

1920  
 was to be paid by vendees. Plaintiff sued for possession after his father's death on the ground that the sale was not binding on him. The first Court decreed his claim, but the Divisional Judge reversed this decree on appeal. Plaintiff then appealed to the chief Court. One of the vendees-respondents subsequently died and as no application was made to bring his representatives on the record, the appeal abated as far as he was concerned. It was held that as the land was still joint in the hands of the vendees the appeal, having abated against one of them, could not proceed against any of the respondents and must be dismissed. In *Hadu v. Lala* (1) it was stated that a useful test in such cases was, could the suit ab initio have been instituted and prosecuted with the deceased respondent left out? We are clear that the present suit could not have proceeded as laid with Sikandar left out. We are therefore of opinion that Mr. Fazli-Husain's preliminary objection must prevail and we direct the appellants to pay the respondents' costs in this Court.

R.M./R.K. *Appeal rejected.*

**A. I. R. 1920 Lahore 175 (1)**

WILBERFORCE, J.

*Hari Singh*—Plaintiff—Petitioner.

v.

*Fazal*—Defendant—Opposite Party.

Civil Revn. No. 735 of 1919 and Original Civil Appeal No. 1851 of 1919, Decided on 19th April 1920, from decree of Sr. Sub-Judge, Jhelum, D/- 14th June 1919.

Limitation Act (1908), Art. 67 — Suit to recover money due on book entry containing promise to pay interest and attested is governed by Art. 67.

A book entry containing a promise to pay at a certain rate of interest and attested by witnesses is a bond, and a suit for recovery of the money due thereon is governed by Art. 67. [P 175 C 1]

*Bindraban*—for Petitioner.

*Devi Dayal*—for Opposite Party.

**Judgment.**—The petitioner in this case sued for Rs. 300, the price of wheat due on a book entry which contained a promise to pay at a certain rate of interest and was attested by two witnesses. The learned Senior Subordinate Judge held that the entry was a bond as defined in the Stamp Act but that it was not a bond for the purposes of limitation, a

decision which counsel for the respondent was unable to support and is obviously indefensible. The Subordinate Judge went on to hold that as the entry was not a bond, the period of limitation was three years, apparently under Art. 115. Even so he did not show how the case was time barred as he did not state when the express or implied contract was broken. The entry obviously amounts to a bond and the period of limitation is governed by Art. 67. I accept the petition for revision and remand the case to the first Court for a trial on the merits. Costs will follow the result and the court-fee on application will be refunded.

R.M./R.K. *Petition accepted.*

**A. I. R. 1920 Lahore 175 (2)**

BROADWAY, J.

*Paiz Ahmad and another*—Defendants—Appellants.

v.

*Karm Elahi and another*—Plaintiffs—Respondents.

Second Appeal No. 2288 of 1919, Decided on 19th February 1920 from decree of Dist. Judge, Jhelum, D/- 26th June 1919.

Limitation Act (1908), S. 12—Delivery of copies to copying agent is to be regarded as delivery to his principal and time between date of application and date of delivery is to be excluded.

The plaintiff's suit having been dismissed on 11th December 1918, he filed an appeal to the District Judge on 21st January 1919. It appeared that the copies of the decree and judgment were applied for by the copying agent on 18th December and were attested on 23rd idem, but were not made over to the copying agent till 2nd January 1919:

*Held*: (1) that the copying agent must be taken as an agent of the appellants and delivery of the copies to him must be regarded as delivery to his principal, who was entitled to deduct the whole of the time from 18th December 1918 to 2nd January 1919;

(2) that the appeal to the District Judge was consequently within time: 9 I. C. 381, Dist. [P 176 C 2]

*Muhammad Iqbul*—for Appellants.

*Ghulam Mohyuddin*—for Respondent 1.

