

and remit the record to him for disposal of the case according to law. And in doing so he must proceed *de novo* and not make any use of or reference to the proceedings which we set aside.

We must therefore quash, and we hereby quash, the conviction and sentence by the Magistrate, and direct that he on the accused being brought before him do proceed according to the law laid down in the Criminal Procedure Code respecting the trial of European British subjects, and on this subject the Magistrate's attention is directed to ss. 74 and 75. We order that the accused Robert Berrill do within eight days from the date of this judgment appear before the Magistrate at Gwalior and surrender to his bail.

1881

 EMPRESS OF
INDIA
v.
BERRILL.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

HABIB-UL-LAH AND ANOTHER (DEFENDANTS) v. ACHAIBAR PANDEY
(PLAINTIFF).*

 1881
August 31.

Pre-emption—Joint purchase—Suit against one of the purchasers—Addition of other purchaser as defendant—Effect of suit as regards the latter being barred by limitation—Act XV. of 1877 (Limitation Act), s. 22.

P, on the 12th April, 1880, instituted a suit against *Z* claiming to enforce a right of pre-emption in respect of the sale of a share of an undivided estate to the latter and his minor brother *A* jointly, under an instrument dated the 12th April, 1879. On the 3rd May, 1880, *A* was made a defendant to such suit, *Z* being appointed guardian for the suit for him.

Held that, inasmuch as such suit, as regards *A*, was beyond time, and as the only relief which could be granted therein to *P* was the invalidation of the joint sale to *Z* and *A*, such suit, even admitting it was within time as regards *Z*, was not maintainable.

THE plaintiff in this suit claimed to enforce a right of pre-emption in respect of the sale of a three-pie share of an undivided village called Pipri Buzurg. This share had been purchased, as appeared from the instrument of sale, which was registered on the 12th April, 1879, by the defendant Zaka-ul-lah jointly for himself and as guardian of his minor brother, Ata-ul-lah. The suit was

* Second Appeal, No. 123 of 1881, from a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 20th November, 1880, affirming a decree of Rai Izzat Rai, Munsif of Bansi, dated the 10th June, 1880.

1881

HABIB-
UL-LA
v.
ACHAIBAR
PANDEY.

instituted on the 12th April, 1880, and was originally instituted against the defendant Zaka-ul-lah alone. On the 3rd May, 1880, Ata-ullah was made a defendant to the suit, Zaka-ul-lah being appointed guardian for the suit for him. Both the lower Courts gave the plaintiff a decree.

In second appeal by the defendants it was contended that the suit was not maintainable as it had not been instituted against both the defendants within the period limited by law, that is to say, one year from the date of registration of the instrument of sale.

Messrs. *Siroj-ud-din* and *Simeon* and *Maulvi Mehdi Hasan*, for the appellants.

The respondent did not appear.

The judgment of the Court (STRAIGHT, J., and BRODHURST, J.,) was delivered by

STRAIGHT, J.—The contract of sale, which the plaintiff-respondent seeks to impeach, was a joint and indivisible purchase of the three-pie share in suit by the defendant-appellant, Zaka-ul-lah, for himself and as guardian of his brother, Ata-ul-lah, the other defendant. The suit as originally brought was unmaintainable, for no relief could have been given against one of the vendees alone, so as to affect the joint interests of his co-vendee, or to establish the plaintiff-respondent's right by pre-emption to supersede the sale as a whole. According to the limitation law the date from which Ata-ul-lah should be considered a party to the litigation is 3rd May, 1880, for he was then joined as a defendant. But the sale-deed was registered on the 12th April, 1879, more than one year before. Even if it be conceded that the suit was in time as against Zaka-ul-lah, which we do not admit, it was clearly too late in respect of Ata-ul-lah, and as the only relief that could be granted to the plaintiff-respondent was to be obtained through the invalidation of the joint contract, it follows that his claim could not be sustained unless preferred within the proper period of limitation against both the vendees. The appeal must be decreed with costs, the decisions of the lower Courts reversed, and the suit dismissed.

Appeal allowed.