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deposited it on the 28th, which was the first day of the reopening of the Court. Those learned Judges held, that the mortgagor had saved the estate from foreclosure by depositing the money on the first day after the 25th November on which the Court was open, and they came to this decision, although Sir B. Peacock doubted whether the Court had been legally closed. Our decision is also in accordance with the English authorities. In *Mayer* v. *Harding* (1), the appellant, who wished to appeal against an order of certain Justices of the Peace, and who was bound by a Statute to lodge in the Queen's Bench the case signed by the Justices within three days after he had received it from them, got the case on Good Friday, when the Queen's Bench was closed, and lodged it on the following Wednesday, when the Division Bench reopened. The Court held, that as the offices were closed from Friday to the Wednesday, the appellant had transmitted the case as soon as it was possible to do so, and had sufficiently complied with the requirements of the Statute. In passing the decision the Court acted upon the rule that the law will not compel the doing of impossibilities.

We, accordingly, reverse the order of the lower Court, and direct that the defendant, if he has been ejected, which we are informed that he has been, should be restored to possession, and that the plaintiff should have liberty to take out of Court the money deposited by the defendant.

The appeal is allowed with costs.

Appeal allowed.

Before Mr. Justice White and Mr. Justice Maclean.

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SARODA PERSHAD CHATTOPADHYA (DEFENDANT) *v.* BROJO NATH BHUTTACHARJEE (PLAINTIFF).*

Limitation Act (XV of 1877), s. 10 *and sched. ii, art.* 120—*Cestui que Trust, Suit by, against Trustee.*

A alleged that his father *B* had, before his death, placed in the hands of *C* a certain sum of money, and had also transferred to *C* his landed property

* Appeal from Appellate Decree, No. 888 of 1879, against the decree of C. D. Field, Esq., Judge of East Burdwan, dated the 9th April 1879 reversing the decree of Baboo Radha Kisto Sen, Munsif of Raneegunge dated the 6th January 1878.

(1) L. R., 2 Q. B., 410.

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upon trust, that *C* should, during the minority of *A*, hold the money and manage the property for the benefit of *A*, and maintain *A*, and should, on *A's* attaining his majority, make over to him the property and so much of the money as should then be unexpended; and that *C* had accepted the trust, but, upon *A's* coming of age, had refused to render any account. *A*, accordingly, brought a suit for an account. *C* pleaded that *A* had attained his majority at a much earlier period than he alleged, and that the suit was barred by limitation. *A* replied that, under s. 10 of Act XV of 1877, his suit could not be barred by any length of time. *Held*, that s. 10 of Act XV of 1877 did not apply to such a case, and that *A's* suit would be barred if not brought within six years from the time when he attained his majority, and became entitled to demand an account.

In India, suits between a *cestui que trust* and a trustee for an account are governed solely by the Limitation Act (Act XV of 1877); and unless they fall within the exemption of s. 10 are liable to become barred by some one or other of the articles in the second schedule of the Act. To claim the benefit of s. 10, a suit against a trustee must be for the purpose of following the trust-property in his hands. If the object of the suit is not to recover any property *in specie*, but to have an account of the defendant's stewardship, which means an account of the moneys received and disbursed by the defendant on plaintiff's behalf, and to be paid any balance which may be found due to him upon taking the account, it must be brought within six years from the time when the plaintiff had first a right to demand it.

