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person who contrived the fraud. The appellant is, under the circumstances, bound to repay the moneys received by him, and he cannot defend himself by the plea that he has paid the money to his principal.—*Tugman* v. *Hopkins* (1); nor can we allow that the circumstance that the principal was himself a servant of the respondent, and in the course of his employment obtained facilities for committing the fraud, relieves the appellant from his liability. If the form of the requisition was purloined, it was taken without the consent of the respondent, and it is not shown that the officers of the department in any way facilitated the theft by the omission of any reasonable precautions. The appeal fails, and is dismissed with costs.

1875.
August 26.

APPELLATE CIVIL.

(Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Oldfield.)

UDA BEGAM (PLAINTIFF) *v.* IMAM-UD-DIN AND OTHERS (DEFENDANTS.)*

Equitable Estoppel—Laches—Acquiescence—Limitation.

The plea of acquiescence is applicable to suits for which a fixed term of limitation is prescribed by law, but mere delay in enforcing a right does not constitute acquiescence. (*Rama Rau* v. *Rájá Rau* (2), impugned: *Peddamuthulaty* v. *N. Timma Reddy* (3) approved with certain qualifications).

The defendants took possession of, and erected buildings on, land which they knew belonged to the plaintiff and they had no claim to, without applying to the plaintiff for consent. The plaintiff abstained from suing to eject them for one or two years, knowing that the defendants were building on the land.

Held, under the circumstances, that the delay in the institution of the suit was not sufficient to deprive the plaintiff of her right to relief.

The plaintiff in the suit was the zemindar of Sarai Babar Khan, a mohalla of the town of Budaun. She resided in another mohalla of the same town about two miles distant from Sarai Babar Khan,

(1) 4 M. & G. 389; 5 Scott, N. R. 464. (2) 2 Mad. H. C. R. 114. (3) 2 Mad. H. C. R. 270.

* Special Appeal, No. 1677 of 1874, from a decree of the Subordinate Judge of Sháhjahánpur, dated the 23rd September, 1874, affirming a decree of the Munsif of Budaun, dated the 28th July, 1874.

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and being a *pardanashin*, her affairs were managed by her son Gholam Haidar. The suit related to a plot of land No. 31 in Sarai Babar Khan. The plaintiff, alleging that this plot of land had formerly been granted to a tenant named Vasil for the erection of certain kucha buildings thereon, that Vasil had deserted the premises that she had retaken possession, that the defendants had dispossessed her, and having entered on the plot had erected on it certain kucha and pucka buildings without her consent, and that the action of the defendants had only become known to her in June, 1874, claimed that the defendants should be ejected and the materials they had brought upon the land removed. The suit was instituted on the 18th June, 1874. The defendants pleaded that the plot had been occupied by three sheds, one tenanted by Vasil, who was still in possession, and the other two by Usman and Jani; that they had no concern with so much of the plot as was occupied by Vasil, and did not question the plaintiff's right to it, but that they had succeeded by inheritance to the portions of the plot occupied by Usman and Jani, and had built thereon a house at a cost of Rs. 1,000; and that, inasmuch as the plaintiff had known of the erection of the house and had not interfered to prevent it, she must be taken to have acquiesced in it, and had thereby lost her right to the relief sought.

The Court of first instance found that the plot had been occupied by Vasil as tenant, and that there was no proof of any occupation by Usman and Jani; that Vasil had abandoned the plot and a right of entry had accrued to the plaintiff; that the defendants had entered and erected the house of which the removal was prayed one or two years before suit; and that the appellant must have known of the erection while in progress, because her son, who was her manager, resided with her at a place only distant about two miles from the spot. On these findings it held that the plaintiff had, by acquiescence, lost her right to the relief she claimed, and must fall back on an action for damages, and consequently dismissed the claim.

