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wife of the complainant crying out that a thief was taking away her *hansli* it was for the accused to prove that his intention was an innocent one and in that case I referred to a previous case of *Brij Basi* v. *The Queen-Empress* (1) which I distinguished from the case before me. I see no reason to depart from what I then laid down.

The learned vakil for the applicant drew my attention to another case of *Premanundo Shaha* v. *Brindabun Chung* (2). In that case the learned Judges delivered themselves of certain observations which were *obiter dicta* which otherwise went to support the contention set up by the vakil. To my mind to hold that if a stranger is found inside a *zenana* at 2 in the morning he can escape from the consequences of his act by saying that he came there at the bidding of the wife or other inmate would be a most dangerous doctrine and the act is deserving of severe punishment.

This brings me to the third point raised in this application, i.e., that the sentence of six months is unduly severe. I am not prepared to accede to this. The result is that I find the accused guilty under section 456 of the Indian Penal Code but I do not interfere with the sentence passed. The accused is said to be on bail; he will surrender to his bail and complete his sentence.

Application dismissed.

FULL BENCH.

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April 9.

Before Sir Henry Richards, Knight, Chief Justice, Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.

GAYA DIN AND OTHERS (PLAINTIFFS) *v.* JHUMMAN LAL AND OTHERS (DEFENDANTS).*

Act No. IX of 1908 *(Indian Limitation Act), schedule I, article* 132—*Limitation—Suit to enforce payment of money charged upon immoveable property—Instalment bond—Meaning of "becomes due."*

A mortgage deed executed on the 16th July, 1890, provided that the mortgagors pay the principal amount secured in ten years by instalments of Rs. 625 yearly and that interest should be paid monthly. There was this further clause:—"If we fail to pay the interest aforesaid in any month, on the principal by the stipulated period, as specified above, or no payment is made

* First Appeal No. 223 of 1913, from a decree of Shekhar Nath Banerji, Subordinate Judge of Mainpuri, dated the 27th March, 1913.

(1) (1896) I. L. R., 19 All., 74. (2) (1895) I. L. R., 22 Calc., 994.

in a year, the mortgagee shall under all those circumstances be at liberty to realize the entire amount with the interest aforesaid in a lump sum through the court by means of a suit from the mortgaged and other moveable and immoveable property and the person of us the executants." There was also this further provision :—"If the mortgagee in order to get interest, does not bring a suit in default of any instalment and we are unable to pay the money, the interest should continue up to the stipulated period of ten years and after it up to the date of realization." No payment was ever made of either principal or interest and the mortgagees ultimately brought a suit on the mortgage on the 12th June, 1912.

Held by *Richards, C. J.*, and *Tudball, J. (Banerji, J. dissenting)* that the suit was barred under article 132 of schedule I to the Indian Limitation Act, 1908, the mortgage money having become due when the first default was made. *Vasudeva Mudaliar* v. *Srinivasa Pillai* (1), *Reeves* v. *Butcher* (2), *Sitab Chand Nahar* v. *Hyder Malla* (3) and *Perumal Ayyan* v. *Alagirisami Bhagavathar* (4) referred to.

Nettakaruppa Goundan v. *Kumara Sami Goundon* (5), *Maharaja of Benares* v. *Nand Ram* (6), *Shankar Prasad* v. *Jalpa Prasad* (7), *Ajudhia* v. *Kunjal* (8) and *Jineswar Das* v. *Mahabeer Singh* (9) distinguished.

Per BANERJI, J.—Having regard to the second of the provisions above cited the suit was not barred by limitation. Where a creditor is authorized to wait for the full period stipulated for repayment, the money does not become due, within the meaning of article 132 of the first schedule to the Indian Limitation Act, 1908, until that period expires.

THE facts of this case were as follows :—

Three persons Lekraj, Kalyan Das and Jhammanlal executed a simple mortgage of the property in suit in favour of the ancestor of the plaintiffs on the 16th July, 1890. Rs. 6,373 were alleged to have been advanced and the condition for repayment was as below :—

"It is convenanted that we shall pay the said amount of principal in ten years, i.e. we shall pay Rs. 625 yearly and we shall pay the interest on the said amount monthly at the rate of eight annas per month. If we fail to pay the interest aforesaid in any month or the principal by the end of the stipulated period as specified above, or no payment is made in a year, the mortgagee shall, under all those circumstances, be at liberty to realize the entire amount with the interest aforesaid in a lump sum. . . . If the mortgagee, in order to get interest, does not bring a suit in default of payment of any instalment and we be unable to pay the money, the interest should continue up to the stipulated period of ten years and also up to the date of realization."

