

which used to be rented, and which his father desires to dispose of in the way he considers most advisable.

I would decree the appeal and decree the claim, but, looking to the relationship subsisting between the parties, they should bear their own costs in all Courts.

TURNER, OFFG. C. J.—I concur in decreeing the appeal. Sons who are members of an undivided Hindú family acquire by birth an interest in the paternal as well as the ancestral estate, and are entitled in certain events to interfere to prevent waste or to enforce partition in the lifetime and without the consent of their father; but, while their interest is proprietary, it lacks the incident of dominion. “They have not independent dominion, although they have a proprietary right.”—Colebrooke’s Digest of Hindú Law, Bk. v, ch. vii, 433, vol. ii, p. 562, 3d ed.

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v.  
SHAM LAL.

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## APPELLATE CIVIL.

1875.  
August 26.

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

SIHUGAN CHAND (DEFENDANT) v. THE GOVERNMENT, NORTH-WESTERN PROVINCES (PLAINTIFF).\*

*Contract—Act IX. of 1872, s. 72—Liability of Person to whom Money is paid by Mistake.*

A treasury officer, under the imposition of a gross fraud, paid money to the defendant, who was the innocent agent of the person who contrived the fraud. In paying the money the treasury officer neglected no reasonable precaution, nor was he in any way guilty of carelessness.

Held that the defendant was bound to repay the money received by him, and that he could not defend himself by the plea that he had paid it to his principal: nor could the Court allow that the circumstance that the principal was himself a servant of the plaintiff, and in the course of his employment obtained facilities for committing the fraud, relieved the defendant from his liability.

THIS was a suit brought on behalf of the Government, North-Western Provinces, to recover Rs. 5,293-15-4, being an amount which the plaintiff by mistake paid to the defendant on his presenting to the officer in charge of the Civil Treasury in Dehra Dún, by

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\* Regular Appeal, No. 95 of 1874, from a decree of the Subordinate Judge of Dehra Dún, dated the 22nd June, 1874.

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the hand of his agent Manohar Misr, a forged certificate of requisition for an advance to the 1st Division, Bháwalpur Revenue Survey, which certificate was duly authenticated by the signature of the defendant.

It appeared that when the officers of the Survey were absent from the station at which the Treasury was located, they occasionally sent requisitions for the pay of establishment through bankers and their agents in order to obtain cash from the Treasury. One Kana Rám, a clerk in the office, being aware of the practice, on the 1st of October, 1872, called at the shop of the defendant, a banker residing at Landaur, and tendering a requisition and a letter to the defendant's gomáshá, requested him to obtain the amount mentioned in the requisition from the Dehra Dún Treasury. The gomáshá consented to do so, on payment of a small commission, to cover the cost of despatching a messenger and conveying back the money. The requisition was a most perfectly executed forgery. The letter was also a forgery and equally well executed. It purported to be addressed by Mr. Johnson, an officer of the Survey, to the Treasury Officer, and requested him to pay the amount entered in the requisition to the bearer. These documents the defendant sent by a servant to the Treasury Officer and duly received the money, which he credited in his books to Kana Rám, and subsequently paid over the whole amount to him, in five separate payments. The forgery having been discovered, the Government, North-Western Provinces, sued to recover from the defendant the amount paid to him by the Treasury Officer.

The first Court found that the money was paid under a twofold mistake of fact; the mistake of supposing that the requisition was a genuine document, and the mistaking of supposing that the defendant's servant was the bearer of a letter from Mr. Johnson, and that the money would be paid by the defendant to Mr. Johnson. It considered that, under the terms of the Indian Contract Act (Act IX. of 1872), it was unnecessary to inquire whether the Treasury Officer had been guilty of laches in making the payment, and found that, if the point was material, there was no proof of laches, and lastly, it held that the plea that the defendant had paid away the money was inapplicable. It, therefore, decreed the claim.

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On appeal the defendant urged that s. 72, Act IX. of 1872, was not applicable to the circumstances of the case; that the finding of the first Court that the Treasury Officer supposed that the defendant's servant was the bearer of the letter from Mr. Johnson was unsupported by any evidence; that the Treasury Officer and his subordinates did not exercise due care in the payment of the money to the defendant's servant, and it was inequitable to make the defendant liable for their carelessness; that the defendant, having paid over the money, in the ordinary course of business, to the person for whom it was realized from the Treasury, was not liable in equity for its repayment to the plaintiff; and that, as the defendant paid the money to Kána Rám, a public servant, in good faith, it was not equitable to hold him responsible for the misappropriation of a public servant.

Mr. Conlan, Pandit Bishambar Náth, and Munshi Hanwantárá Parshád for the appellant.

The Senior Government Pleader (Lala Jádá Parshád) for the respondent.

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

It appears to us that the pleas taken in appeal fail. The money was paid under a mistake, and, therefore, the provisions of the 72nd section apply. The Treasury Officer would certainly not have paid the money unless he had believed the requisition was duly signed and countersigned, and the signatures which he believed to be genuine are admitted to be false. He, therefore, paid the money under a mistake of fact. It is immaterial whether he believed the bearer of the requisition to be the messenger sent by Mr. Johnson or by the appellant; and, indeed, the circumstance that the messenger was the servant of a respectable native banker would have been calculated to disarm rather than excite suspicion. Looking to the course of business, we cannot find any ground for the contention that the Treasury Officer neglected any precaution he could reasonably have been expected to take, nor that he was in any way guilty of carelessness. The Officer was imposed on by a gross fraud, and paid the money to the appellant, who was the innocent agent of the

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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.

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## 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; *Peddumuthulaty 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.  
Mad. II. C. R. 270.

(2) 2 Mad. II. C. R. 114.

(3) 2

\* 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.