

able time, and that, not having done so, he must be taken to have countenanced the completion of the bargain with the vendee, and to have waived his right of pre-emption. The cases referred to by the learned pleader for the appellant are not strictly analogous, for in them the pre-emptor satisfied the requirements to which we have adverted above. It seems to us, therefore, that the conclusions arrived at by the Judge were well founded, and that this appeal must be dismissed.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Duthoit.

MUHAMMAD HABIBULLAH KHAN (DEFENDANT) v. SAFDAR HUSAIN KHAN (PLAINTIFF).*

Resulting trust—Suit against trustee for possession of share, and for account and recovery of profits—Act XV of 1877 (Limitation Act), s. 10, sch. ii, Nos. 62, 89, 120.

M and S purchased certain property jointly in 1865, and had equal interests in it till 1868, when M's interest was reduced to one-third. S paid the entire purchase-money in the first instance, and incurred expenses in conducting suits for possession of the property, and for registration of the deed, and ultimately obtained possession in 1869 or 1870, and took the profits from that date. M did not pay any part of the money up to 1870, and it was not till 1871 that the whole of his share of it was subscribed, and he paid little or nothing towards the expenses. Subsequently he sued S for possession of his share, to have an account taken of the profits, and to recover his share of them with future mesne profits and costs.

*Held that, under the above circumstances, there was a resulting trust in favour of the plaintiff, and the defendant became liable to account to him for his share; but inasmuch as there was no express trust, and the property did not become vested in trust for a specific purpose within the meaning of s. 10 of the Limitation Act, and the suit was not brought for the purpose of following such trust property in the hands of a trustee, within the meaning of the section, such suit was not one which, under s. 10, might not be barred by any length of time. *Bulwant Rao v. Puran Mal* (1) referred to.*

*Held also that No. 89 of schedule ii of the Limitation Act did not apply to the suit; and that No. 62 did not meet a claim like the present relating to an equitable claim against a trustee liable to account, in which the relief sought was to have an account taken of the trust property, and to recover what might be due. *Guru Dass Pyne v. Ram Narain Sahu* (2) referred to.*

Held also that No. 120 of schedule ii of the Limitation Act applied to the suit, as it was one for which no period of limitation was provided elsewhere in the schedule.

* First Appeal No. 57 of 1882, from a decree of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 27th February, 1882.

(1) I. L. R., 6 All. L. (2) L. R., 11 Ind. Ap. 59; I. L. R., 10 Cal. 360.

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THE plaintiff in this case sued for possession of a one half share of certain property which had been purchased jointly by himself and the defendant in 1865; to have an account taken of the profits; and to recover his share of them to the amount of Rs. 15,000, with future mesne profits and costs. The purchase-money was paid, in the first instance, by the defendant, with whom the property, from the time when possession of it was obtained in 1869 or 1870, remained, and who, according to the plaintiff, held the half share in trust for him. In 1877, when the plaintiff demanded an account and share of the profits, the defendant denied his right to more than one-third of the property. In 1880, the defendant refused to come to any arrangement. He alleged that the plaintiff had promised to pay his share of the purchase-money and of the expenses incurred in obtaining possession of the property, or, in default, to relinquish his claim, and that, having failed to make such payment, he had now forfeited the one-third share.

There were between the parties various issues of fact, to which it is not necessary to refer at length. The Court of first instance found that the parties had joined in making the purchase; that the plaintiff's share was originally one-half, but that he had relinquished a portion in 1863, his share being thus reduced to one third; that the defendant held this one-third share in trust for the plaintiff with a liability to account for it to him; that the plaintiff did not bind himself to relinquish the share upon failure to make certain payments; and that he was entitled to a third of the profits which the defendant had received.

One of the pleas set up by the defendant was that the claim was barred by limitation. The learned Judge was of opinion that the limitation applicable to the claim for account and profits was that provided by sch. ii., art. 120 of the Limitation Act, and that the suit being brought within six years from the accrual of the cause of action in 1880, when the defendant first denied the plaintiff's right to the one-third share, the plea of limitation failed.

On appeal to the High Court, it was contended for the defendant that the learned Judge was wrong in treating him as a trustee in respect of the property; that the limitation applicable to the case was not art. 120, but art. 62, or possibly art. 89; and that

the plaintiff could only claim profits for three years, and the claim had become barred.

Mr. *T. Conlan*, Mr. *G. T. Spankie*, *Munshi Hanuman Prasad* and *Shaikh Mehdi Hasan*, for the appellant.

Mr. *G. E. A. Ross*, *Pandit Bishambhar Nath*, the *Senior Government Pleader* (*Lala Juala Prasad*), and *Pandit Nand Lal*, for the respondent.

