joint, and omitted to take into account the cumulative effect of all these documents.

In their Lordships' opinion, there is no hypothesis on which all the transactions of the thirty-eight years from 1861 to 1899 can be reconciled and made consistent but one, and that is, that the petition of 1861 was a genuine document, and that the agreement it embodies and in furtherance of which it was presented, was a real agreement. The plaintiff does not deny that money was paid by Dalip Singh to his mother, but says it was for maintenance. The receipts refute this. He does not deny that a compromise was made before the petition of 1861 was presented, but seeks to limit the extent of it. Their Lordships concur with the Subordinate Judge in thinking that the plaintiff acted upon the partition effected in 1861, that he took advantage of it, and never repudiated it during Dalip Singh's lifetime. He is, therefore, bound by it now.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court should be reversed with costs, and that the decree of the Subordinate Judge should be restored.

The respondent must pay the costs of this appeal.

Appeal allowed.

Solicitor for the appellant :—*Douglas Grant.*

J. V. W.

APPELLATE CIVIL.

1909
April 15.

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

RAO GIRRAJ SINGH AND OTHERS (DEFENDANTS) *v.* RANI RAGHUBIR KUNWAR (PLAINTIFF).*

Act No. XV of 1877 (*Indian Limitation Act*), *Schedule II, Articles* 57, 62, 89, *and* 120— *Limitation — Liability of agent's sons and grandsons— Compromise— Permission of Court—Code of Civil Procedure (Act No. XIV of* 1882), *section* 373— *Principal and Agent— Accounts — Cause of action.*

Where an agent from time to time withdrew money from the chest of his principal's estate and placed it in the chest of his own estate, doing so up to the day of his death, and there was no adjustment or settlement of accounts, *held*,

* First Appeal No. 130 of 1907 from a decree of Pitambar Joshi, Additional Subordinate Judge of Aligarh, dated the 17th of January 1907.

1909

RAO GIRRAJ SINGH v. RANI RAGHUBIR KUNWAR.

in a suit brought by the principal against the sons and grandsons of the agent, after his death, to recover the money so withdrawn, that the cause of action accrued after the death of the agent and the period of limitation was six years under article 120, schedule II of the Limitation Act. In a case like this the cause of action would not accrue so soon as any particular sum of money was transferred from one estate to the other, but the agent continued to hold the money as such under an obligation to render accounts when called upon and to pay any balance which might be found to be due. The sons and grandsons of such agent on his death would become liable to pay any such balance on the ground of their pious liability. Articles 57, 62 and 89 of schedule II of the Limitation Act do not apply to such a suit.

THE facts of this case are as follows :—

After the death of the plaintiff's husband on August 6th, 1879, her property was managed by her father Rao Umrao Singh who used to receive the whole income. Umrao Singh died on June 3rd, 1898, without accounting for the same. The plaintiff on May 23rd, 1901, sued her brothers for recovery of Rs. 3,09,067-11-1 which she claimed to be due to her from the estate of her father and brothers. This suit was compromised upon certain terms and a decree was passed on July 21st, 1902. Upon a violation of the terms of the compromise the plaintiff instituted this suit on March 31st, 1904, the claim being substantially the same as that made in 1901. The sons of the brothers were also impleaded as parties to this suit. The principal pleas raised by the defendants were that the suit was barred by the provisions of section 373, Act XIV of 1882, and by limitation.

The Subordinate Judge overruled both the pleas and held that article 120, Act XV of 1877, schedule II, applied to the case, and decreed the plaintiff's claim in part. The defendants appealed to the High Court.

Hon'ble Pandit *Sundar Lal* (with him Pandit *Moti Lal Nehru*, Dr. *Satish Chandra Banerji*, Dr. *Tej Bahadur Sapru* and Pandit *Baldev Ram Dave*), for the appellants.

