

senior chela as representing that idol and that therefore the present suit was barred by limitation." (page 894). We have clear authority, therefore, in refusing to accept the plaintiff's argument.

[The judgement then proceeded to deal with the other two issues which are not material for the purpose of this report.]

For these reasons our answers to the questions put to us by the learned Additional Judge are :—

(1) That the transfer of the 17th of April, 1905, was an alienation which started adverse possession in favour of Musammat Bishni.

(2) That Musammat Bishni could acquire title to the property under the deed and by adverse possession.

(3) That by her admission of paragraphs 1 and 2 of the plaint Musammat Bishni was not estopped from putting forward a plea of limitation.

A copy of this judgement shall be sent to the court which made this submission and the costs consequent on the reference here shall be costs in the appeal out of which the reference arose. The costs will be payable by the plaintiff.

## APPELLATE CIVIL.

*Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Lindsay.*

1925  
January,  
4.

JAI NARAIN (DEFENDANT) *v.* JAFAR BEG AND ANOTHER  
(PLAINTIFFS).\*

*Acquiescence—Equitable doctrine of—Building on the land of another—Circumstances disentitling owner to claim demolition.*

In order that the protection of the equitable doctrine of acquiescence may be successfully claimed, the following circumstances must subsist :—

The party claiming the benefit of the doctrine must have made a mistake as to his legal rights and must have

\* Appeal No. 90 of 1924, under section 10 of the Letters Patent

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expended some money or done some act on the faith of his mistaken belief; and the possessor of the legal right must have known of the existence of his own right which is inconsistent with the right claimed by the other party, he must have known of the other party's mistaken belief in his own rights, and he must have encouraged the other party in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. *Willmott v. Barber* (1), followed.

THIS was an appeal under section 10 of the Letters Patent from the judgement of a single Judge of the Court. The facts of the case were as follows :—

The plaintiffs came into court alleging that the defendant had trespassed on a small portion of land belonging to them and had erected a building thereon. The suit was filed in the month of November, 1918, and the allegation in the plaint was that the defendant had begun to erect the building during the civil court vacation, which, in the year 1918, lasted from the 20th of September to the 19th of October. The plaintiffs prayed for the ejectment of the defendant and for the demolition of the building which he had erected. The defence was that the land in suit was the property of the defendant and not of the plaintiffs, and a further plea was taken that the claim of the plaintiffs was barred on the principle of "tacit acquiescence and waiver."

The court of first instance found that the title to the land in suit was clearly with the plaintiffs and that the defendant had no title at all. But it refused to order demolition upon the ground that the construction was already complete. The plaintiffs appealed, but without success. They then came in second appeal to the High Court, and this appeal was decreed by a single Judge of the Court upon the main ground that the courts below had not given any sufficient reasons

for refusing an order for demolition. The defendant preferred the present appeal under section 10 of the Letters Patent.

Babu *Lalit Mohan Banerji*, for the appellant.

Babu *Saila Nath Mukerji* and Munshi *Baleshwari Prasad*, for the respondents.

THE judgement of the Court (MEARS, C.J., and LINDSAY, J.), after stating the facts as above, thus proceeded :—

After hearing the arguments of counsel, we think the learned Judge of this Court was quite right. The law on the subject of equitable estoppel has been expounded in the case of *Willmott v. Barber* (1). In dealing with the subject of acquiescence, FRY, J., observed as follows at page 105 of the report :—

It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other

(1) (1880) L.R., 15 Ch. D., 96.

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acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but, in my judgement, nothing short of this will do."

Applying these principles to the case now before us, no case has been made out by either of the courts below for refusing the plaintiffs demolition of the construction. It has been argued that the defendant appellant was under a mistaken belief that the land in dispute belonged to him. Even assuming that, the defendant would still not be entitled to succeed in this appeal, for it would be necessary for him to establish the other matters referred to in the judgement of FRY, J. From the judgement of the courts below, however, it does not appear to us that the defendant appellant could have entertained any *bonâ fide* belief that he was the owner of the land in question.

We are of opinion that the appeal fails and we dismiss it accordingly with costs.

*Appeal dismissed.*

[N.B.—It may be noted that "fraud," as used by an Equity Judge, means "against good conscience" rather than fraud in the criminal, or colloquial, sense.—ED.]

### REVISIONAL CIVIL:

*Before Mr. Justice Dalal and Mr. Justice Boys.*

HARNAND LAL (PLAINTIFF) v. CHATURBHUI (DEFENDANT).\*

*Civil Procedure Code, sections 115, 151; order XXXII, rule 15—Order refusing to stay proceedings—Revision—"Inherent powers of court"—Avoidance of multiplicity of proceedings.*

During the pendency, in the court of a Subordinate Judge, of a suit for specific performance, the defendant's

\* Civil Revision No. 125 of 1925.

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