

By THE COURT :— We allow the appeal, set aside the decree of the court below and dismiss the plaintiff's suit as against Puran Mal with costs.

Appeal decreed.

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PURAN MAL
v.
FORD, MAC
DONALD AND
COMPANY,
LIMITED.

MISCELLANEOUS CIVIL.

Before Mr. Justice Walsh and Mr. Justice Stuart.

KALYAN MAL AND ANOTHER (PETITIONERS) v. KISHAN OHAND
(OPPOSITE PARTY)*

1919
May, 20.

*Act No. IX of 1908 (Indian Limitation Act), schedule I, articles 49, 60 and 145—
Limitation—Bailment—Suit to recover property bailed—Contract or tort.*

The plaintiff sued for the return of certain property which had been deposited with two persons as follows, namely, four hundred gold mohurs with Musammam Ohun Kunwar and some pictures and manuscripts with Sobhag Mal.

Held that the limitation applicable to the former suit was that prescribed by article 60 of the first schedule to the Indian Limitation Act, 1908, and to the latter that prescribed by article 145; or, if the suit was looked upon as one in tort, article 49 would apply, the period beginning to run from the date when the return of the property was demanded.

THIS was a reference under section 18 of the Ajmer Courts Regulation, No. I of 1877, arising out of a suit originally filed *in forma pauperis* in October, 1911. The application for leave to sue as a pauper was at first rejected, and it was not till the 6th of February, 1913, that the suit was registered for trial, the order of the first court having been set aside on an application for revision to the Commissioner. Pending this revision Musammam Chun Kunwar died, and her son, Kalyan Mal, and daughter, Raj Bai, were put on the record as her legal representatives. The claim was for the return of (1) 400 gold mohurs, alleged to have been deposited with Musammam Chun Kunwar, the wife of Seth Sobhag Mal, in October and November, 1908, and of (2) certain valuable pictures and books alleged to have been deposited with Seth Sobhag Mal about the same time, namely, in October and November, 1905. The court of first instance decreed the plaintiff's claim, and on appeal this decree was upheld by the Additional District Judge of Ajmer. On the motion of the defendants,

however, a reference was made to the High Court of the following questions:—

- (1) Whether the transaction relating to 400 gold mohurs is, on the facts found, a case of an express trust within the meaning of section 10 of the Limitation Act, or is it a case of a deposit with the Banker?
- (2) If the latter (i.e., deposit with the Banker) by what article of the Limitation Act is it governed?
- (3) Is the order of the Hon'ble the Chief Commissioner appointing the applicants to be the legal representatives of Musammat Chun Kunwar not binding in the further proceedings in the case, and are the applicants not her legal representatives under section 2(ii) of the Code of Civil Procedure and the Hindu law?
- (4) Whether the original and the appellate courts have rightly construed exhibits A and B, letters written by Musammat Chun Kunwar and Seth Sobhag Mal?

On this reference—

Mr. *M. L. Agarwala* and *Munshi Bhagwan Das*, for the petitioner.

The Hon'ble Dr. *Tej Bahadur Sapru* and *Munshi Kamla Kant Varma*, for the opposite party.

WALSH and STUART, JJ.:— This is a reference under section 18 of the Ajmer Courts Regulation I of 1877. In our opinion, on the facts which have been found, the case is remarkably clear and simple. The courts of Ajmer have taken the right view though they have not expressed very happily the precise articles under the Limitation Act which, they think, destroy the defence set up. The facts show that there were originally two contracts of bailment under section 43 of the Indian Contract Act, 400 gold mohurs having been entrusted to Musammat Chun Kunwar, to some extent, through her husband, and certain pictures and manuscripts to Sobhag Mal, for specific purposes. Those contracts of bailment or deposit conferred upon the person to whom the goods were entrusted, variously called the bailee or the depositary, lawful possession. To entitle the owner to sue and repossess himself by suit of the goods, or to recover damages for their loss, if they are not restored to him, he must make a

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demand. He may of course sue in contract. It is an implied term of every such contract that the goods shall be returned on demand. The failure to return them is a breach of contract. On the other hand, he may sue in tort, and from the moment he makes a demand for the return of the goods, if that demand is not complied with, the possession of the person, the depositee or bailee, becomes unlawful and the owner may sue in what is called detinue. To constitute a cause of action for detinue he must make a formal demand for the goods. Once these principles are understood the application of the appropriate article of the Statute of Limitation becomes simple. We do not think that section 10 of the Limitation Act has anything to do with it. So far as the gold mohurs are concerned, we think Article 60 applies. The plaintiff elected to treat them as money. Specific coins entrusted to a bailee for a given purpose to be returned in specie may constitute movable property. They are also money. We do not agree with the courts below that the case has anything to do with deposit with a banker, but so far as the claim for the gold mohurs or their value is concerned, it is clearly a suit for money deposited under an agreement that it shall be payable on demand. The statute begins to run when the demand is made. The demand in this case was made within three years of the commencement of the suit. So far as that portion of the suit is concerned the defence failed.

With regard to the pictures and manuscripts we think that the contract was clearly one of deposit and that the suit is covered by article 145 being one against the depository to recover the movable property deposited. The period for that suit provided by the Limitation Act is 30 years. This suit is therefore within time so far as the pictures and manuscripts are concerned. Inasmuch as a demand for the return of the goods has been found to have been made and they are not forthcoming, the suit may be treated equally in the alternative, as one in tort, and article 49 would apply to such a suit, being a suit for the return of specific property wrongfully detained. The period for that suit begins to run when the detainer's possession becomes unlawful. Being lawful in its origin it does not become unlawful until a demand is made and rejected.

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The answers to the questions in reference must, therefore, be as follows :—

- (1) With regard to the 400 gold mohurs, article 60 applies.
- (2) The answer to question No. 2 is :—It is not a deposit with a banker, but either article 49 or article 145 is equally applicable.
- (3) The answer to question No. 3,—namely, is the order of the Hon'ble the Chief Commissioner appointing the applicants to be the legal representatives of Musammât Chun Kunwar, not binding in the further proceedings in the case, and are the applicants not her legal representatives under section 2 (ii) of the Code of Civil Procedure, and the Hindu law? —is *no*.
- (4) The answer to question No. 4 is *yes*.

The costs of this reference must abide the result of the suit. We fix the fees in this Court at the sum of Rs. 550 for the respondents and at Rs. 400 for the appellants.

Before Mr. Justice Walsh and Mr. Justice Stuart.

ABDUL BAQI KHAN (PETITIONER) v. SIRAJ-UL-HASAN AND OTHERS
(OPPOSITE PARTIES).*

1919
May, 21.

Act (Local) No. II of 1916 (United Provinces Municipalities Act), sections 19 to 26—Election petition—Petition presented by unsuccessful candidates against several respondents.

It is not a valid objection to a petition filed by an unsuccessful candidate at a municipal election under section 19 of the United Provinces Municipalities Act, 1916, having as respondents more than one of the successful candidates, that the petitioner cannot be himself declared elected in the room of more than one of the respondents.

AN unsuccessful candidate at an election of members of the Allahabad municipal board filed a petition under section 19 of the Municipalities Act, 1916, in which he alleged certain malpractices against three persons who had been declared elected as members of the board, and prayed that he himself and two other unsuccessful candidates might be declared elected in room of three respondents. Various objections were taken to this petition, which are set forth in the judgment of the Court, and the Commissioner referred these objections to the High

* Civil Miscellaneous Reference No. 263 of 1919.