The former suit was not withdrawn with liberty to bring a fresh suit but the claim was partly decreed. The compromise could create no fresh right of action. *Venkataramiah* v. *Ramakrishna* (1), *Niaz Ahmad* v. *Abdul Hamid* (2). Rao Umrao Singh had managed and received the income from his own estate as also his daughter's, and when necessary the moneys of

(1) (1906) I. L. R., 29 Mad., 205. (2) (1908) 5 A. L. J. R., 278.

one estate had been applied for the benefit of the other. But the moneys so applied had been generally shown as loans in the account-books, and to a claim to recover such loans article 57, schedule II, Limitation Act, applied. It was a matter of accident that as manager of one estate he advanced money to himself as manager of another estate, but a person may in law have a dual personality. Salmond's *Jurisprudence*, (2nd Ed), p. 281. *Bhagwati* v. *Banwari Lal* (1), Umrao Singh was his daughter's agent. Indian Contract Act, section 182, and article 89, Limitation Act, might apply, the agency having terminated with his death. *Lawless* v. *The Calcutta Landing and Shipping Co.*, (2), *Harender Kishore* v. *Administrator-General of Bengal* (3), *Asghar Ali* v. *Khurshed Ali* (4). In any case, the money claimed might be treated as money had and received and article 62 would apply. The cause of action against the son would accrue in the father's lifetime. *Narsingh Misra* v. *Lalji Misra* (5), *Mallesam Naidu* v. *Jugala Panda* (6). In no view of the matter, therefore, could article 120 apply. The case of *Bindraban Behari* v. *Jamuna Kunwar* (7), was not rightly decided inasmuch as the definition of "defendant" in section 3, Act XV of 1877, was overlooked.

Babu *Jogindra Nath Chaudhri* (with him *Messrs. B. E. O'Conor, Nehal Chand* and Munshi *Gulzari Lal*) for the respondent submitted that section 373, Civil Procedure Code, had no application. Paragraph 5 of the compromise provided for a right to sue for the money again and that provision having been embodied in the decree the Court must be deemed to have given the necessary permission. The decree gave the plaintiff the right to bring the suit and the defendants were stopped from raising this point. This was virtually a suit for accounts. What the plaintiff sought to recover was surplus lying in the hands of the agent after deducting necessary expenses of the estate, and not moneys received by the agent. Article 120, schedule II, Limitation Act, applied to the suit and not article 57 or 62 or 89. Umrao Singh was not authorized to lend money by the power of attorney

(1) (1908) I. L. R., 31 All., 82, 89, 99.
(2) (1881) I. L. R., 7 Calc., 627.
(3) (1885) I. L. R., 12 Calc., 357, 366.
(4) (1901) I. L. R., 24 All., 27, P. C.
(5) (1901) I. L. R., 23 All., 206.
(6) (1899) I. L. R., 23 Mad., 292.
(7) (1902) I. L. R., 25 All., 25.

1909

RAO GIBRAJ SINGH v. RANI RAGHUBIR KUNWAR.

which he held from the plaintiff. *Kalee Kishen* v. *Juggut Tara* (1). For moneys in the hands of an agent, it was not the date of the receipt thereof, but it was the date of the termination of the agency which gave the principal his starting point of limitation. *Lawless* v. *The Calcutta L. and S. Co.* (2). He referred to *Bindraban* v. *Jamuna Kunwar* (3), *Chand Mal* v. *Kalyan Mal* (4), and *Mohmed Riasat Ali* v. *Hasin Banu* (5), and submitted that the suit might be regarded as one for compensation for breach of contract, the violation of the compromise having given the plaintiff her cause of action.

Hon'ble Pandit *Sundar Lal* in reply :—The 11 W. R. case was decided under Act XIV of 1859, which did not contain any provisions corresponding to articles 62, 89 and 92 of Act XV of 1877. The fact of accumulation of money in the hands of the agent did not take the case out of article 62. In the Punjab case relied upon it was said that article 62 might apply to a case like this. Article 89 applied to a person who had ceased to be an agent at the date of suit. There were no assets of the father in a joint family governed by the *Mitakshara*. The suit therefore might be treated as one to enforce the pious obligation of Hindu sons and grandsons. *Jogindra Nath Roy* v. *Deb Nath Chatterjee* (6), was also referred to.

STANLEY, C. J. and BANERJI, J.—This appeal raises an important question under the Indian Limitation Act. The suit out of which it arises was instituted by the plaintiff respondent on the 31st of March, 1904, for the recovery of Rs. 3,52,180-2-5 alleged to have been due to her by her father Rao Umrao Singh at the time of his death in respect of the income of the plaintiff's estate, known as the Sahanpur estate, received by him under a power of attorney executed by the plaintiff in his favour. The plaintiff sought to recover this amount out of the family property known as the Kuchesar estate, which was owned and possessed by Rao Umrao Singh and his family.