(1) (1907) I. L. R., 30 Mad., 426.
(2) (1891) 2 Q. B. D., 509.
(3) (1896) I. L. R., 24 Calc., 281.
(4) (1896) I. L. R., 20 Mad., 245.
(5) (1898) I. L. R., 22 Mad., 20.
(6) (1907) I. L. R., 29 All., 431.
(7) (1894) I. L. R., 16 All., 371.
(8) (1908) I. L. R., 30 All., 123.
(9) (1875) I. L. R., 1 Calc., 163.

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No payment was made by the mortgagors. The present suit was brought on the 12th June, 1912, against the representatives of the first two mortgagors, Lekhraj and Kalyan Das, and the third mortgagor, Jhammanlal. The defence, *inter alia*, was that the suit was barred by limitation. The Subordinate Judge holding that the cause of action arose on the date of non-payment of the first instalment dismissed the suit. The plaintiffs appealed to the High Court.

Mr. *Muhammad Ishaq Khan* (with him the Hon'ble Mr. *Abdul Raoof*), for the appellants:—

The question is one of construction. The stipulation was for payment by instalments, and in case no instalments were paid, the payment of the entire amount of the bond in a lump sum. The case, therefore, comes under the provisions of Article 75 of the Limitation Act. If the instalment was not paid and no suit was brought the condition of recovering the entire amount was waived. The creditors had an option to sue on the date of first default but they were not bound to sue. The article applicable to a mortgage suit is 132, but for an instalment bond the principle of article 75 also would apply. The plaintiffs could have sued if they had chosen to do so, but they could also waive their right, which they did. The limitation began to run against them on the date when the last instalment became overdue. The whole money became payable on the expiry of ten years. *Juneswar Das* v. *Mahabeer Singh* (1), *Maharaja of Benares v. Nand Ram* (2), *Ajudhia* v. *Kunjal* (3), *Ramnath* v. *Musammat Jio* (4), *Amolak Chand v. Baij Nath* (5), *Ganesh Rai v. Har Dayal* (6).

The Hon'ble Dr. *Sunderlal* (with him Mr. *B. E. O'Conor*, Dr. *Satish Chandra Banerji*, the Hon'ble Munshi *Gokul Prasad*, Babu *Sital Prasad Ghose* and *Pandit Lakshman Rao Dube*), for the respondents:—

Article 132 applies to this case; this has been settled by the recent Privy Council case in *Vasudeva Mudaliar* v. *Srinivasa Pillai* (7). The whole question is when did the money

(1) (1875) I. L. R., 1 Calc., 163.
(2) (1907) I. L. R., 29 All., 431.
(3) (1908) I. L. R., 30 All., 123.
(4) (1880) P. R., 101.
(5) (1913) I. L. R., 35 All., 455.
(6) Weekly Notes, 1881, p. 129.
(7) (1907) I. L. R., 30 Mad., 426.

sued for become due within the meaning of these words as used in the said article. The test of the case is when could the plaintiffs sue for the money. Under the terms of the bond the mortgagee is entitled to sue for the entire amount on the non-payment of any instalment. If he could, the money has then become due within the meaning of these words. The option not to sue, although the whole money had become due, is perfectly immaterial *Sheo Narain* v. *Ramdin* (1), *Perumal Ayyan* v. *Alagirisami Bhagavathar* (2), *Sitab Chand Nahar* v. *Hydar Malla* (3). The last is a very strong case. The words used were "may sue at his pleasure" and yet it was held that the creditor was bound to sue. The money here became due when the first instalment was not paid and in spite of the fact that the creditor did not sue it remained due. Money becoming due does not depend upon the creditor's option. The rule of law in England is laid down in *Reeves* v. *Butcher* (4) and *Hemp* v. *Garland* (5) where it was said that "if the creditor chose to wait till all the instalments become due, no doubt he might do so; but that which was optional on the part of the plaintiff would not affect the right of defendant, who might well consider the action as accruing from the time that the plaintiff had a right to maintain it." This rule of law has never been doubted in England; Darby and Bosanquet (2 Ed.) p. 27. Banning on Limitation (3rd Ed.) p. 31, note 7. No question of waiver was ever raised in the court below and no payment having been made the question does not arise.

