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the *laches* of the natural guardian in not paying the simple interest at 12 per cent. reserved under the mortgage, the interest, which on default became compound interest, with six-monthly rests, now amounts to the disproportionate sum of Rs. 945-3-0. If the Court finds that the whole or any part of the principal was borrowed for the benefit of the minor, then to that extent, on equitable considerations, the minor's estate ought to be held liable before he is equitably entitled to be relieved of the mortgage. The appeal is so far allowed. Costs here and hitherto will be costs in the cause.

Appeal decreed and cause remanded.

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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

SUNDAR LAL (PLAINTIFF) *v.* FAKIR CHAND (DEFENDANT).*

Benamidar—Realization by benamidar of money due on a bond in his name—Payment of such money to bonâ fide *transferee—Rights of beneficiary—Limitation—Act No. XV of* 1877 *(Indian Limitation Act) Schedule ii, Article* 62.

A benamidar realized upon a bond standing in his own name money to which other parties were beneficially entitled, and paid over the money so obtained in the course of a transaction apparently *bonâ fide* and not collusive to a third party who had no knowledge of the beneficiaries' interest therein.

Held on suit by one of the parties beneficially interested in the bond that his remedy against the benamidar having become barred by limitation, the plaintiff could not recover against the transferee who had taken *bonâ fide* in ignorance of the plaintiff's interest. *Thomson* v. *Clydesdale Bank, Limited,* (1) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Pandit *Moti Lal Nehru,* for the appellant.

Mr. *D. N. Banerji* (for whom Babu *Jogindro Nath Chaudhri),* for the respondent.

STANLEY, C. J., and BANERJI, J.—The circumstances out of which this appeal has arisen are the following. One Lalji Mal executed a bond in favour of Mahesh Das, defendant No. 1, to secure a sum of Rs. 17,000. It is alleged, and has been found,

* Second Appeal No. 1223 of 1900, from a decree of C. L. M. Eales, Esq., District Judge of Bareilly, dated the 28th of June 1900, confirming a decree of Babu Madho Das, Subordinate Judge of Bareilly, dated the 6th February 1900.

(1) L. R., 1898, A. C., 282.

that Mahesh Das was a mere *benamidar* in this transaction, and that the persons for whose benefit the bond was given were three in number, namely, the plaintiff Sundar Lal, Musammat Rup Dei, and Harnam Das. The shares in which they were respectively entitled to the amount of the bond were as follows:—Sundar Lal, Rs. 1,000; Musammat Rup Dei, Rs. 10,000, and Harnam Das, Rs. 6,000. Mahesh Das brought a suit on the bond and obtained a decree, and on foot of that decree he realized sums amounting in the aggregate to over Rs. 20,000. Harnam Das, one of the beneficiaries, died, leaving Mahesh Das, Fakir Chand and others as his heirs. Fakir Chand, after the death of Harnam Das, as manager and head of the family, brought a suit against Mahesh Das for recovery of the amounts received by him on foot of the bond, claiming that Harnam Das was beneficially entitled to all the moneys secured by it. A compromise decree was granted in that suit, whereby Mahesh Das agreed to hand over to Fakir Chand all the moneys that he had received on foot of the bond. It was arranged that the bond-debt should be treated as assets of Harnam Das; and in consideration of Mahesh Das relinquishing in favour of Fakir Chand his interest in certain immovable and other property of Harnam Das, Fakir Chand allowed Mahesh Das to retain out of the moneys recovered on foot of the bond a sum amounting to about Rs. 15,000 as representing his share of the assets of Harnam Das. Now it is not alleged in the present suit, and certainly has not been proved, that Fakir Chand had any knowledge that the plaintiff had any interest in this bond: throughout the proceedings he claimed that the bond-debt belonged to Harnam Das, and in this suit he denied that the plaintiff had any interest in it. After the date of the decree which was obtained by him, Fakir Chand recovered a further sum of Rs. 3,000 from the judgment-debtor Lalji Mal. This was on the 18th July, 1899. The present suit was brought by the plaintiff on the 22nd of September, 1899, for recovery of his share in the moneys so realized on foot of Lalji Mal's bond. The Subordinate Judge held that the plaintiff had established his title as beneficial owner in respect of Rs. 1,000 of the money secured by the bond; but he found that

