

ground, as, we think, the District Court has decided the case wrongly on the second ground, *i.e.*, on the merits; and it will be better to dispose of the case on the merits in order to prevent further litigation.

According to the ruling of the Full Bench in *Sávitribái v. Lakshimbái*⁽¹⁾, the defendant will be liable to the plaintiff for maintenance only if the defendant is in possession of ancestral property or property which belonged to her husband, out of which such maintenance could be recovered. It appears from the judgment of the District Court that the only property of which defendant is now possessed (whatever she may have had when her husband died twenty years ago, or whatever she may have done with it) is the proceeds of the sale of some jewels, her *stridhan*, and a family-house which is jointly occupied by plaintiff and defendant and yields no rent. Defendant is not, therefore, liable to the plaintiff in this suit.

We reverse the decree of the District Court and restore that of the Subordinate Court rejecting plaintiff's claim. Plaintiff to bear costs in the District Court and in this Court.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanábhái Haridás.

JAGJIVAN JAVHERDA'S (ORIGINAL DEFENDANT), APPELLANT,
GULAM JILANI CHAUDHRI (ORIGINAL PLAINTIFF), RESPONDENT.*

September 19.

Suit for money taken in execution of a decree—Compensation—Damages for loss of gain or interest upon money—Limitation Act XV of 1877, Schedule II, Arts. 29 and 120.

A suit to recover money wrongly taken under a decree is a suit for compensation to which the limitation of one year under art. 29 of the Limitation Act XV of 1877, Sch. II, applies. The same limitation under the same provision applies if to the above demand a claim be added to recover damages for the loss of gain or interest upon the money.

THIS was a second appeal against the decision of Khán Bahádúr M. N. Nánávati, Subordinate Judge (First Class) of Thána, re-

* Second Appeal No. 559 of 1882.

(1) I. L. R., 2 Bom., 573.

1883

JAGJIVAN
JAVHERDASv
GULAM
JILANI
CHAUDHRI.

versing the decree of Ráo Sáheb C. N. Bhat, Subordinate Judge, Second Class, of Thána.

The plaintiff alleged that the defendant, in 1861, obtained a decree against the plaintiff's father and in 1867 attached in execution thereof an allowance called the *Chaudhri hak* annually payable to the plaintiff's family from the Government Treasury; that the plaintiff's father died on the 7th of October, 1869, and that from the moment of his death the plaintiff succeeded to the *hak* in his own right; that the defendant on the 25th of August, 1875, wrongfully drew from the Government Treasury the allowance due for the years 1871-72, 1872-73, and 1874-75, amounting in all to Rs. 717-8-4, and prayed that the defendant might be directed to pay the said amount to him.

The defendant answered that he had lawfully received the amount in execution of his decree and was not liable to refund it, and contended that the suit being instituted in 1878 was barred by limitation under art. 29 of schedule II. of Act XV of 1877. The Subordinate Judge (Second Class) held the claim barred; the Subordinate Judge (First Class) in appeal held that the limitation of six years under art. 120 was applicable, and awarded a part of the claim on the merits.

The defendant appealed to the High Court.

Ghanashám Nilkanth Nádkarni for the appellant.—Article 29 of the Limitation Act, XV of 1877, schedule II, provides a period of one year for a suit “for compensation for wrongful seizure of moveable property under legal process.” The identical money could not be recovered, but only its equivalent, as compensation. In case of a bullock, for instance, the article would undoubtedly apply. Articles 48 and 49 refer to specific moveables. Article 62 refers to money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. The suit is therefore barred.

Mánekhsháh Jehángirsháh for the respondent.—Article 29 does not apply when the specific article is to be returned. Here the suit is to get that which the defendant wrongfully took. At any rate it can be viewed as a suit to recover money had by the

defendant to the plaintiff's use and a period of three years under article 62 applies.

WEST, J. :—The chief question in this case is that of whether a suit for the money taken under a decree is a suit for compensation to which article 29 of Schedule II of Act XV of 1877 is applicable. The form of expression we have just used shows how the question has become one to be argued. In the case of an ox or a boat wrongly seized in execution, supposing the article itself is sought to be recovered, the Code of Civil Procedure section 283, provides for a suit to be brought by the person against whom an order has been made under sections 280, 281, or 282. For such a suit, article 11 of schedule II of the Limitation Act prescribes a term of one year. Besides the recovery of the article, the owner may seek compensation for damage to it or for his loss of the use of it, and for such a suit article 29 prescribes a term of one year. But again, the recovery of the specific article may be impossible or undesirable, and then the owner may seek compensation both for the thing itself and for the damage he has sustained through being deprived of the use of it. To such a suit it cannot be doubted that article 29 will apply: as the double claim of compensation consists of elements of identical character, these, though capable of separate existence, blend by contract in their subject into one.

Now, in the case of money, it is said that a plaintiff "sues for the money" or "the same money" that was taken from him, not, as in the case of other things, for compensation. But, in fact, he does not sue for "the same" money or desire to recover the same money. He seeks an equal sum which, on account of its equivalence, is called the same sum, and thence again the same money. In the case of a specific article, not money, the holder can generally restore it if he is ordered to do so. In the case of money, he cannot. Once appropriated, it has lost identity as to the particular coins, and can no more be retaken with certainty than particular measures of wine or water that have been thrown into a vessel containing other wine or water. The impossibility of the return of the identical coins limits the defendant's duty then to the replacing them by substitutes of exactly equal value, and

1883

JAGJIVAN
JAVHERDASv.
GULAM
JILANI
CHAUDHRI.

1883

JAGJIVAN
JAVHERDAS
v.
GULAM
JILANI
CHAUDHRI.

the limit of the defendant's duty in such a case is the measure of the plaintiff's right. He cannot insist on a restoration of such and such rupees; he can insist only on being paid their exact value in other rupees. This is essentially compensation, and corresponds more exactly to the original sense of the word than when this is extended to a claim or decree for damages for the loss occasioned by deprivation of the property until it, or its value was given back to the plaintiff as distinguished from the equivalent for the property itself. The compensation, however, for the money wrongly seized and for the loss of gain or interest upon it may blend in a single claim for compensation. In either case, the limitation is, we think, provided by article 29. We, therefore, reverse the decree of the Subordinate Judge in appeal, and restore that of the Court of First Instance with costs throughout on the respondent.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanábhái Haridás.

September, 27

GANGA'DHAR SAKHA'RAM, PLAINTIFF, v. MA'HÁDU SANTA'JI,
DEFENDANT.*

Dekhan Agriculturists' Relief Act, XVII of 1879, Section 47—The Code of Civil Procedure (XIV of 1882), Section 525—Construction—Arbitration award—Conciliator's certificate.

Where a matter has been referred to arbitration, without the intervention of a Court of justice, by parties one of whom is an agriculturist, and an award has been made thereon, any person interested in the award may, without obtaining the conciliator's certificate, apply for the filing of the award under section 525 of the Code of Civil Procedure, the provisions of which are not superseded by section 47 of the Dekhan Agriculturists' Relief Act, 1879.

THIS was a reference under section 617 of the Code of Civil Procedure (XIV of 1882) made by Ráo Sáheb V. J. Gánu, Subordinate Judge (Second Class) of Wái, through the Special Subordinate Judge and Special Judge under the Dekhan Agriculturists' Relief Act, 1879. The Subordinate Judge (Second Class) stated the case thus:—

* Civil Reference No. 40 of 1883.