APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

1884

November 28.

KESU SHIVRA'M, PLAINTIFF, *v.* VITHU KANA'JI AND OTHERS, DEFENDANTS.*

Dekkhan Agriculturists' Relief Act No. XVII of 1879, *as amended by Acts XXIII of* 1881 *and XXII of* 1882, *Sec.* 72—*Limitation—Surety—Principal.*

A, as principal, and B and C as sureties, obtained a lease from D of certain land, dated 30th July 1880. A, B, and C were agriculturists within the meaning of Act XVII of 1879, and the lease was registered under section 56 of that Act. On 1st March 1884, D sued A, B, and C to recover the rent under the lease.

Held, that under section 72 of Act XVII of 1879, as amended by Acts XXIII of 1881 and XXII of 1882, the extended limitation did not apply to the surety even though the principal debtor was an agriculturist. The words "not merely a surety for the principal debtor" (which enact the exception to the extended limitation given by that section) are not restricted to the case in which the principal debtor is a non-agriculturist.

The lease, however, having been registered under section 54, *Held* that it was under section 60 "to be deemed to have been registered under the provisions of the Indian Registration Act, 1877," and that therefore by clause 116 of schedule 2 of the Limitation Act XV of 1877, the period of limitation applicable to the surety was six years from the date of default by the principal debtor to pay rent.

THIS was a reference under section 617 of the Civil Procedure Code, Act XIV of 1882, by Ráv Sáheb Báláji Mahádev, Subordinate Judge of Khed, who stated the case as follows:—

"The plaintiff Kesoo bin Shivrám has instituted a suit "No. 239 of 1884 falling under clause (X) of Chapter II of the "Dekkhan Agriculturists' Relief Act, XVII of 1879, as amended "by Act XXII of 1882, to recover Rs. 30 due under a kabuláyat "(lease exhibit 3) dated the 30th July 1880, executed in his favour "by defendant No. 1, Vittoo bin Kanhoji, as principal debtor and "by defendants Nos. 2 and 3, Bála bin Kukárám and Káshi bin "Bapuji, as sureties. There is no dispute that all the defendants "1, 2, and 3 (principal debtor and sureties) are agriculturists. "The lease (exhibit 3) has been registered under the provision "of section 56 of the Dekkhan Agriculturists' Relief Act. The "question here is one of limitation. The lease (exhibit 3) stipu-"lated that the rent due by the defendants was to be paid in

* Civil Reference No. 46 of 1884.

"two instalments. The first instalment fell due on the 20th "January 1881, and the second on the 20th February of the "same year. The claim as against defendant No. 1, the principal "debtor, is within limitation under section 72 of the Relief Act, "the suit having been instituted on the 1st March 1884, that is "within six years from the accrual of the cause of action. But "the question is whether the claim as against defendants Nos. 2 "and 3 as sureties is not time-barred, the suit having been insti- "tuted more than three years from the date of the accrual of "the cause of action.

"My own opinion on the question referred for decision is that "the claim as against the sureties, defendants 2 and 3, is time- "barred. * * * * * *"

The Special Judge, Dr. A. D. Pollen, in submitting the references to the High Court, made the following remarks:—

"Much uncertainty prevails in the subordinate courts with "regard to the precise meaning to be attached to the word "'*merely* a surety' in section 72 of the Relief Act. It has been "ruled that when the principal debtor is a non-agriculturist, the "extended period of limitation does not apply to the sureties if 'they happen to be agriculturists. But when both the principal "and the sureties are agriculturists, there seems to be no reason "why the same period of limitation should not apply to both. "The section was amended to prevent the anomaly of agricultu- "rist sureties being held liable, though the liability of their non- "agriculturist principal may have been long barred by limitation. "It was not, I think, intended that different periods of limitation "should apply when principal and sureties are both agriculturists. "It seems, however, doubtful whether the language employed "in amending the section is capable of this construction. It also "often happens that a party to a bond is for convenience de- "scribed as a surety, though he be in reality one of the principals "and personally interested in the transaction. In such a case "he is not merely a surety, and the word 'merely' may have "been used to meet such cases only. In cases where both prin "cipal and surety are agriculturists, it appears to me that quite "independently of section 72 the same law of limitation must

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"apply to the sureties as applies to the principal, and that the "amended section 72 is no bar to the application of the general "rule."

None of the parties appeared in the High Court.

SARGENT, C.J. :—The first question raised by this reference is, whether the words "not being merely a surety for the principal debtor" in section 72 of the Dekkhan Relief Act, as amended by Act XXIII of 1881, are to be construed as applying exclusively to the case in which the principal debtor is a non-agriculturist. Taken in their plain and obvious meaning, they would include all cases of sureties according to the maximum "*Indefinitum equipollet universali.*" The expression first occurs in sec. 3, cl. *y*, and sec. 12 of the original Dekkhan Relief Act, XVII of 1879, but was omitted from those sections as amended by Act XXIII of 1881, and by the same Act it was introduced into sections 56 and 72. In neither of the sections 3 and 12 of the Act of 1879 is there anything in the context to restrict the generality of the expression. Nor does the circumstance of its subsequent omission from those sections necessarily lead to the inference that the expression had been used in a restricted sense. The same remark applies to the introduction of the expression into section 56.

Passing to section 72, the introduction of the expression by the amending Act was due, as appears from the report of the committee on the Amending Act of 1881, to a suggestion of the Court in *Hajarimal* v. *Krishnaráv*[1]. In that case the question for consideration was, whether the creditor's claim against the agriculturist surety was barred, that against the non-agriculturist principal being already barred by the Act of Limitation of 1877. Sir M. Westropp, C. J., who delivered the judgment of the Court, after showing that, with due regard to the canons of construction, the case of a surety must be deemed to fall within section 72 of the Act of 1879, says: "The intention of the Legislature in extending the period of limitation was to remove the frequent pressure on agriculturist debtors to execute fresh and probably more stringent deeds or bonds than those originally given by

(1) I. L. R. 5 Bom. 647.

those debtors, and thus to benefit such agriculturists. The Legislature might perhaps have, advantageously to agriculturists, excepted sureties from the operation of section 72, but it has not made any such exception. Were we to do so, we should be acting as legislators and not as judges." But not a single expression is to be found to show that the learned Judge had in his mind only sureties for a non-agriculturist principal, or that he did not consider that it would be for the advantage of agriculturists that agriculturist sureties generally should be omitted from the operation of the new limitation. It may be, as the Special Judge points out, that it would not, as a fact, be for the advantage of the agriculturist borrower that the extended period of limitation should not apply to his surety, and it may be that it was an oversight in the framers of the section not confining the exception in section 72 to sureties for non-agriculturists, but it is not for this Court to speculate on the subject. As Parke, B., says in *Nixon* v. *Philips*[1], "we must still construe the Act according to its plain and obvious meaning."

Passing to the question as to the period of limitation applicable to the sureties, who were parties to the kabulayat of 30th July 1880, registered under section 56 of Act XVII of 1879, and who thereby bound themselves to pay the plaintiff the rent if their principal should fail to do so, it is to be observed that by section 60 of the Act of 1879, such an instrument is to be "deemed to have been duly registered under the provisions of the Indian Registration Act, 1877," and, therefore, by cl. 116 of 2nd Sched. of Act XV of 1877 the period of limitation will be six years from the date of default by the principal debtor to pay the rent.

(1) 20 L. J. Ex. 90.