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by delaying to sue together for ejection of a trespasser in wrongful possession of a portion of the joint property, or by delaying to have partition in order to assert their separate rights to actual possession in accordance with their shares, cannot stop the running of time in favour of the trespasser.

For these reasons we hold that the plaintiff's suit was time-barred as was held by the first appellate court. We allow this appeal, set aside the decree of the learned Judge of this Court and restore the decree of the first appellate court. The appellants to have their costs of this appeal.

Appeal allowed.

Before Mr. Justice Sulaiman and Mr. Justice Kendall.

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April, 2.

ANRUDDH KUMAR AND ANOTHER (DEFENDANTS) v.
LACHHMI CHAND (PLAINTIFF).*

*Act No. IX of 1872 (Indian Contract Act), sections 72 and 73—
Obligation resembling contract—Compensation due under
the Land Acquisition Act, 1894, paid by mistake to the
wrong person—Duty of person receiving such payment to
refund—Interest.*

Certain compensation which would have been due to one *B* under the provisions of the Land Acquisition Act, 1894, had he survived, was paid by mistake to *AK* on the supposition that he was the legal representative of *B*. It was afterwards found that *AK* was not the legal representative of *B*, but that one *LC* was.

Held that sections 72 and 73 of the Indian Contract Act applied. *AK* was bound to refund to *LC* the money paid to him by mistake, and, as he had for a considerable period avoided payment thereof, he was properly chargeable with interest for the time during which the money had been withheld.

*First Appeal No. 379 of 1925, from a decree of Saiyid Abdul Hasan, Subordinate Judge of Dehra Dun, dated the 30th of June, 1925.

Held, also, that illustration (n) to section 73 of the Indian Contract Act, 1872, is not exhaustive and cannot be considered as co-extensive with the provisions of the section itself. *Jwala Prasad v. Hoti Lal* (1) and *Abdul Saffur Rowther v. Hamida Biri Ammal* (2), referred to.

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THE facts, material for the purpose of this report, were briefly as follows :—Lachhmi Chand, plaintiff had two brothers, Mohar and Baldeo, and they were all separate. The defendant Anrudh Kumar was the son of Mohar. On the 24th of August, 1920, Baldeo died as a separated owner. Mohar having predeceased him, Lachhmi Chand would be entitled to succeed to the estate. Anrudh Kumar, who was not the heir-at-law, apart from alleging jointness, set up a will in his favour. In the lifetime of Baldeo some land had been acquired by the Government under the Land Acquisition Act, and he died while the proceedings were pending. A sum of Rs. 33,000 and odd was awarded as compensation for the property so acquired. On the 14th of March, 1921, this amount was paid to Anrudh Kumar, who claimed to be the heir of the deceased Baldeo. A suit was instituted by Anrudh Kumar against Lachhmi Chand, which was decided on the 18th of June, 1921, by the first court. It found that the family was separate and that the will which had been set up by Anrudh Kumar was a forgery. This decision was ultimately affirmed by the High Court on the 27th of November, 1924.

In 1923, Lachhmi Chand brought a suit against Anrudh Kumar, in which the relief claimed by the plaintiff was for a decree for the principal sum due, together with interest from the 14th of March, 1921, to the 17th of September, 1923, the date of filing the suit, at 6 per cent. per annum, by way of damages. Anrudh Kumar, in his written statement, mainly pleaded that he was not liable to pay interest on the amount claimed by the

(1) (1924) I.L.R., 46 All., 625.

(2) (1919) I.L.R., 42 Mad., 661.

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plaintiff. The Subordinate Judge decreed the claim with the interest. The defendant appealed.

Dr. *Kailas Nath Katju*, for the appellants.

Babu *Piari Lal Banerji* and *Munshi Shambhu Nath Seth*, for the respondents.

The judgement of the Court (SULAIMAN and KENDALL, JJ.), after stating the facts set out above, thus continued :—

The appeal of Anrudh Kumar must be dismissed. The only point that has been urged on his behalf is that he should not have been made liable to pay interest on the amount which had been paid over to him in the land acquisition proceedings. There can be no doubt that Anrudh Kumar set up a forged will in his favour, and it was on the strength of that forged document that he succeeded in recovering Rs. 33,000 and odd which were due to the estate of Baldeo, by falsely alleging that he was his legal representative. Anrudh Kumar has had the use of this money for all these years. When it was found that the document on which his claim was based was forged and he had no legal title whatsoever, it was clearly his duty to repay the amount taken out by him. The plaintiff was driven to carry on a protracted litigation against Anrudh Kumar up to the appellate court before he succeeded finally in exposing the spurious character of the document set up by Anrudh Kumar. The present suit was instituted within three years of the date when the money was taken out by Anrudh Kumar, and, indeed, even before the disposal of the appeal in the High Court. If one were to proceed on grounds of justice, equity and good conscience, one would have no hesitation in allowing the plaintiff compensation for the withholding of this amount for all these years. The learned advocate for the appellants, however, contends that interest can be allowed only if the grounds of the case are to be found

either in the Interest Act of 1839 or section 73, illustration (n), of the Indian Contract Act. In this view he relies strongly on the case of *Jwala Prasad v. Hoti Lal* (1), which undoubtedly supports him. We might however point out that it is not quite accurate to state that the grounds must be found in section 73, illustration (n), of the Contract Act. The illustration of course is not exhaustive and cannot be co-extensive with the provision in the section itself. The view taken by the Madras High Court in the case of *Abdul Saffur Rowther v. Hamida Bivi Ammal* (2) is that interest can be allowed on equitable grounds even if the case does not fall within the statutory enactments. The learned Judges of the Madras High Court relied on three cases decided by their Lordships of the Privy Council, which they thought indicated that interest could be allowed on principles of equity, justice and good conscience. It is not necessary for us to decide this point in this case, as in our opinion the present case comes within the four corners of the provisions of the Indian Contract Act.

Chapter V, which deals with certain relations resembling those created by contract, contains section 72, under which a person to whom money has been paid or anything delivered by *mistake* or under coercion must repay or return it. There is no doubt here that the amount of compensation money was paid to Anrudh Kumar under the mistaken belief that he was the legal representative of Baldeo who had been entitled to this amount. There was thus a legal obligation on Anrudh Kumar to repay or return this amount. Section 73, paragraph 3, of the Indian Contract Act provides that when an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had

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contracted to discharge it and had broken his contract. This paragraph speaks of an obligation resembling those created by contract, and not necessarily a completed contract as is mentioned in illustration (n) to this section. Reading sections 72 and 73 together we have no doubt in our minds that the obligation on Anrudh Kumar to repay or return the amount was one resembling that created by a contract. When the Land Acquisition officer made the payment to him it was undoubtedly understood that the payment was made to him as representing the estate of Baldeo, whose property had been acquired by Government. If that supposition was wrong there was an obligation on the payee to refund the amount to the true heir. The present suit was instituted by Lachhmi Chand, who has been found to be the lawful heir entitled to this amount. We are, therefore, of opinion that the plaintiff should be allowed compensation for the withholding of the amount from him for all this period. The court below has fixed the ordinary court rate of interest at 6 per cent. per annum as a reasonable rate of compensation, which we think was quite fair.

The result, therefore, is that the appeal of Anrudh Kumar is dismissed with costs. He will pay the full costs of the plaintiff in the court below and one-sixth of the costs of the plaintiff in this Court and will bear his own costs.

Appeal dismissed.