. Gourney* (Irish Term Reports 242), *Collins v. Benning* (12 Modern Reports 444), and *Capp v. Lancaster* (Cro. Eliz. 548). Whether that rule would, before the coming into force of the new Limitation Act of 1871, have been applicable to Hindus, or Muhammadans, in respect of *hundis*, or notes, drawn up in the forms usual amongst natives of India, it is unnecessary now to consider. It is sufficient to say that Article 72 of the second schedule annexed to the new Limitation Act is applicable alike to Hindus, Muhammadans, Parsis, and others, either in the island of Bombay or elsewhere in British India.

The second question put by the learned Judge is :—  
“ Whether or not the demand should be the first one made after the passing of the note ? ” To that we reply that, if the first demand has been a complete and unqualified demand, we think that the period of limitation must be regarded as beginning to run from the time of such first demand. Whether, as has been heretofore held, the bringing of an action to recover the amount due on the bill or promissory note should be regarded as a sufficient demand, it is not necessary for this court now to give an opinion.

As to the 6th paragraph of the case, submitted by the learned Judge for our consideration, we only say that it must always be a question of the true construction of the bill or note itself, whether or not it is payable on demand.