

PRIVY COUNCIL

Punjab Cotton Press Co. Ltd.

Vs.

Secretary of State

P.C.A Nos. 41, 39 and 40 of 1925
(Viscount Dunedin, Lord Salvesen and Sir John Wallis JJ.)

11.02.1927

JUDGMENT

VISCOUNT DUNEDIN J.

1. These three suits have been consolidated and they have all been decided on the same plea by the learned Judges of the High Court at Lahore, but in truth they are in a different position, because the first suit was brought before the expiry of two years and the other two suits were not brought until the expiry of the two years, in other words, the first suit is not hit by the limitation of Article 36 of the First Schedule of the Limitation Act, which reads as follows :

For compensation for any malfeasance, misfeasance or non feasance, independent of contract and not herein specially provided for, limitation two years.

2. But the two other suits are hit and therefore in so far as the two latter suits were dismissed, the judgment was right, although their Lordships do not think it went upon the right ground, be cause it was put upon Article 2 of the Limitation Act, instead of upon Article 36. The first suit, however, was brought within two years, and, therefore, so far as limitation is concerned, it is either hit under Article 2 or not at all. Article 2 is : For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment for the time being in British India. and the period is ninety days.

3. What is complained of here is that the Government, who are the people in charge of the canals, constructed a vast set of irrigation canals in the neighborhood of the Ravi river. The Ravi river was prone to frequent floods and these canals not only acted as irrigation canals, but they also acted to a certain extent as relievers of the river in flood; but the riyer had been apt to flood to an extent which the canals could not

relieve, and accordingly spilt water came upon certain land on either side of the canal and, at a certain place, in order to deal with this spilt water and let it away to the ordinary level of the country, the officials, first of all, cut three cuts through the canal at a place marked M. on the map (not shown here). The result of that was to let water down from one side of the canal, namely, the side nearest the Ravi river, to the other side and then down the water tumbled; then there became a great accumulation of water lower down and, in order to let that water away, the configuration of ground being such that the Ravi River at this place was in a position well to left of the canal, looking the way that the water is flowing, they recently cut two other cuts, letting the water back again to its old side next the Ravi river. They cut at a place which is marked A on the plan, a cut quite close to where the railway passes on a high embankment, and they did so as alleged really because they were afraid, if this accumulation went on, the railway embankment and the railway might be injured. The result of that, as the plaintiffs' say, was to injure their mills. It is quite clear that, upon the plaintiffs' showing, this was an act which the defendants performed at their own hands, and which, so far as statutes were concerned, they do not seem on the statement contained in the plaint in a position to justify. No doubt, if they can show that what was done falls within the provisions of the Canal Act, that is to say, if they can show that it was really done, as Section 16 (15 ?) of the Canal Act says, in order to avoid accident to the canal, then they will come straight within the clause already mentioned, Article 2 of the Second Schedule. But their Lordships think the lower Court has strayed into an error, in that they have taken that as if it were proved against the averment of the plaintiffs. The plaintiffs' case as it stands does not show that the action was done for any purpose of protecting the canal, but only for the purpose of protecting the railway and letting the water away. Accordingly, a determination of it at this stage depending upon Article 2 cannot stand; but, at the same time, when the case goes back, the learned Judge of first instance having gone into the facts, if the High Court, on taking up those facts, consider that it is proved as a matter of fact that the operation was really for the protection of the canal and that, consequently, it falls within section 16 (15 ?) of the Canal Act, no doubt the plea of limitation will apply. In other words, the judgment is not necessarily wrong in applying the plea of limitation under Article 2, but it is wrong, because it has applied it to a case which is contrary to what is averred by the plaintiffs before it has come to a determination on the facts. The case will, therefore have to go back, and their Lordships will humbly advise His Majesty accordingly. As there has been divided success, there will be no costs awarded to either party.

Case remanded.