Mr. *Muhammad Ishaq Khan* was heard in reply.

BANERJI, J.—The only question, in this appeal, is whether the plaintiffs' claim, which is one to enforce payment of the amount due on a simple mortgage by sale of the mortgaged property, is barred by limitation. The mortgage bond is dated the 16th of July, 1890, and the time fixed for repayment is ten years. Except for another provision in the bond, to which I shall presently refer, the amount secured by it was repayable on the 16th July, 1900, and as the present suit was instituted on the 12th June, 1912, it would be within time under article 132 Schedule I to the

(1) (1911) 14 O. C., 129 at 133.
(2) (1896) I. L. R., 20 Mad., 245.
(3) (1896) I. L. R., 24 Calc., 281.
(4) (1891) 2 Q. B. D., 509.
(5) (1842) 62 R. R., 423 at 426.

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Limitation Act, which has been held by their Lordships of the Privy Council to be applicable to a suit of this kind. The defendants, however, rely on the following provision of the bond and urge that the amount of the mortgage became due when default was made in the payment of the first instalment and as more than twelve years have elapsed since the date of default the claim is time-barred. The provision is this:—"We shall pay Rs. 625 yearly and we shall pay the interest on the said amount monthly at the rate of 8 annas per month. If we fail to pay the interest aforesaid in any month, or the principal by the end of the stipulated period, as specified above, or no payment is made in a year, the mortgagee shall, under all these circumstances, be at liberty to realize the entire amount with the interest aforesaid in a lump sum, through court, by means of a suit, from the mortgaged and other moveable and immoveable property and the persons of us the executants." Had this clause stood alone it might perhaps be said, on the authority of the English and other cases cited on behalf of the respondents, that the plaintiffs were bound to sue when default was first made in the payment of the instalment fixed in the bond. The document, however, goes on to provide that "if the mortgagees in order to get interest, do not bring a suit in default of payment of any instalment and we be unable to pay the money, the interest should continue up to the stipulated period of ten years and also after it up to date of realization." This clause, in my opinion, means that the mortgagee is competent to wait for the full period of ten years stipulated in the bond and it is not obligatory on him to call in the money on the occurrence of a default in the payment of the instalments. The bond, in its earlier provisions, made the mortgaged property security both for principal and interest and this clause would be wholly unnecessary and redundant if the meaning of it was only to make the property security for interest or to provide for payment of interest. It says nothing about the security and it, in my opinion, clearly intends that the mortgagee might, if he so chose, wait for the full term of ten years and if he did so, interest would run till date of actual payment. This provision in the bond gives full power to the mortgagee not to enforce his right to claim the entire amount of the mortgage on the happening of a

default but to wait till the expiry of the stipulated period of ten years. It is true that under article 132 time begins to run from the date when the money becomes due, but that date depends upon the terms of each document, and a true construction of those terms. In my judgement, in view of the clause in the bond in suit to which I have referred, the money secured by the bond did not become due until the expiration of ten years from the date of the bond. Where, under the terms of the document, the creditor is authorized to wait for the full period stipulated for repayment, the money cannot be held to have become due, within the meaning of article 132, until the expiry of that period. The first clause, as to payment of the whole amount on the occurrence of a default, was clearly inserted in the document for the benefit of the creditor and as he was expressly authorized not to take advantage of the clause, I am unable to hold that he was bound to sue when default was made. Any other view would, as observed in *Maharaja of Benares* v. *Nand Ram* (1) be "very unfortunate." "It would be to punish a creditor for forbearance shown to his debtor, and compel him to press his demands at the earliest opportunity and insist upon speedy and full satisfaction of his claim." The question in that case was of the applicability of article 75 which of course does not govern this case, but the principle of the ruling applies. A similar view was held by EDGE, C. J., and BLAIR, J., in *Shankar Prasad* v. *Jalpa Prasad* (2), which was a case of execution of a decree. The decree in that case provided that the amount of it should be paid by eight instalments and that in case of default and non-payment of any instalment the plaintiff had power to realize in one lump sum the entire decretal money payable up to that time by executing the decree. It was held, upon a construction of the decree, that "the decree-holder, on the happening of any default, might, if he wished, execute the decree for all the decretal money then unpaid, but that it was not the intention that on the happening of a default the decree-holder should be bound to execute the decree once and for all." In *Juneswar Das* v. *Mahabeer Singh* (3) their Lordships of the Privy Council

(1) (1907) I. L. R., 29 All., 431. (2) (1894) I. L. R., 16 All., 371.

