

1886.

PITÁMBÉR
SUNDARJI
v.
CÁSSIBÁI.

It was argued that the case came within the principle of *Engell v. Fitch* ⁽¹⁾, which the House of Lords state to be that "a vendor is bound to do everything that he is enabled to do by force of his own interest, and also by force of the interest of others whom he can compel to concur in the conveyance:" (see observations of Lord Hatherley on this case in *Bain v. Fothergill* ⁽²⁾). Now it seems to me the defendant, on her side, did offer to do all that then lay in her power, and the plaintiff, on his side, insisted on something further that did not lie in her power. She offered all she was able to offer. The title-deeds did not really turn up till some time after. They were with her co-mortgagee, and she could not force him to deliver them. The case, then, does not come within *Engell v. Fitch* ⁽¹⁾, but within the leading case, and there can be no damages for the loss of the bargain. But as the defendant has not paid the earnest-money into Court, or formally tendered it, she must pay the costs of the suit. There must be a decree for the earnest-money—for Mr. Chalk's costs of the arbitration: Rs. 50—and the plaintiff is to have all the costs of the suit.

Attorneys for the plaintiff:—Messrs. *Chalk and Walker*.

Attorneys for the defendant:—Messrs. *Jefferson, Bháishankar, and Dinshá*.

(1) L. R., 4 Q. B., 659.

(2) 7 H. L., p. 209.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

ATMA'RA'M, (PLAINTIFF), v. GOVIND, (DEFENDANT)*

Limitation Act XV of 1877, Sec. 19—Acknowledgment within "the new period"—Construction.

In a suit brought on the 20th July, 1886, by the plaintiff to recover the price of goods sold on the 12th March, 1881, to the defendant, the plaintiff filed two *khátás* under the defendant's signature, acknowledging the debt, and bearing dates the 6th March, 1882, and the 29th October, 1884. The Subordinate Judge, being of opinion that the suit was barred, referred the case to the High Court.

*Civil Reference, No. 22 of 1886.

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Held, that the suit was not barred; the second acknowledgment having been made within "the new period" arising from the first acknowledgment, was made within a period prescribed for the suit, and was, therefore, itself the starting point of a new period.

THIS was a reference by Ráo Sáheb Krishnáji Náráyan Kher, Second Class Subordinate Judge of Alibág, under section 617 of the Civil Procedure Code (Act XIV of 1882).

In Suit No. 397 of 1886 the plaintiff sued the defendant for the recovery of money due on account of goods sold to him on the 12th March, 1881. The Subordinate Judge was of opinion that the suit having been instituted on 20th July, 1886, was clearly barred by the law of limitation, unless there was something to prevent its operation. The plaintiff filed two *khátás* signed by the defendant (exhibits 3 and 4) dated, respectively, 6th March, 1882, and 29th October, 1884. The plaintiff's pleader contended that the second acknowledgment, (exhibit 4), being dated 29th October, 1884, the suit is in time, as it was instituted within three years from its date. He also contended that, in regard to the second acknowledgment, the period of three years should be counted, not from the date of the original liability, but from that of the first acknowledgment. The Subordinate Judge referred the case for the High Court's opinion.

Vásudev Gopál Bhandárkar for the plaintiff:—The suit is not barred. The second acknowledgment having been within three years from the first acknowledgment, the plaintiff's suit is saved: see *Mohesh Lal v. Busunt Kumaree* ⁽¹⁾.

Gangáram Bápsobá Rele for the defendant.

SARGENT, C. J.:—We think that, upon the proper construction of section 19 of the Limitation Act XV of 1877, the second acknowledgment having been made within "the new period" arising from the first acknowledgment, must be deemed to have been made within a period prescribed for the suit, and was, therefore, itself the starting point of a new period. This view of the section would appear to have been acted on in *Mohesh Lal v. Busunt Kumaree* ⁽¹⁾.

⁽¹⁾ I. L. R., 6 Calc., 340.

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