The Court (*OLDFIELD and DUTHOIT, JJ.*) delivered the following judgment:—

DUTHOIT J. (After stating the facts, continued:)—With regard to the appeal on behalf of defendant in respect of the character in which defendant held the property, it seems clear that the plaintiff and defendant joined in the purchase in 1865, and each had equal interests in the properties until 1868, when the plaintiff's interest was reduced to one-third. The defendant paid the entire purchase-money in the first instance, and incurred expenses in conducting suits for possession of the property, and for registration of the deed; and ultimately obtained possession in 1869 or 1870, and took the profits from that date. The plaintiff does not appear to have paid any part of the money up to 1870; he subsequently paid Rs. 3,500, and it was not till 1874 that the rest of his share of it was subscribed; and he seems to have paid little or nothing towards the expenses.

Under the above circumstances, there was a resulting trust in favour of the plaintiff, and the defendant became liable to account to the plaintiff for his share; but there was no express trust; the property did not become vested in trust for a specific purpose within the meaning of s. 10 of the Limitation Act, nor is this suit brought for the purpose of following such trust-property in the hands of a trustee within the meaning of the section. Their Lordships of the Privy Council have ruled that the section applies to suits for the purpose of recovering the property for the trusts in question, and that when property is used for some purpose other than the proper purpose of the trusts, it may be recovered, without any bar of time, from the hands of the persons indicated in the section.—*Bulwant Rao v. Puran Mal* (1). This suit is not

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therefore one which, under s. 10, may not be barred by any length of time.

The Judge has applied to it the limitation of art. 120, so far as it is a suit for account, and recovery of the money found to be due. On the other hand, it is contended for the defendant that either art. 89 or art. 62 of the Limitation Act (XV of 1877) is applicable.

In our opinion, the former article is not applicable, for no relation of principal and agent can be said to subsist between the plaintiff and the defendant, nor do we consider art. 62 to apply. That article refers to suits for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use, but it does not meet a suit like this relating to an equitable claim against a trustee liable to account, in which the relief sought is to have an account taken of the trust property and to recover what may be due. The form in which the suit is brought is not that of an action for money had and received for the plaintiff's use, and the latter class of suit would not afford a sufficient relief.

We may refer to the case of *Guru Doss Pyne v. Ram Narain Sahoo* (1) decided by the Privy Council on the 21st February, 1884, in support of the view of art. 62 which we take. The plaintiff in that case had obtained a decree for money against the widow of one Modhosadan as representing the latter, on account of the value of timber converted by Modhosadan to his use. Some property of Modhosadan's brother was attached, and the plaintiff instituted the suit to try his right to recover the amount of his decree by sale of the property, on the ground that Modhosadan's brother had misappropriated the proceeds of the sale of the timber. Their Lordships held that art. 60, Act IX of 1871, which corresponds to art. 62, Act XV of 1877, was inapplicable to the suit, which they observe was "to enforce an equitable claim on the part of the plaintiffs to follow the proceeds of their timber, and, finding them in the hands of the defendant, to make him responsible for the amount;" and they held that the suit came within art. 118, Act IX of 1871, which corresponds with art. 120, Act XV of 1877.

(1) L. R., 11 Ind. Ap. 59; I. L. R., 10 Cal. 860.

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In the same way, an equitable claim of the nature of the present will not fall under art. 62, but under art. 120 of the Limitation Act, and the Judge was right to apply that article, as the suit is one for which no period of limitation is provided elsewhere in the schedule.

[Other matters dealt with in the judgment are not material to the purposes of this report. The case was remanded to the lower Court for the determination of certain questions of fact.]

Cause remanded.

CRIMINAL REVISIONAL.

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July 22.

Before Mr. Justice Brodhurst.

QUEEN-EMPRESS v. DUNGAR SINGH AND ANOTHER.

Convictions of rioting and causing grievous hurt—Offences distinct—Separate sentences not illegal—Criminal Procedure Code, ss. 35, 235—Act VIII of 1882, s. 4—Act XLV of 1860 (Penal Code), ss. 147, 325.

The offences of rioting, of voluntarily causing hurt, and of voluntarily causing grievous hurt, each of the two latter offences being committed against a different person, are all distinct offences within the meaning of s. 35 of the Criminal Procedure Code.

Under the first paragraph of s. 235 of the Criminal Procedure Code, a person accused of rioting and of voluntarily causing grievous hurt may be charged with and tried for each offence at one trial, and, under s. 35, a separate sentence may be passed in respect of each. *Queen-Empress v. Ram Parlab* (1) dissented from.

The facts of this case are sufficiently stated in the judgment.

Mr. C. Dillon, for the applicants.

The *Public Prosecutor* (Mr. G. E. A. Ross), for the Crown.

BRODHURST, J.—In this case Dungar Singh, Churni Singh, and five other accused persons were tried by the Deputy Magistrate of Pilibhit for the offences of rioting and causing grievous hurt, punishable respectively under ss. 147 and 325 of the Indian Penal Code. Dungar, Churni, and one Nathu Khan were convicted and sentenced to six months rigorous imprisonment under s. 147, and were also convicted under s. 325, and were each sentenced to a further term of six months' rigorous imprisonment.

(1) I. L. R., 6 All. 121.

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