IN this case, the plaintiff Brojo Nath Bhuttacharjee alleged that, in the month of Joist 1276 (corresponding with parts of the months of May and June 1869), his father Ram Sunder Bhuttacharjee had appointed the defendant Saroda Pershad Chattopadhya to be the manager of all his moveable and immoveable properties, and to be the guardian of the plaintiff, who was then a minor, and had then made over a certain sum of money and all his properties to the defendant upon trust, to take charge of them, and out of them to maintain the plaintiff until he should attain his majority; and that, on the plaintiff attaining his majority, the defendant should make over to him the said properties and so much of the money as should be unexpended; and that the defendant had accepted this trust. The plaintiff further alleged, that, his father having died shortly after, the defendant acting as his guardian and as manager of the properties left by his father, had let out and made settlements of the properties and maintained him till the month of Kartick 1284 (corresponding with parts of the months

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of October and November 1877), when he attained his majority; that, on attaining his majority in the month of Kartick 1284, he had at once called upon the defendant to render to him an account of all the moveable and immoveable properties left by his father, and the profits derived therefrom, and of all receipts and disbursements whatsoever, and that the defendant had failed to comply with his demand. The plaintiff, accordingly, prayed for a decree directing the defendant to account for all the moveable and immoveable properties of Ram Sunder Bhuttacharjee which had come into his hands, and of the profits derived therefrom, and also of the receipts and disbursements connected therewith.

The defendant pleaded, 1*st*, that the plaintiff was at least 25 or 26 years old, and must therefore have attained his majority long before Kartick 1284, and that he having failed to prefer his claim within three years after he attained his majority his claim was barred by limitation; and 2*nd*, that he (the defendant) had never in fact accepted the trust nor acted as guardian and manager as alleged by the plaintiff.

The Court of first instance held, that this was a suit by a plaintiff describing himself as a ward against a defendant described by him as his guardian, for the purpose of taking an account, and that there being no express provision to be found in sched. ii of the Limitation Act (XV of 1877) applicable to such a suit, the period of limitation applicable to it would be six years as provided by art. 120 of that schedule; and that, upon the evidence before it, the plaintiff must have attained his majority in 1278 B. S. (1871), or more than six years before the institution of this suit, and that therefore as limitation would run from the time when the plaintiff attained his majority, the suit was now barred by limitation. The Court of first instance also held, that the defendant had not accepted the trust nor acted as guardian as alleged by the plaintiff.

From this decision the plaintiff appealed to the Court of the District Judge, on the ground that upon the evidence the defendant had accepted the trust and had acted as guardian and trustee for the plaintiff, and that this being so, he was, by s. 10 of Act XV of 1877, precluded from pleading any period of limitation,

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The Judge on appeal reversed the decision of the Munsif, holding that the defendant had accepted the trust created by the plaintiff's father, and had managed the property for some years after the death of the plaintiff's father; and in particular, that a sum of Rs. 127 had been entrusted by the plaintiff's father to the defendant for the use of the plaintiff. With respect to limitation, the Judge held that the suit was exempt from the operation of the Limitation Act by virtue of s. 10 of that Act. But as he was of opinion that the plaintiff took over charge of his father's property in 1283 (1876), he limited the account to be taken to the years commencing 1277 (1870) and ending 1282 (1875).

From this decision the defendant appealed to the High Court.

Baboo *Oopendro Chunder Bose* for the appellant.

Baboo *Nogendro Nath Roy* and Baboo *Umbica Churn Ghose* for the respondent.

The judgment of the Court (WHITE and MACLEAN, JJ.) was delivered by

WHITE, J. (who, after stating the facts, continued):—The defendant urges in appeal before us that s. 10 does not apply to the suit, but that the suit is barred by the operation of art. 120 of the Act.

In England, the Statute of Limitation does not apply to a suit for an account brought by a *cestui que trust* against his trustee under an express trust, or by a principal against an agent expressly appointed [*Obee* v. *Bishop* (1), *Wedderburn* v. *Wedderburn* (2), *Brittlebank* v. *Goodwin* (3), *Burdich* v. *Garrick* (4), *Story* v. *Gape* (5), and *Stone* v. *Stone* (6)]; although in certain cases where the relation of trustee and *cestui que trust* is admitted to be no longer subsisting, and in a few other cases, a Court of Equity will refuse relief on the ground of lapse of time. The English doctrine does not appear to rest upon any exemption, express or implied, to be found in the English law of

(1) 1 D. F., and J., 142.
(2) 4 M. and C., 41.
(3) L. R., 5 Eq., 546.
(4) L. R., 5 Ch. Ap., 233.
(5) 2 Jur., N. S., 706.
(6) L. R., 5 Ch. Ap., 74.