The court below gave the plaintiff a decree for Rs. 2,17,840-4-2 with future interest from the 31st of March, 1904, up to the date

(1) (1868) 11 W. R., 76 : 2 B. L. R., 139.
(2) (1881) I. L. R., 7 Calc., 627, 631.
(3) (1902) I. L. R., 25 All., 55.
(4) (1886) P. R., No. 96.
(5) (1893) I. L. R., 21 Calc. 157, 163 P. C.
(6) (1903) 8 C. W. N., 113.

of realisation, to be recovered by attachment and sale of the property held jointly by Rao Umrao Singh and the defendants who are now owners of and in possession of the Kuchesar estate. From this decree the present appeal has been preferred.

The Sahanpur estate was owned by Khushal Singh, deceased. The plaintiff is the daughter of Rao Umrao Singh and the widow of Khushal Singh and upon the death of the latter became entitled to this estate. The defendants 1—4 are the sons and the defendant No. 5 is the grandson of Rao Umrao Singh and formed with him a joint Hindu family. Khushal Singh died on the 6th of August, 1879; and shortly after his death the plaintiff, who is a *pardanashin* lady, executed a power of attorney in favour of her father Rao Umrao Singh, authorizing him to manage the estate on her behalf. This power of attorney is dated the 10th of May, 1880, and by it the usual powers of management were conferred upon Rao Umrao Singh, including a right to collect the rents and profits of the villages forming the Sahanpur estate and also debts and, in case of necessity, to execute mortgages or sale-deeds. This document is No. 6 of the record. Another power of attorney was executed by the plaintiff respondent in favour of Rao Umrao Singh on the 15th of January, 1887, empowering him to register documents executed by him on behalf of the plaintiff respondent and realise moneys due to her. Formerly the Kuchesar estate included the Sahanpur and also the Bhadsona estates. A number of years ago it was divided into three *tappas* called respectively Kuchesar, Sahanpur and Bhadsona. Rao Umrao Singh and his family owned the *tappa* now called Kuchesar, while Khushal Singh owned Sahanpur. The remaining portion fell to the lot of Partap Singh. Acting under the power of attorney which we have mentioned above, Rao Umrao Singh managed the Sahanpur estate on behalf of the plaintiff from the year 1880 up to the 3rd of June, 1898, the date of his death. Two sets of accounts were kept by him, one for the Kuchesar and the other for the Sahanpur estate and each estate had its own money chest. After defraying the necessary expenses of the plaintiff's estate, there were large savings out of the income of that estate during the management of Rao Umrao Singh, and money was from time to time transferred by Umrao Singh from

1909

RAO GIRRAJ SINGH v. RANI RAGHUBIR KUNWAR.

the money chest of that estate to the money chest of the Kuchesar estate. There was no adjustment of the accounts between the plaintiff and Rao Umrao Singh during the lifetime of Rao Umrao Singh. After his death his son Rao Girraj Singh and the other defendants made over to the plaintiff's agents the accounts of the Sahanpur estate and on the basis of these accounts it was ascertained that during the management of Rao Umrao Singh a very large sum was due to the plaintiff in respect of the surplus income of the Sahanpur estate.

On the 23rd of May, 1901, Rani Raghubir Kunwar instituted a suit against Rao Girraj Singh and the defendants 2—4 for recovery of the amount so ascertained to be due in respect of the income received by Rao Umrao Singh on her behalf, over and above moneys paid to or applied on her behalf, and also for a sum of Rs. 8,379, representing the income of the Sahanpur estate, collected by the defendants after the death of Rao Umrao Singh. The defendants filed a defence to that suit and in their written statement alleged that Rani Raghubir Kunwar had in accordance with her husband's will adopted Indarjit Singh, son of Girraj Singh, and grandson of Rao Umrao Singh, and that in consequence of this adoption she had no right to maintain the suit. This suit was compromised on the 11th of July, 1902, and a decree was passed in the terms of the compromise on the 21st of July, 1902. According to the compromise the defendants withdrew their plea as to the adoption of Kunwar Indarjit Singh and the plaintiff withdrew her claim in respect of the amount alleged to be due to her for collections made by Rao Umrao Singh. The defendants admitted their liability for the amount received by them after Rao Umrao Singh's death, namely, a sum of Rs. 8,379-13, and it was agreed that a decree for this amount should be passed in the plaintiff's favour. It was further agreed that if any of the parties should deviate from the compromise the other party should not be bound by it; and that if the defendants or any of them should deviate from it, it should be deemed null and void and the plaintiff should "revert to her right to claim." The decree was drawn up in the terms of the compromise. But before this decree was passed it was arranged that Kunwar Indarjit Singh as also Jagjit Singh, the minor son

of Digbijai Singh, should be made parties to the suit so that they might be bound by the compromise and decree. An application for this purpose was made to the court and granted, and as appears from the judgment of the learned Subordinate Judge, the interests of all parties were carefully considered before the decree on the compromise was passed. The object of making Indarjit Singh a party to these proceedings was to quiet the title of Raghubir Kunwar.

