

(1866) 08 CAL CK 0012

Calcutta High Court

Case No: Special Appeal Nos. 970 and 994 and to 1002 of 1866

A.J. Forbes

APPELLANT

Vs

Mahi Sahu and Others

RESPONDENT

Date of Decision: Aug. 21, 1866

Judgement

Sir Barnes Peacock, Kt., C.J., Loch, L.S. Jackson and Macpherson JJ.

1. In this case two points are referred for the opinion of the Full Bench. When this case was called on, there was no Counsel appearing for either side, and the Judges were obliged to argue the case amongst themselves. With regard to the first question, it appears to me that, in a suit for breach of a contract to be performed at different times, limitation must be calculated from each breach of contract as it arises. Thus, in a suit upon a contract to pay by installments or to perform certain acts at different periods, each breach would be separate, and limitation as to such breach would run from the date at which the money was to be paid or the duty to be performed. This would not apply to any contract which expressly provides that in the event of any breach the whole debt shall become due, or the whole damages shall be recoverable, or a sum certain shall be paid as compensation in respect of the whole contract, as in the case of *Meer Mahomed Kazem, Chowdhry v. Forbes* 5 W.R., 277.

2. The answer to the first question is substantially an answer to the second question,--namely, whether damages can be awarded for each year when the contract extends over several years, or must be confined to the first year. Where there is a contract for performing certain duties in each of several years, each breach of the contract would be a complete cause of action, and separate damages would be recoverable for each breach.

3. The case will be sent back to the Court which referred the points to us in order that they may deal with it. There are several analogous cases which will be governed by this case. It will be for the Court which referred the questions to determine upon each particular contract with reference to the opinion we have now given, and to

apply the law accordingly in each particular case.

Campbell, J.

4. I have considerable misgivings about answering these questions in this very abstract form. It seems to me that the form in which they have been sent up is inconvenient. The practice has been that either the whole case is referred to a Full Bench, or particular points in a particular case are referred for the opinion of a Full Bench. I very much wish that the case had been argued before us, and that we had known exactly how the questions arose in the case before us the more so because there has, I think, been some error in the reference in regard to the variance supposed to have existed between the decisions quoted.

5. On looking at these cases, I do not see that either of those points arises in any of them. With regard to limitation it seems to me that the only question which arose was as to the application of cls. 2, 9, and 10, s. 1, Act XIV of 1859, and the question whether the cause of action arose from the breach of contract, or whether every subsequent breach of contract was new ground of action, was not raised or discussed in those cases.

6. As respects the second question, it seems to me that the point which arose in the case previously decided was on the construction of a particular contract,--i.e., whether the liquidated damages there specified were liquidated damages for the whole contract or damages for each year during which the contract lasted, that question was decided on the construction of the particular contract. That being so, and the question not having been argued, we have only to answer these abstract questions without reference to any particular case, either to the present case or to those quoted in the order of reference.

7. I have no doubt that the answer in reference to the abstract question on the first point must be that, where the contract does in fact contain a series of contracts, each of that series of contracts may constitute the subject of a fresh breach. I would only like to qualify that general answer, so far as I am concerned by this one observation, that it seems to me that if the parties have treated the contract as de facto wholly broken and at an end from the time of the first rupture,--if they have, as between themselves, wholly renounced the contract, reserving only the claim for damages, and not seeking to obtain specific performance,--then I have very great doubt whether a party claiming under that contract can, at the end of many years, bring up a state claim for damages, on the ground that the contract made so many years ago was originally to be in part performed at a later date. But, on the supposition that either of the parties has treated the contract as a subsisting contract, then in each of the series of contracts (supposing there is such series) a new cause of action arises. As to the second question, there can be no doubt, I should think, supposing that there is no provision for liquidated damages, that the damages to be awarded in regard to any contract are for the whole contract, and

not for a single year. If the contract is for several years, the damages cannot be limited to one year, but must cover the whole injury sustained; such damage being reasonably assessed as a jury would assess it.

¹See Limitation Act (IX of 1871), s. 23.