The lower appellate Court agreed with the Court of first instance as to the plaintiff's title, and the absence of proof of the title set up by the defendants, but it also found that the plaintiff had through her son the means of knowing of the erection while in progress. Hence it inferred her knowledge, and from her knowledge and

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inaction it inferred that she had tacitly consented to it. It affirmed the decree of the first Court, relying on the rulings of the late Sudder Court in *Powell* v. *Guffoor Khan* (1), and *Ramjewun* v. *Sah Koondun Lall* (2).

The plaintiff appealed to the High Court. The pleas set forth in the memorandum of appeal were that the decision of the lower appellate Court was bad in law, as the plaintiff, being admitted to be the rightful owner of the land, and having brought the suit within the time allowed by law, was entitled to a decree for the possession of the land and for the removal of the buildings erected thereon by the defendants ; and that it was also bad in law in that the onus lay on the defendants to prove that they obtained express permission from the plaintiff to build upon the land.

The *Senior Government Pleader* (Lala *Judla Parshád*) and Munshi *Hanúmán Parshád* for the appellant.

Pandit *Bishambar Náth* and Mir *Zahúr Husain* for the respondents.

The judgment of the Court (after setting out the facts of the case as above stated) was as follows :—

In special appeal it has not been objected that the circumstances from which the appellant's knowledge is inferred were insufficient to warrant that inference, and, therefore, we need not consider this point; the case has been argued on the hypothesis that the erection of the building commenced with the appellant's knowledge a year or two before the institution of this suit. The pleas recorded in the memorandum of special appeal are inaccurately drawn, but the contention of the appellant at the hearing was that her consent ought not to be inferred merely from her inaction, and that, inasmuch as she has brought her claim into Court within the term allowed by law for the institution of such claims, she is entitled to a decree. The rulings of the Sudder Court as to the effect of delay in the assertion of a right have been considerably modified or explained by more recent decisions of this Court, which have, however, we believe, escaped the observation of the reporter. We propose, therefore, in disposing of this case, to examine at somewhat greater length than

(1) S. D. A. R., N.-W. P., 2nd July, 1864. (2) S. D. A. R., N.-W. P., 29th January, 1864.

we should have otherwise thought it necessary to do the principle on which the rule of estoppel *in pais* appears to rest, and the circumstances to which it should be applied. This rule has been stated generally in the following terms :—" If a man by words or by conduct has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induced others to do that from which they might otherwise have abstained, he cannot question the legality of the act he had so sanctioned to the prejudice of those who have so given credit to his words, or to the fair inference to be drawn from his conduct." And again :—" If a party has an interest to prevent an act being done and acquiesces in it so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had it been done by his previous license."—*Cairncross* v. *Lorimer* (1).

Mr. Justice Story points out the principle on which the rule rests, and it is most important that the principle should be borne in mind in applying the rule :—

"This doctrine of estoppels *in pais*, or equitable estoppels, is based upon a fraudulent purpose, and a fraudulent result. If, therefore, the element of fraud is wanting, there is no estoppel. As if both parties were equally conusant of the facts, and the declaration, or silence, of the one party produced no change in the conduct of the other, he acting solely on his own judgment. There must be deception, and change of conduct in consequence, to estop the party from showing the truth."—(Story's Equity Jurisprudence, vol. ii, s. 1543). Of course by fraud the author must be understood to mean whatever amounts in law to fraud.

In *Ramsden* v. *Dyson* (2) Lord Chancellor Cranworth and Lord Wensleydale declared that if a stranger builds on the land of another supposing it to be his own, and the owner does not interfere, but leaves him to go on, equity considers it dishonest in the owner to remain passive and afterwards to interfere and take the profit. But

(1) 3 Macq. H. L. Cas. 829 ; 7 Jur., N. S. 149. (2) L. R., 1 H. L. 129 ; 21 Jur., N. S. 506 ; 14 W. R. 926.