Despite this decree, on the 8th of December, 1903, Kunwar Indarjit Singh under the guardianship of his maternal uncle Chaudhri Balbir Singh, instituted a suit against the plaintiff and Brijraj Saran Singh, whom she had in the meantime adopted, for a declaration that the plaintiff is the adopted son of Kunwar Khushal Singh and that the decree of the 21st of July 1902, is null and void against him and that the adoption of the defendant Brijraj Saran Singh was null and void, and for possession of the property of Khushal Singh. The bringing of this suit by Kunwar Indarjit Singh under the guardianship of his maternal uncle was an ill-disguised device to make it appear that his father Girraj Singh was not at the bottom of it. It is perfectly clear that Girraj Singh was the prime mover in the litigation. He supported his son's case and gave evidence in support of the adoption. This suit was dismissed on the 21st of December 1906, by the learned Additional Subordinate Judge of Aligarh, who decided after an exhaustive review of the evidence that the alleged adoption of Kunwar Indarjit Singh was not proved. From this decision an appeal, viz., F. A. No. 138 of 1907, was preferred which was heard by us and judgment therein was delivered to-day affirming the decision of the court below. The conclusion at which we arrived was that there was no foundation for the allegation that Indarjit Singh had been adopted by Rani Raghubir Kunwar.

In the appeal now before us the first ground of appeal which was pressed in argument is that the suit is barred by section 373 of the Code of Civil Procedure of 1882. The contention of the learned advocate for the appellants is that the plaintiff having abandoned her claim to recover the moneys received by Rao Umrao Singh on her behalf in the earlier suit of the 23rd of

1909

RAO GIRRAJ SINGH v. RANI RAGHUBIR KUNWAR.

May, 1901, without, as alleged, having obtained permission of the court to bring a fresh suit in respect thereof was precluded from bringing the suit. We are of opinion that there is no force in this contention. The suit of the 23rd of May 1901, was compromised, and it was one of the terms of the compromise that if any of the parties should deviate from the compromise, the compromise should be deemed null and void and that the plaintiff should in that event "revert to her right to claim," that is, to prosecute a suit for recovery of the amount alleged to be due to her. A decree was passed, as we have said, in the terms of the compromise embodying the provision of it in regard to the right of the plaintiff to sue in the event of the compromise not being observed. It appears to us, therefore, that it cannot be successfully contended that the plaintiff in the events which have happened was not at liberty to bring a fresh suit. It was intended by the compromise that the question of the adoption of Indarjit Singh should be set at rest and it was on the express understanding that his alleged adoption would not be set up that the plaintiff withdrew her claim in respect of the moneys received by Rao Umrao Singh on her behalf. Despite this compromise and decree Indarjit Singh supported by his father Girraj Singh again set up the alleged adoption and so deviated from the compromise, and thereupon the plaintiff was relegated to her rights as they stood at the date of the compromise. It would be obviously inequitable if under the circumstances the plaintiff could not maintain her suit. Further, having regard to the terms of the decree it may we think properly be regarded as equivalent to an order granting leave to the plaintiff to withdraw from the suit with liberty to bring a fresh suit.

The next question raised by the learned advocate for the appellants is that the suit is barred by limitation. A commission was issued by the court for the examination of the accounts kept by Rao Umrao Singh and a Pleader of the court was appointed Commissioner. He was directed to submit a report with reference to the *wazkhams* (day-books) of the estate as to how much money was debited to the Kuchesar estate in the day-books of the Sahanpur estate. He found that a sum of Rs. 3,71,591-6-6 were so debited between the period from the 14th

of February, 1883, to the 17th of May, 1898. The various items so debited are entered as "parol debts debited to the Kuchesar estate." Rao Umrao Singh appears to have withdrawn money from time to time from the chest of the Sahanpur estate and placed it in the chest of the Kuchesar estate and this he did up to the date of his death. There was no adjustment or settlement of accounts during all these years between him and the plaintiff. Mr. *Sundar Lal* on behalf of the defendants-appellants contends that the article of limitation applicable to the case is either article 57 or article 62 of Schedule II to the Limitation Act, 1877, and that under either of these articles the entire claim is barred, the suit not having been brought within three years from the date when the money was either lent by the plaintiff to Rao Umrao Singh, or received by Rao Umrao Singh for her use. Article 89 was also relied on as barring the suit on the assumption that it can be treated as a suit by a principal against his agent for movable property received by the agent and not accounted for.