(3) (1875) I. L. R., 1 Calc., 163.

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expressed a similar opinion. That was a suit to recover the amount of a hypothecation bond in which the borrower engaged to repay the amount with interest on a day named, with a condition that in the event of the hypothecated lands being sold in execution of a decree before the day fixed for repayment, the lender should be at liberty at once to sue for the recovery of the debt. It was contended that the plaintiff's cause of action arose on the 18th May, 1865, when the lands pledged were sold in execution and that the suit having been brought after six years from that date was time-barred. With reference to this contention their Lordships observed :—" Their Lordships must not be supposed, in coming to this decision, to give any countenance to the argument of Mr. Arathoon that this suit would have been barred if the limitation of six years under clause 16 had been applicable to it. They think upon the construction of this bond there would be good reason for holding that the cause of action arose within six years of the commencement of the suit." Their Lordships thus held that limitation would begin to run from the date fixed for payment and that the cause of action arose, that is to say, the money became due, on that date and not on the date on which the hypothecated property was sold in execution. It is true that their Lordships said that it was not necessary to decide the point in the view which they took of the period of limitation applicable to the case before them but an expression of opinion by their Lordships is entitled to the greatest weight and ought to guide the courts in this country. Considerable reliance was placed on behalf of the respondents on the cases of *Shitab Chand Nahar* v. *Hyder Malla* (1) and *Perumal Ayyan* v. *Alagirisami Bhagavathar* (2). In neither of those cases was there a clause, in the bond, similar to the one in this case, which expressly empowered the creditor to wait for the full term of the mortgage. Those cases, therefore, are in my opinion no authority on the question before us. The decision of that question depends upon the true construction of the terms of the bond and the intention of the parties as gathered from the bond. I am of opinion that upon a true construction of the bond in this case the money secured by it became due on the expiration of ten years from the date of the bond and that the claim is not

(1) (1896) I. L. R., 24 Calc., 281. (2) (1896) I. L. R., 20 Mad., 245.

barred by limitation. I would allow the appeal, set aside the decree of the court below and remand the case to that court for trial on the merits.

RICHARDS, C. J.—This appeal arises out of a suit to enforce payment of a sum of Rs. 10,000, principal and interest, alleged to be due on foot of a mortgage, dated the 16th July, 1890, by sale of the mortgaged property. The mortgage-deed provided that the mortgagors should pay the principal amount secured in ten years by instalments of Rs. 625 yearly and that the interest should be paid monthly. There was this further clause :—"If we fail to pay the interest aforesaid in any month or the principal by the stipulated period, as specified above, or no payment is made in a year, the mortgagee shall, under all these circumstances, be at liberty to realize the entire amount with the interest aforesaid in a lump sum through court by means of a suit from the mortgaged and other moveable and immoveable property and the person of us the executants." Later on the deed has a provision which has been translated as follows :—"If the mortgagee, in order to get interest, does not bring a suit in default of any instalment and we are unable to pay the money, the interest should continue up to the stipulated period of ten years and after it up to the date of realization." This last clause seems to me simply to mean that the mortgaged property should remain and be security for the interest, even if no suit was brought to enforce the monthly payment. No payment was ever made upon foot of either principal or interest up to the date of the institution of the present suit on the 12th June, 1912.

The court below has dismissed the plaintiff's suit, holding that the claim is barred by limitation. The plaintiffs have appealed.

In my opinion the decision of the court below is correct. It is admitted that the article of the Limitation Act which applies is article 132, see the decision of their Lordships of the Privy Council in *Vasudeva Mudaliar* v. *Srinivasa Pillai* (1). This article deals with "suits to enforce payment of money charged upon immoveable property." The period of limitation prescribed is twelve years and time begins to run from the date when the money sued for "becomes due." No doubt if the mortgagors had

(1) (1907) I. L. R., 30 Mad., 426.