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if a stranger builds on the land of another knowingly, there is no principle of equity which prevents the owner from insisting on having back his land, with all the additional value which the occupier has imprudently added to it; and Lord Wensleydale added that, if a tenant does the same thing, he cannot insist on refusing to give up the estate at the end of his term. *It was his own folly to build.*

These dicta of the highest authority illustrate the application of the general rule. There must be something more than a mere delay in instituting proceedings to deprive a man of his legal remedies. We are not, indeed, prepared to adopt without qualification an opinion thrown out by the High Court of Madras, "that the equitable doctrine of laches and acquiescence is not applicable to suits in the Mofussil for which a period of limitation is provided by the Limitation Act."—*Rama Rau* v. *Raja Rau* (1).

The rule as expounded by the authorities we have quoted is obviously founded on a highly equitable principle, and we see no reason why on fitting occasions it should not be applied in this country. No doubt a distinction must be made between those cases in which a suitor seeks some relief which, if he proves his case, the Court is bound to grant him, and the cases in which he seeks relief which the Court has discretion to grant or refuse. When a suitor has a right to demand relief, no doubt a stronger case must be made out against him than such mere tardiness in seeking a remedy which might justify a Court in refusing relief when it has a discretion to grant or refuse it. With this qualification we assent to the dictum of the Madras High Court in a case decided subsequently to *Rama Rau* v. *Raja Rau* (2) to the effect that "on the whole it may be taken as the law both of Courts of law and equity that mere laches, short of the period prescribed by the statute of limitation, is no bar whatever to the enforcement of a right absolutely vested in the plaintiffs at the period of suit."—*Peddamuthulaty* v. *N. Timma Reddy* (3); but where there is more than mere laches, where there is conduct or language inducing a reasonable belief that a right is foregone, the party who acts upon the belief so induced, and whose position is altered by this belief, is entitled in this country, as in other countries, to plead acquiescence, and the plea if sufficiently proved ought to be held a good answer to

(1) 2 Mad. H. C. R., at p. 116. (2) 2 Mad. H. C. R. 114. (3) 2 Mad. H. C. R., at p. 273.

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an action, although the plaintiff may have brought suit within the period prescribed by the law of limitation. In the case before us it has been found that the appellant, knowing that the respondent was building on her land, abstained from commencing proceedings for one or two years. The respondents have set up a title to the land which has been held to be manifestly false. They must have known they had no claim to it, and they could hardly have doubted it belonged to the zemindár. Had they thought it probable the zemindár would consent to their usurpation, they might have assured themselves on the point by applying to her before they expended a rupee on the land. Under the circumstances, we cannot hold that the delay in the institution of the suit is sufficient to deprive the appellant of her right to relief.

The appeal is decreed with costs, and so much of the decrees of the Courts below as dismissed the claim to the plot in question in this appeal are reversed, and the claim is decreed.

ORIGINAL CIVIL.

1875.
August 31.

(Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, and Mr. Justice Oldfield.)

CROSTHWAITE (PLAINTIFF) *v.* HAMILTON (DEFENDANT).

Principal and Surety—Clerk of the Small Cause Court—Bond for Performance of Duties of Office—Liability of Surety—Act XI. of 1865, ss. 45, 51—Small Cause Court Judge—Principal Sudder Ameen (Subordinate Judge)—Jurisdiction.

Held that, in permanently investing, under s. 51, Act XI. of 1865, the Judges of the Courts of Small Causes at Agra, Allahabad, and Benares, with the powers of a Principal Sudder Ameen (Subordinate Judge), the local Government did not exceed its power or contravene the law, although the occasional investiture of Small Cause Court Judges by name from time to time, with the powers of a Principal Sudder Ameen, may have been the mode of procedure contemplated by the legislature as the one likely to be ordinarily adopted. (*Mussumat Bijee Koer* v. *Rai Damodur Dass* (1) impugned.)

The defendant and J. W. C., Clerk of the Small Cause Court at Allahabad, entered into a bond to the Judge of the Small Cause Court, as well as to his successors in office, in a certain sum as security for the true and faithful performance by J. W.

(1) H. C. R., N. W. P., 1873, p. 55.