On the part of the plaintiff-respondent the contention is that article 120 is the article applicable to the case and that the plaintiff had six years from the date of the death of Rao Umrao Singh within which to bring the suit; that the right to sue the defendants only accrued on the death of Rao Umrao Singh.

It appears to us that article 57 is not applicable. There is no evidence of any loan having been made by the plaintiff to Rao Umrao Singh. Rao Umrao Singh as the Manager of the plaintiff's estate, collected the rents for her and placed the money either in the chest of the Sahanpur estate or in that of the Kuchesar estate debiting the Kuchesar estate with any sums belonging to the Sahanpur estate which were so placed in the chest of the Kuchesar estate. There is no evidence that the plaintiff ever agreed to lend the money to her father. He simply retained her money in his hands.

Article 62 we think has equally no application. The suit is not one on the common *indebitatus* count for money received by the defendants for the use of the plaintiff, but is one for money which the plaintiff seeks to follow in the hands of the defendants as owners of the Kuchesar estate. The money was

1909

RAO GIRRAJ SINGH v. RANI RAGHUBIR KUNWAR.

placed in the coffers of the Kuchesar estate by Rao Umrao Singh and the defendants as owners of that estate had the benefit of it. It is in the nature of an equitable claim.

It is not also in our judgment a suit coming within article 89 inasmuch as the defendants are not and never were the agents of the plaintiff. The article which is applicable to the case is we think article 120. The case stands thus:—Umrao Singh as agent or manager for the plaintiff collected the rents and profits of the Sahanpur estate which were payable to her. He made payments to her from time to time on account and defrayed on her behalf the outgoings and expenses of management. He withdrew from the Sahanpur chest and transferred to the Kuchesar chest whatever sums he required from time to time and treated the sums so withdrawn as advances made to the Kuchesar estate for which he was liable to account. There was in fact a running account between the two estates and this account was never adjusted. In circumstances such as these a cause of action would not accrue so soon as any particular sum was transferred from the Sahanpur estate to the Kuchesar, money chest. Rao Umrao Singh continued to keep the money so transferred as agent for the plaintiff and as such agent remained under an obligation to render an account of his agency when called upon to do so and to pay any balance which might be found to be due on the taking of such account. He was not called upon to account and there was no adjustment of the accounts during his lifetime. The defendants, his sons and grandsons, on his death became liable to pay the balance which from the accounts might be found to be due to the plaintiff, under their pious obligation to satisfy Rao Umro Singh's debts, if for no other reason, to the extent of any joint family property in their hands. The cause of action against them accrued, we think, on the death of Rao Umrao Singh and not before, and article 120 is, we think, applicable and the suit having been brought within six years from the date of the death of Rao Umrao Singh it is not barred by limitation. Apart from their pious obligation to pay their father's debts the defendants as owners of the Kuchesar estate were benefited to the extent of the moneys transferred by Rao Umrao Singh, the head of the family, to the chest of that estate from the chest of the Sahanpur

estate, and in this view also they are liable in equity to make good out of the Kuchesar estate the amount so appropriated to that estate by Rao Umrao Singh out of the rents and profits belonging to the plaintiff.

The case of *Seth Chand Mal* v. *Kalyan Mal* (1), lends support to this view. In that case the plaintiff sued the defendant who was the son of the plaintiff's deceased agent, and who was in possession of the property of the deceased agent for an account of his property for which the agent was accountable and he prayed that an account might be taken of the amount recoverable by him and a decree might be passed in his favour. It was held by PLOWDEN and BURNEY, JJ., that the plaintiff was entitled to have the account taken and a decree passed for any sum which might be found to be due by the agent at the time of his death. It was held that the suit having been brought within three years from the date of the agent's death was within time whether it was governed by article 62 or article 120 of Schedule II of the Limitation Act and that article 89 had no application. It was not necessary to decide in this case whether article 62 or article 120 was applicable.