**Judgment.**—Karam Ilahi and others sued Faiz Ahmad and others for possession of certain land. The trial Court dismissed the suit on 11th December 1918, and the plaintiffs preferred an appeal to the District Judge which was accepted, and possession of the land decreed, on 26th June 1919. Faiz Ahmad and the

other defendants have preferred this second appeal to this Court through Dr. Muhammad Iqbal and I have heard Maulvi Ghulam Mohyuddin for the plaintiffs-respondents. The only point taken in the appeal is that the appeal to the learned District Judge was barred by limitation. As stated above, the suit was dismissed by the trial Court on 11th December 1918—the appeal to the District Judge was filed on 21st January 1919 and was time-barred unless it can be held that the then appellants were entitled to the benefit of the days occupied in obtaining copies of the decree and judgment appealed against. These copies were applied for on 18th December 1918 and were attested on 23rd December 1918. Even if this period of six days be allowed them, the appeal of the plaintiffs was barred. The learned vakil for the respondents however produced a copy of a register in which it is entered that owing to the Christmas holidays the copies were not made over to the copying agency till 2nd January 1919 and claims that his clients are entitled to be allowed these extra ten days.

Dr. Muhammad Iqbal however contended that as the application for copies had been made to the copying agent, no time should be allowed at all and bases his contention on a Division Bench decision of the Chief Court reported as *Ashiq Hussain v. Ali Bakhsh* (1). In that case the decree appealed against had been passed on 24th February 1908 and the appeal should have been filed by 24th May 1908—as a matter of fact it was filed on 29th May 1908, i. e., five days after the period of limitation had expired. It was found that the appellant had come to Lahore from Delhi and had here engaged a counsel, who on 16th May 1908 wrote to the copying agent of the Delhi District asking him to supply him with the necessary copies. No copying-fee was, however sent with the letter and the copying agent replied that he could not make the necessary application for the copies asked for until the necessary money had been remitted to him. A money order for the amount was sent to him on 21st May 1908, which he received on 23rd May 1908. He filed an application for the copies required on 25th May 1908, received them the same day and despatched them to Lahore, and

(1) [1911] 9 I. C. 381.

the appeal was filed on 29th May 1908. It was held that the appeal was time barred as no proper application for copies had been made till 25th May 1908, i. e., after the period for filing the appeal had expired, and that no days of grace could be allowed. It was held that the copying agent was not such an officer of the Court to whom an application could be made, but was a mere agent of the would-be appellant. In the present case I think the copying agent must be taken as an agent of the then appellants. He however made the application he was asked to make on 18th December 1918, i. e., before the period for filing the appeal had expired. Though the copies were ready on 23rd December 1918, they were not delivered to the said agent till 2nd January 1919. Assuming that delivery to him must be regarded as delivery to his principals, it seems to me that the said principals can claim to be allowed the whole of the period from 18th December 1911 to 2nd January 1919, and this would bring their appeal within limitation. I accordingly hold that the appeal was within time and dismiss this second appeal with costs.

R.M./R.K.

*Appeal dismissed.*

### A. I. R. 1920 Lahore 176

ABDUL RAOOF, J.

*Ila-ud-Din*—Defendant—Appellant.

v.

*Amir Ullah and others*—Plaintiff and Defendants—Respondents.

Second Appeal No. 591 of 1920, Decided on 22nd June 1920, from decree of Dist. Judge, Attock, D/- 12th December 1919.

**Evidence Act (1872), S. 115—Widow permitting occupancy tenant to exchange occupancy field with non-occupancy one—Reversioner acquiescing in exchange and not objecting to sinking of well by tenant—Exchange cannot be subsequently objected.**

A widow permitted an occupancy tenant to exchange one of his occupancy fields with a non-occupancy one. Plaintiff, one of the collaterals of the last male holder and a lambardar, not only did not object to the exchange, but was present when mutation was sanctioned and affixed his seal to the patwari's report. Subsequently the occupancy tenant sank a well in the field obtained by him under the exchange and even then the plaintiff raised no objection. Six years after the exchange had been effected, he brought a suit for a declaration that the exchange would not affect his reversionary rights: *Held*: that the plaintiff, having acquiesced in the exchange and having failed to object to the