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his claim was barred as against Mahesh Das under the provisions of article 62 of the second schedule to the Limitation Act. The moneys which were recovered by Mahesh Das were recovered on the following dates:—The 20th of March, 1890, the 20th of September, 1894, and the 28th of June, 1896. The suit was not brought until the 22nd of September, 1899, that is, more than three years after the last payment to Mahesh Das. Under schedule ii of the Limitation Act a *benamidar* (which Mahesh Das was) is not a trustee within the meaning of the Act. This being so the article of the Limitation Act which was applied to the case, *viz.*, art. 62, was the article which governed it. As regards the Rs. 3,000 which Fakir Chand had realized on the 18th of July, 1899, the Subordinate Judge gave the plaintiff a decree for his share, that is, a $\frac{1}{17}$th part of this amount. An appeal was preferred by the plaintiff from this decree on the ground that if the claim was barred as against Mahesh Das, it was not barred against Fakir Chand, who received, or must be deemed to have received, the money from Mahesh Das on the 17th of August, 1897, so that three years had not elapsed from the date of his receipt of the money until the institution of the suit. The contention on behalf of the appellant was, that the arrangement made between Mahesh Das and Fakir Chand was equivalent to a payment to Fakir Chand of the moneys realized by Mahesh Das on foot of the bond, and a repayment of part to Mahesh Das, and that Fakir Chand must be treated as having got possession of the whole of the moneys for the use of the parties, including the plaintiff, who were beneficially entitled to the amount of the bond. The lower appellate Court dismissed the plaintiff's appeal. Hence the present appeal to this Cour .

We think that Fakir Chand must be treated as if he had received the entire sum from Mahesh Das which Mahesh Das had realized on foot of his decree. But we fail to see how it can be successfully contended that he got any portion of this money for the use of the plaintiff, or that, under the circumstances of this case, the money which was in the hands of Mahesh Das can be followed into the hands of Fakir Chand. Fakir Chand recovered the money as assets of Harnam Das, and

treated it as assets of Harnam Das. There was no fiduciary relation or privity existing between him and the plaintiff, and no collusion whatever between him and Mahesh Das has been suggested. No doubt, if the plaintiff had in due course proceeded against Mahesh Das for his share, he could have established his right to it as against him, but he allowed his claim to be barred as against him by limitation. If Fakir Chand had known or had had reason to believe that the money secured by the bond belonged in part to the plaintiff, different considerations would arise from those which present themselves to us. But it does not appear that he had any such knowledge, and no collusion on his part, as we have said, or fraud, is alleged. Under such circumstances we are of opinion that the share of the plaintiff cannot be recovered from Fakir Chand. An instructive case, which appears to have a bearing upon the question before the Court, is that of *J. R. Thomson* v. *Clydesdale Bank, Limited*, (1). In that case the appellants, who held as trustees fifty shares in the Commercial Bank of Scotland, instructed a stock-broker in Edinburgh to sell the shares and deposit the proceeds in certain colonial banks in the names of the appellants. The shares were sold by the broker in the ordinary course of business, the dealing being between him and another member of the Stock Exchange, who knew him only in the transaction, and accordingly gave in payment for the shares in the ordinary way a cheque payable to the broker or order. This cheque was paid by the broker to the credit of his account with the respondent Bank. At the time when the cheque was paid in, the broker's account with the respondent Bank was overdrawn to an amount exceeding the amount so paid. The broker having become insolvent, the appellants claimed to be entitled to have the amount of the cheque repaid to them by the respondent Bank. The case came before the House of Lords on appeal from a judgment of the Court of Session in Scotland affirming the interlocutory order of the Lord Ordinary. In the course of his judgment Lord Herschell, L. C., commenting upon the argument that the bankers took with notice that the sum which they received was a sum of money not belonging to their debtor

(1) L. R., 1893, A. C., 282.