The case of *Kalee Kishen Pal Chowdhry* v. *Srimati Juggat-Tara* (2), also supports our view. In that case the representatives of a *gomashta* who had for the last four years of his life taken the money of his employers in advance for the purposes of his business, were sued for the balance of account of such moneys after giving credit for the amount of the *gomashta's* annual salary. It was held that the suit being brought within six years from the date of the *gomashta's* death, was not barred by the provisions of Act XIV of 1859. Both the lower courts in that case had held that clause 16, section 1, of Act XIV of 1859, which corresponds with article 120 of Act XV of 1877, was applicable to the suit and that on the date of its institution the moneys overdrawn were barred by lapse of time. In appeal under section 15 of the Letters Patent this ruling was reversed. In delivering the judgment of the Court, PEACOCK, C. J., observed: "In such a case the cause of action would not accrue immediately the money was advanced. There would be an

(1) (1886) P. R. No. 96. (2) (1868) 2 B. L. R., 139.

1909

RAO GIRRAJ SINGH v. RANI RAGHUBIR KUNWAR.

obligation on the agent to render an account of his agency, and to account for the moneys in question. In using the word 'account,' I use it in its legal sense as not confined merely to rendering an account of what he has done with the money, but as including the payment of any balance which might be found due from him upon taking of the accounts. The agent died before he was requested to account for, or to render an account of the moneys; and then I apprehend a cause of action accrued against his representatives, so far as they had assets, to repay to the principal any balance which upon the adjustment of the accounts might appear due from the agent. It appears to me therefore that the period of six years must be computed not from the time when the agent drew the moneys but from the time of his death."

The case of *Gurudas Pyne* v. *Ram Narain Sahu* (1), also lends support to the view which we have above expressed. The question raised in that appeal related to the law of limitation under Act IX of 1871, the suit being one for the proceeds of the sale of timber wrongfully converted by a deceased person against whom a decree had been obtained for such wrongful conversion, such proceeds being in the hands of the defendant who held them as agent for the representative of the deceased. It was held that neither article 48 of schedule II of the Act in question which fixed the limitation of three years for suits for moveable property acquired by dishonest misappropriation or conversion, nor article 60 of the same schedule, corresponding to article 62 of Act XV of 1877, which fixed a limitation of three years for suits for money payable by the defendant to the plaintiff for money received for the plaintiff's use was applicable, but that as a suit for which no period of limitation was provided elsewhere, it fell within article 118 of the same schedule which corresponds with article 120 of the Act of 1877. Sir BARNES PEACOCK in delivering the judgment of the Privy Council observed: "There was no dishonest misappropriation or conversion. The defendant sold the timber on account of his brother; he held the proceeds on account of the widow, and there was no dishonest misappropriation, although the plaintiffs had a right, on finding

(1) (1884) I. L. R., 10 Cal., 860, P. C.

the money in his hands, to attach it and make him responsible to them." Later on he observes: "The suit is 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 defendants to make him responsible for the amount. That does not fall either within article 60 or article 48, but comes within article 118, as "a suit for which no period of limitation is provided elsewhere in this schedule, and for suits of that nature a period of six years is the limitation." We should also refer to the case of *Bindraban Behari* v. *Jamna Kunwar* (1), in which it was held that a suit to recover from the son of a deceased pleader as representative of his father money which had been received by the pleader in his professional capacity on behalf of his client was governed as regards limitation by Article 120.

For the foregoing reasons we are of opinion that the plaintiff's suit is not barred by limitation.

One other objection to the decree was this that four sums of Rs. 8,804, Rs. 2,000 Rs. 4,050, and Rs. 12,000 were allowed by the court below to the plaintiff though these sums were it is said not claimed by her in her plaint. We do not think that there is any substance in this objection. The plaintiff claimed in her plaint Rs. 3,52,180-2-5 and a sum of Rs. 2,17,840-4-2 (which includes interest) only was decreed to her. The Commissioner in his report did not give credit to the plaintiff for these sums, no doubt because they were not entered in the account books as debited to the Kuchesar estate. Of the items which make up the sum of Rs. 8,804, the first appears in the account as having been used for indigo business; the second item of Rs. 2,000 as a loan to deposit account; the third of Rs. 4,050 as given for the purchase of horses, and the fourth Rs. 12,000 "as taken to Meerut for the Muhiuddinpur case debited to the Sirkar." The court below we think rightly allowed these sums finding that they were spent upon or applied for the purposes of the Kuchesar estate and not for the Sahanpur estate. Full credit was given to the defendants for all sums which were applied for the plaintiff or her estate in the sum of Rs. 1,18,959-7-1 which was deducted

(1) (1902) L. R., 25 All., 55.