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fulfilled their contract the mortgagees would not have been entitled to sue until the expiration of ten years from the date of the mortgage, and in that case the present suit would have been within time. The provision, however, in the deed admittedly entitled the mortgagee to bring a suit to recover principal and interest after the first default, and if it can be said that the money then "became due" the suit is barred by limitation. It is contended on behalf of the appellant that the mortgagees were entitled to sue, or not to sue, and that accordingly on a true construction of the mortgage deed the money did not "become due" until the expiration of ten years from the date of the mortgage. I cannot agree with this contention. It seems to me that money is "due" when it can be legally demanded, and it is admitted in the present case that the money, secured by this mortgage, could have been legally demanded and recovered after the first default, and had a suit been brought for its recovery by sale of the mortgaged property, the defendants could not have pleaded that such a suit was premature. For this there is the high authority of the English Court of Appeal in the case of *Reeves* v. *Butcher* (1). In that case the plaintiff lent money to the defendant under a written agreement for a fixed period of five years "subject to the power to call in the same at an earlier period in the events hereinafter mentioned." The defendant agreed to pay interest quarterly and the plaintiff agreed not to call in the money for five years if the defendant should regularly pay interest. It was further provided that if the defendant should make default in payment of any quarterly payment of interest for twenty-one days the plaintiff might call in the principal. No interest was ever paid. The plaintiff commenced his action within six years from the end of the period of five years. It was held that time began to run against the plaintiff from the earliest time at which the action could have been brought, that is to say, twenty-one days after the first instalment of interest became due. LINDLEY, L. J., said :—"I am of opinion that we cannot differ from the judgement below without altering the law. The agreement is one reasonably easy to be understood. It provides for a loan for five years, subject to a provision that if

(1) (1891) 2 Q. B. D., 509.

default is made in punctual payment of interest the principal shall be recoverable at once. Now, the Statute of Limitation (21 Jac. I., C. 16) enacts that such actions as therein mentioned including 'all actions of debt grounded upon any lending or contract without speciality, shall be brought within six years next after the cause of such action or suit, and not after.' This expression, 'cause of action,' has been repeatedly the subject of decision, and it has been held particularly in *Hemp* v. *Garland* (1), decided in 1843 that the cause of action arises at the time when the debt could first have been recovered by action. The right to bring an action may arise on various events, but it has always been held that the statute runs from the earliest time at which an action could be brought."

FRY, L. J., said:—"We have not to determine whether the defence here set up is handsome or conscientious, but whether it is good at law, and I am of opinion that it is. The agreement contains a stipulation that the lender shall not call in the principal sum for a period of five years, if the borrower should so long live, and should duly and regularly pay the interest. This implies a contract by the borrower that the principal debt should be paid at once on the death of the borrower, or on default in payment of interest. The subsequent provisoes imply a contract by the lender not to enforce payment after the death of the borrower until the expiration of a six months' notice, and a contract not to enforce payment of the capital for default in payment of interest until twenty-one days after such default, thus giving the borrower further time. Subject to the stipulations, the implied contract to pay the principal remained in force. The principal, therefore, became payable twenty days after the first quarterly instalment of interest became due, and from that time the statute of limitations began to run. If authority is wanted, *Hemp* v. *Garland* (1), is in point."

LOPEZ, L. J., said:—"The defendant alleges that the cause of action arose more than six years before the action was commenced, and that the action is barred by the statute of limitations. Now, when first had the plaintiff a cause of action? When default was made for twenty-one days in payment of an instalment of interest.

(1) (1842) 62 R. R., 423

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Hemp v. *Garland*(1), is in point. It is said that this case is not good law, and that it has not been referred to for many years. I think that it has not been referred to because it has been acquiesced in, and it does not appear that it has ever been questioned." It seems to me that this case is the clearest authority (if authority were needed) that money "becomes due" as soon as it is legally recoverable, quite irrespective of when the suit was instituted.

This view was taken in the case of *Sitab Chand Nahar* v. *Hyder Malla* (2), and in the case of *Perumal Ayyan* v. *Alagirisami Bhagavathar* (3).

A somewhat contrary view was taken in the case of *Nettakaruppa Goundan* v. *Kumarasami Goundan* (4). In this last case, however, the clause in the mortgage-deed was as follows:—"In default of paying on the above dates, I shall pay the said sum with interest at fifteen per cent. per annum from the date of the bond irrespective of the above due date *whenever you make the demand.*" The court seems to have thought that the money did not become due on default unless a demand was made. It is unnecessary to express any opinion as to whether or not the learned Judges were correct in their construction of the deed in question because there are no similar words in the deed in the present suit.

