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fully, in order to ascertain what was the procedure the law required them to follow. We must set aside, as we do, the decree of the 13th November 1889, so far as it purports to be anything beyond an order for filing the award. We express no opinion on the merits of this case. The appeal is allowed on the one ground which we have considered. The other grounds, in the view which we take of this case do not at present arise. We remand the case under s. 562 of the Code of Civil Procedure to the Court of the Subordinate Judge, and direct him to dispose of the suit according to law. The costs of this appeal will be costs in the cause.

*Appeal decreed.*

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May 20.

*Before Sir John Elye, Kt., Chief Justice and Mr. Justice, Tyrrell.*

CHAND MAL AND ANOTHER (PLAINTIFFS) v. ANGAN LAL (DEFENDANT). \*

*Suit by purchaser of decree to recover money of deceased Judgment-debtor in the hands of his agent—Limitation—Act XV of 1877 (Limitation Act), sch. ii, No. 120.*

ne A P, having certain moneys lying at his credit in Calcutta, empowered A L to receive the same and hold them on his behalf. A P died at Moradabad, and subsequently to his death, the said moneys, which remained in the hands of A L, were attached by one of the creditors of A P in execution of a decree. The decree-holder sold his rights under the decree in respect of the moneys in the hands of A L to the plaintiffs, who sued to obtain the same from A L.

*Held* that the period of limitation applicable to such a suit was that prescribed by art. 120 of the second schedule of the Indian Limitation Act (Act XV of 1877).

*Gurudas Pyne v. Ram Narain Sahu* (I. L. R., 10 Cal. 860) referred to.

The facts of this case were as follows :--Narain Das, an ancestor of the plaintiffs, obtained a decree for a debt against Ajudhia Prasad, the elder brother of the defendant, on the 23rd July 1878, from the Court of the Judicial Assistant Commissioner, Peshawar, for Rs. 30,545-12-0. Nothing having been realised in respect of this decree, a certificate under s. 223 of the Code of Civil Procedure was obtained in 1881 for the execution of the decree in the district of Moradabad, of which Ajudhia Prasad was a resident, but it appears

\* First appeal No. 29 of 1890 from a decree of Babu Anant Ram, Subordinate Judge of Moradabad, dated the 9th January 1890.

that nothing was effected in pursuance of this certificate. Afterwards, on the 30th April 1884, another certificate was obtained from the Peshawar Court by one Damodar Das, as representative of the deceased decree-holder, Narain Das, and in pursuance of that certificate Chand Mal and Musammat Bhana Dai applied on the 20th August 1885 for execution of the decree in the Court of the Judge of Moradabad. They also applied for the transfer of the decree to the Court of the Subordinate Judge, and, Ajudhia Prasad having died on the 13th June 1883, for the substitution of his widow and minor sons as judgment-debtors. They further prayed that the amount of the debt to the extent of Rs. 9,635-4-9 might be recovered from Angan Lal, the brother of Ajudhia Prasad, he having received that money from the Commissariat Office at Calcutta as money due to Ajudhia Prasad. Notice was sent to Angan Lal, who objected. His objections were disallowed, and he thereupon filed a regular suit to get rid of his liability, alleging that the money in question had been paid over to Ajudhia Prasad. That suit was dismissed by the Court of first instance, but, in appeal the High Court reversed the decision of the Court below, on the ground that the proceedings taken by that Court against Angan Lal were without jurisdiction. The decree-holders in consequence attached the money in question in the hands of Angan Lal. Both Angan Lal and the widow of Ajudhia Prasad attempted to get rid of the attachment, but unsuccessfully. The plaintiffs in the present suit purchased the debt due by Angan Lal on the 17th December 1888 and sued in the Court of the Subordinate Judge of Moradabad to recover the same. The Subordinate Judge found that the suit was barred by limitation under art. 62 of the second schedule of the Limitation Act (XV of 1877). The plaintiffs thereupon appealed to the High Court.

Pandit *Sundar Lal* and Babu *Rajendra Nath*, for the appellants.

Munshi *Ram Prasad*, for the respondents.