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limitation, but to be the creation of the Equity Judges. It is now, however, expressly recognised by the Legislature, which in the Judicature Act (36 and 37 Vict., c. 66, s. 25, cl. 2) enacts, that "no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitation."

In India, suits between a *cestui que trust* and trustee for an account seem to be governed solely by the Indian Limitation Act, and unless they fall within the exemption of s. 10 are liable to become barred by some one or other of the articles in the second schedule of the Act. To claim the benefit of s. 10, the suit against the trustee must (amongst other things) be for the purpose of following the trust-property in his hands. The plaintiff's present suit has no such object. It is plain that its object is not to recover any property in *specie*, but to have an account of the defendant's stewardship, which means an account of the money received and disbursed by the defendant on plaintiff's behalf, and to be paid any balance which may be found due to him on taking the account.

I think, therefore, that the learned Judge is in error in holding that the suit falls under the description of suits mentioned in s. 10, and that the Munsif was right in holding that art. 120 applies to the suit.

If the learned Judge below had found the date when the plaintiff attained his majority, it would probably have been unnecessary to remand this suit. The plaintiff alleges in his plaint that he attained his majority in Kartick 1284 (October-November 1877), but the Munsif found that he reached his full age in 1278 (1871). The learned Judge pronounced no opinion on this point, it being unnecessary in the view which he entertained of the case. The plaintiff, however, is entitled to have the opinion of the lower Appellate Court on this question of fact, as it formed one of the objections in his grounds of appeal to the lower Appellate Court. It will, therefore, be necessary to remand the suit to try this question.

If the Judge finds that the plaintiff attained his majority more than six years before he commenced the suit, he will dismiss the

plaintiff's suit. If he finds this issue in the negative, he will order the account to be taken for the period of time and as directed by the learned Judge Mr. Field.

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The appeal is allowed. Costs of the appeal and the trial on the remand will abide the result.

Appeal allowed and Case remanded.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

GUNGANARAIN SIRKAR AND ANOTHER (PLAINTIFFS) *v.* SREENATH BANERJEE (ONE OF THE DEFENDANTS).* 1880 *Jan.* 15.

Co-Sharer—Suit for Fractional Share of Rent.

The plaintiff, alleging himself to be a fourteen-anna shareholder in a zemindari, sued a tenant for a proportionate share of the rent due to him as such shareholder. The other co-sharers were made defendants, but did not contest the suit; *held*, that inasmuch as it had been shown that the tenant-defendant had, on previous occasions, paid the plaintiff rent separately, though not in the proportionate share now demanded by him, and it being further to be presumed that the co-sharers admitted the plaintiff's claim, such suit would lie.

THIS was a suit for recovery of arrears of rent and interest thereon for a period extending from Bysak 1281 (April 1874) to Choitro 1283 (March 1877).

The plaint stated that the plaintiffs were part-owners to the extent of a fourteen-anna share in a certain zemindari; that the tenant-defendant in suit held a lease of certain specified lands in that zemindari; and that the amount claimed represented arrears of rent due to the plaintiffs from that defendant in respect of their fourteen-anna share in such zemindari. The plaintiffs' co-sharers in the zemindari were made defendants in the case, together with the tenant, from whom such arrears of rent were claimed. The tenant-defendant (who alone entered appearance),

* Appeal from Appellate Decree, No. 661 of 1879, against the decree of H. Beverley, Esq., Additional Judge of Zilla 24-Pargannas, dated the 27th of December 1878, affirming the decree of Baboo Benode Behari Chowdhry, Munsif of Baruipore, dated the 4th July 1878.