A number of cases have been cited, on behalf of the appellant, including the cases of the *Maharajah of Benares* v. *Nand Ram* (5), *Shankar Prasad* v. *Jalpa Prasad* (6) and *Ajudhia* v. *Kunjal* (7). All these cases dealt with the construction of article 75 of the Limitation Act which contains no reference to the money "becoming due," and in my opinion these cases have no bearing on the question which we have to consider in the present appeal see also *Amolak Chand* v. *Baij Nath* (8). Article 75 is the article applicable to quite a different suit from the present. The learned advocate for the appellants also referred to a *dictum* of their Lordships of the Privy Council in the case of *Juneswar Das* v. *Mahabeer Singh* (9). The facts of that case were quite different,

(1) (1842) 62 R. R., 423.
(2) (1896) I. L. R., 24 Calc., 261.
(3) (1896) I. L. R., 20 Mad., 245.
(4) (1898) I. L. R., 22 Mad., 20.
(5) (1907) I. L. R., 29 All., 431.
(6) (1894) I. L. R., 16 All., 371.
(7) (1908) I. L. R., 30 All., 123.
(8) (1913) I. L. R., 35 All., 455.
(9) (1875) I. L. R., 1 Calc., 163.

and their Lordships expressly state that it was unnecessary to decide the question to which the *dictum* refers. Their Lordships have, moreover, in the recent case, to which I have referred, decided that article 132 is the article which applies to a suit on a simple mortgage to enforce payment of money charged on immoveable property. I am clearly of opinion that in the present case the money "became due" within the meaning of that expression in the article of limitation when the first default was made and that accordingly the suit is barred by limitation. I would dismiss the appeal.

TUDBALL, J.—I concur with the learned Chief Justice that the present suit is barred by limitation. The matter to my mind is a simple one. Article 132 clearly applies and under that article time began to run from the date on which the money became due. To find out the date on which the money became due one has to examine the conditions laid down in the bond. They are simple and run as follows:—"It is covenanted that we shall pay the said amount of principal within ten years, that is, we shall pay Rs. 625 annually, and we shall pay the interest on the said amount monthly at the rate of eight annas per month. If we fail to pay the interest aforesaid in any month or the principal in the stipulated period as specified above, or no payment is made in a year, the mortgagee shall under all these circumstances be at liberty to realize the entire amount with the interest aforesaid in a lump sum through court by means of a suit from the mortgaged and other moveable and immoveable property, and the persons of us, the executants. We or our heirs or representatives shall have no objection or excuse in any way."

Then comes a clause on which considerable stress has been laid on behalf of the appellants but which in my opinion is not of the slightest assistance to them. Correctly translated that clause runs as follows:—"If the mortgagee, in his desire for interest, does not bring a suit on any default of ours and we are unable to pay the money, the interest shall continue up to the stipulated period of ten years and also after that up to the date of realization." It is an admitted fact that the mortgagors failed to make any payments of interest within the first year after the execution of the deed and no instalment of principal or interest has ever been paid. Under

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the terms of the bond immediately on the first default occurring, the mortgagor was clearly liable to pay the whole sum to the mortgagee. In other words the money became due from the mortgagor to the mortgagee on the occurrence of the first default. I fail to see how the last clause which I have mentioned above helps the appellants in any way. It seems to me that this clause was simply put into the document in order to make it quite clear that the interest should continue to run, in spite of no suit being brought, not only up to the expiry of the ten years, but also up to the date of realization. It was simply put in to make it clear that interest would not cease to run after the expiry of ten years. The mortgagee on the occurrence of the first default was fully entitled to demand his money and the mortgagor could not have met him with the plea that this demand was premature. There is no question of "waiver" for no waiver has been alleged, much less proved. Paragraph 3 of the plaint is practically a repudiation of any waiver. In my opinion under the clear terms of this bond the money "became due" in the year 1890, and the present suit was many years beyond time. I would, therefore, dismiss the appeal.

BY THE COURT.—The order of the Court is that the appeal be dismissed with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.

1915
April 9.

LAHASO KUAR (PLAINTIFF) *v.* MAHABIR TIWARI AND OTHERS. (DEFENDANTS).*

Acquiescence—Possession for many years by co-sharer—Presumption—Consent.

When one co-sharer has been in exclusive possession of a particular plot for a very long time and has made constructions thereon the presumption is that he is in possession with the consent of the other co-sharers. The other co-sharers cannot after lying by for many years come in and ask to have the constructions demolished.

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

Pandit *Shiam Krishna Dar* and Babu *Mangal Prasad Bhargava*, for the appellant.

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* Second Appeal No. 1183 of 1913, from a decree of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 30th July, 1913, reversing a decree of Ganga Nath, Munsif of Ballia, dated the 30th August, 1912.