EDGE, C. J., and TYRRELL, J.—The only question which we need consider is a question of limitation. Angan Lal received a large sum of money as special agent for that purpose of Ajudhia Prasad,

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his brother. The money was received on behalf of Ajudhia Prasad. The money was attached in the hands of Angan Lal by a judgment creditor of Ajudhia Prasad; the plaintiffs became the purchasers of the rights of that judgment-creditor and they sought in this suit to recover the money from Angan Lal. It was contended on behalf of Angan Lal that art. 62 of the second schedule of the Indian Limitation Act of 1877 applies. If that article did apply, the suit was barred by time. On the other hand, on behalf of the plaintiffs-appellants, it was contended that art. 120 of that schedule was the only article which applied. If that article applies, the suit was within time, inasmuch as the plaintiffs appear to us to be standing, *quâ* Angan Lal in the shoes of Ajudhia Prasad; we should have thought that the article of limitation, namely, art. 62, which would clearly have applied to a suit by Ajudhia Prasad, would also apply to the suit of the plaintiffs, but we have been referred on behalf of the plaintiffs to the case of *Gurudas Pyno v. Ram Narain Sahu* (1) as an authority to show that art. 62 would not apply here. In that case the plaintiff sought to recover money which had been received by the defendant for one Musammat Moti Dasi as the price of timber sold for her. The timber, in fact, was the timber of the plaintiff who had been wrongfully dispossessed by the husband of Musammat Moti Dasi. Then the defendant contended that art. 60 of the second schedule of the Limitation Act of 1871 applied.

That article is word for word the same as art. 62 of the second schedule of the present Act. Their Lordships held that as the defendant was, when selling the timber, acting as the agent of Musammat Moti Dasi, and as he received the money for her and not for the plaintiff, art. 60 of the second schedule of the Limitation Act of 1871 did not apply, and that the article which did apply was art. 118 of the schedule, which article corresponds with art. 120 of the second schedule of the present Act. When we regard the specific words used by their Lordships of the Privy Council in that case when explaining that art. 60 did not apply, and having regard to the fact that Angan Lal received the money for Ajudhia Prasad,

(1) I. L. R., 10 Cal. 860.

and not for the plaintiffs or the judgment-creditors whose interest they purchased, we are bound to decide that art. 120 of the second schedule of the Limitation Act of 1877 is the article which applies to this case and that the suit is consequently within time. The other issues have been found in the Court below in favor of the plaintiffs. Those findings have not been objected to by objections filed under the Code of Civil Procedure. We must consequently accept them, as we do. We accordingly decree the appeal with costs and pass a decree for the amount claimed by the plaintiffs, namely, Rs. 9,635-4-9 with 6 *per cent.* interest from the date of our decree and costs of both the Courts.

*Appeal decreed.*

*Before Mr. Justice Straight and Mr. Justice Knox.*

BALDEO SAHAI (DEFENDANT) *v.* BAIJ NATH (PLAINTIFF). \*

1891  
May 27.

*Act IV of 1882 (Transfer of Property Act) s.s. 52 and 82—Contribution—Lis pendens.*

Two properties, A and B, belonging to different owners, were mortgaged under a joint bond for the same debt. The mortgagee put his bond in suit, and having obtained a decree caused property A to be sold, the proceeds of which proved more than sufficient to satisfy the whole mortgage-debt. Before such sale, however, X had, in execution of a simple money-decree, acquired a share in property A. X accordingly sued for contribution from property B, in that, so far as his share in property A went, he had satisfied the mortgage-debt, and ultimately obtained a decree in his favor; but, during the pendency of that litigation, property B had been transferred to Y.

*Held* that Y must take the property subject to X's right to contribution from it in respect of the loss of his share in property A.

The facts of this case sufficiently appear from the judgment of Straight, J.

Mr. T. Conlan and Mr. Amir-ud-din, for the appellant.

Babu Jagindro Nath Chaudhri, for the respondent.

STRAIGHT, J.—It is unfortunate that the facts and dates relating to the circumstance out of which this litigation has arisen were

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\*Second Appeal No. 1562 of 1888 from a decree of Maulvi Muhammad Abdul Quaium, Subordinate Judge of Bareilly, dated the 27th March 1888, confirming a decree of Babu Ganga Prasad, Munsif, Bareilly, dated the 16th December 1887.