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personally, but which he held, or had received for other persons, and that having had this knowledge or notice, they could not retain it in discharge of Thomson's debt, observes:—"I cannot assent to the proposition that even if a person receiving money knows that such money has been received by the person paying it to him on account of other persons, that of itself is sufficient to prevent the payment being a good payment, and properly discharging the debt due to the person who receives the money. No doubt if the person receiving the money has reason to believe that the payment is being made in fraud of a third person, and that the person making the payment is handing over in discharge of his debt money which he has no right to hand over, then the person taking such payment would not be entitled to retain the money upon ordinary principles which I need not dwell upon." Further on he observes:—"It is obvious that the case of the appellants wholly fails, unless they bring home to the respondents much more than has been attempted here, namely, a knowledge that in the particular case the person was not justified in paying over the particular amount. Of course, if they prove that there was such knowledge on the part of the bankers, the bankers could not retain it." Lord Shand in the course of his judgment remarks:—"Where questions arise with third parties into whose hands the money can be traced, as in this instance, liability against them for recovery of the sum misapplied arises only where it can be shown directly, or as the reasonable inference from facts proved, that these parties were cognizant that the money was being wrongfully used, in violation of the agent's duty and obligation." These observations of their Lordships appear to us to be pertinent to the question before us. If Fakir Chand had knowledge or any ground for believing that the moneys realized by Mahesh Das belonged in part to the plaintiff, and so were being wrongfully applied by Mahesh Das in violation of his duty as *benamidar*, then, according to this ruling, Fakir Chand would have no answer to the plaintiff's claim; but in the absence of such knowledge, and having regard to the fact that he took over the moneys from Mahesh Das as assets of Harnam Das *bonâ fide* without any knowledge of the rights of the plaintiff, he cannot be held

accountable at the hands of the plaintiff. For these reasons the appeal, in our opinion, must fail and is dismissed with costs.

Appeal dismissed.

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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

FAKIR CHAND (PLAINTIFF) v. DAYA RAM AND OTHERS (DEFENDANTS).*

Act No. XV of 1877 *(Indian Limitation Act), schedule ii., articles* 64, 120—*Limitation—Suit against heirs of deceased debtor—Hindu law—Joint Hindu family.*

The plaintiff, on the 29th of August, 1898, sued to recover a sum alleged to be due on an account stated between himself and one Kashi Nath, since deceased, on the 15th of November, 1893. The contesting defendants were two sons of Kashi Nath and were sued as members of a joint Hindu family and as partners in the business carried on by Kashi Nath, and his third son, who did not defend the suit. It was found, however, that these defendants had separated from their father and brother before the date of the account sued upon, and that they were not partners in the business.

Held that the suit was governed as regards limitation by art. 64 of the second schedule to the Indian Limitation Act, 1877; that limitation, which had begun to run in favour of the deceased from the date of the account stated, continued running in favour of the heirs, and that in the absence of any valid agreement or part payment, such as would have the effect of extending the period of limitation, the suit was barred. *Narsingh Misra* v. *Lalji Misra* (1) distinguished. *Dagdusa Tilakchand* v. *Shamad* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Pandit *Sundar Lal*, for the appellant.

Pandit *Moti Lal Nehru* and Babu *Durga Charan Banerji*, for the respondents.

STANLEY, C. J., and BURKITT, J.—This is an appeal from a decree of the Subordinate Judge of Meerut in so far as it dismissed the plaintiff's claim as against the defendants Ram Prasad and Kanhaya Lal. The defendants are the three sons of one Kashi Nath, who died in the year 1894. From the evidence it appears that Kashi Nath and his sons, prior to the year 1877, formed a joint Hindu family. In that year Kashi Nath divided the joint family property between himself and his sons, and from that time forward he and his sons

* First Appeal No. 15 of 1900, from a decree of A. Rahman, Esq., Subordinate Judge of Meerut, dated the 8th day of November 1899.

(1) (1901) I. L. R., 23 All., 206. (2) (1884) I. L. R., 8 Bom., 542.