1909

RAO GIRRAJ SINGH v. RANI RAGHUBIR KUNWAR.

from her claim. We think therefore that the court below rightly allowed these 4 items.

The only other question pressed before us in argument by the appellants' learned advocate is concerned with interest. The court below allowed interest on the amount decreed from the 21st of July 1902, up to the 31st of March 1904, that is from the date of the decree in the earlier suit up to the date of the institution of the present suit and also future interest. The appellants contend that the court below should not have awarded interest for the period during which the appellants abided by the compromise. We think under the circumstances that the plaintiff is entitled to interest for the period in question. According to the compromise she was relegated to her original rights, upon the refusal of Indarjit Singh to abide by the terms of the compromise and there is no reason why interest on the sum found to be due to her should not be allowed. This disposes of the only questions pressed before us in the appeal.

An objection was filed by the plaintiff-respondent under section 561 of the Code of Civil Procedure of 1882, in respect of an item of Rs. 65,913-15-3 and other matters, but the objection has been pressed in respect of the item of Rs. 65,913-15-3 only. By an oversight the court below gave credit twice for this amount to the Kuchesar estate. In the last sentence of the judgment at page 23 of the paper-book the balance found to be due to the plaintiff is Rs. 1,97,456-4-2. In ascertaining this amount the sum of Rs. 65,913-15-3 as also other sums are deducted, but on turning to the account of the Commissioner (No. 5 of the record) it will be found that this sum had already been credited to the Kuchesar estate, under date the 25th of July, 1898. The learned advocate for the appellants admits that this is so. Consequently the objection of the plaintiff-respondent in this respect will be allowed.

The result is that we dismiss the appeal with costs. We allow the objection in part and give a decree to the plaintiff-respondent for Rs. 65,913-15-3 in addition to the sum decreed to her by the court below. This sum will carry interest at the rate

of 6 per cent. per annum from the 21st of July, 1902. The costs of this objection will be paid and received by the parties in proportion to failure and success.

Appeal dismissed.

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

1909, *April* 20.

MOTI LAL (PLAINTIFF) *v.* BHAGWAN DAS AND OTHERS (DEFENDANTS).*

Sale—Purchase money partly paid—Vendor's lien—Right of vendor's decree-holders to bring the property to sale in execution as his judgment debtor's property.

Where on a sale part of the sale consideration remains unpaid, the vendor has a lien on the property sold for the unpaid purchase money. But this does not entitle any decree-holder of the vendor to bring the property to sale in execution of his decree as property of his judgment-debtor. He may attach the unpaid portion of the purchase-money which is due to his judgment-debtor and enforce his lien on the property but he cannot cause the property purchased by a third party to be sold for the recovery of the unpaid purchase-money to which he, as decree-holder, is not entitled.

THE facts of the case will appear from the judgment.

Babu *Benod Behari*, for the appellant.

No one appeared for the respondents.

STANLEY, C. J., and BANERJI, J.—The respondent Bhagwan Das obtained a money decree against Shiam Lal, Mulchand, Sardar Singh and Puran Chand and in execution of that decree caused a house to be attached. That house had been sold to the plaintiff by the guardian of the minors, judgment-debtors, on the 9th of June 1904. The suit out of which this appeal has arisen was brought by the purchaser Moti Lal for a declaration that the house in question was not liable to sale in execution of the decree held by Bhagwan Das against his judgment-debtors. The court of first instance found that the sale in favour of the plaintiff was a real transaction but that Rs. 417 out of the consideration remained unpaid and therefore the vendors had a lien on the house for the aforesaid amount of purchase money. It made a decree declaring the sale to be genuine but it further declared that the decree-holder was entitled to realise Rs. 417, the unpaid purchase money by sale of the house. This decree has been affirmed by the lower appellate court. The plaintiff

* Second Appeal No. 1108 of 1907 from a decree of C. Rustomji, Additional District Judge of Agra, dated the 4th of May 1907 confirming a decree of Chhaju Mal M.A., Subordinate Judge of Agra, dated the 2nd of January 1906.