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KING-EMPEROR v. DEBOO SINGH.

JWALA PRASAD, J.

case in which the appeal based as it is entirely upon facts and the weighing of the evidence seems to be unsubstantial if not wholly unjustifiable. We have been taken through the whole of the evidence. We have considered the probabilities and the circumstances. We are not prepared to differ from the view taken by the Court below. It is difficult to say that any Court would have taken a view different from that taken by the Court below which has thoroughly gone into the case and its judgment is a lucid statement of the facts, a complete summary of the evidence and fair comments thereon and reasonable conclusions drawn from them. A mere perusal of the judgment would show that the Court below has bestowed great care and attention and has weighed the evidence carefully and has placed its view lucidly and hardly anything can be usefully added to the judgment of the Court below. I do not feel inclined to differ from the conclusions arrived at by the Court below.

Accordingly I uphold the judgment of the Court below and the order of acquittal and dismiss the appeal.

MULLICK, J.—I agree that sufficient reason has not been shown for setting aside the acquittal.

Appeal dismissed.

PRIVY COUNCIL.

J. C. 1928.

Dec., 14.

L. P. E. PUGH

v.

ASHUTOSH SEN.*

Limitation—Conversion—Conversion without Dishonesty—Joint Tortfeasors—Assignment of Mining Lease—Coal raised outside demised Land—Royalties paid to Assignor—Suit against Assignor and Assignee—Indian Limitation Act, 1908 (*IX of* 1908), *Sch. I, art.* 48.

In 1915 the appellant acquired a coal mining lease granted by a zamindar over a property called *P*, together

*PRESENT: Viscount Sumner, Lord Warrington of Clyffe, and Sir John Wallis.

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with the benefit (if any) of a sanad by which the zamindar had agreed to lease an adjoining 20 bighas, part of property *G*, conditionally on that lease being executed within a time which had then expired. The appellant continued until January, 1917, encroachments already made in the 20 bighas, believing that he had a promise from the zamindar of an extension of the sanad. The zamindar had however leased *G* in 1914 to the respondents. In September 1917 the appellant, without notice of the lease of 1914, sublet *P* for the whole of the residue of his term, with the benefit of the sanad. The sub-lessees agreed to pay the appellant royalties upon the demised premises, and he indemnified them against claims in respect of his encroachments. The sub-lessees continued the workings under the 20 bighas, and paid the appellant royalties upon the whole coal raised by them without distinguishing between that from *P* and that from the 20 bighas. In June, 1920, the respondents sued the appellant and his sub-lessees for conversion of coal raised by the sub-lessees from the 20 bighas. Both Courts in India held the appellant liable jointly with them.

By the Indian Limitation Act, 1908, Sch. I, art. 48, the period of limitation for a suit

> "for specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same"

is three years from the time when the plaintiff

> "first learns in whose possession"

the property is. By art. 49 the period for a suit

> "for other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same"

is three years from the date of the cause of action.

Held, (*1*) that art. 48 applied as "conversion" in the article included all conversions, whether "dishonest" or not, and that accordingly no part of the claim was barred; but (*2*) that the appellant was not liable, as there was no evidence constituting him a joint tortfeasor with the other defendants, who are in effect assignees of the lease to him.

Lodna Colliery Co. v. *Bipin Behari Bose* (1), approved.

Doe v. *Harlow* (2), distinguished.

Decree of the High Court varied.

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(1) (1920) 1 Pat. L. T. 84; 55 Ind. Cas. 113.

(2) (1840) 12 Ad. & E. 40.

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Appeal (no. 30 of 1927) from a decree of the High Court (December 22, 1925), affirming, subject to a modification, a decree of the Subordinate Judge of Purulia (November 26, 1921).

On June 26th, 1920, parties represented by respondents nos. 1 to 4, brought a suit against the appellant and two other defendants, for an injunction and for damages in respect of coal extracted from lands of which the plaintiffs were lessees and under-lessees. They alleged that they first knew of the encroachments in June, 1919. The present appellant was defendant no. 3. The coal had been extracted by defendants nos. 1 and 2 by encroachments from lands held by defendant no. 1 from defendant no. 3 as under-lessee of the whole of his lessee interest, and under-leased to defendant no. 2.

The defendants in addition to other defences pleaded limitation.

The facts are fully stated in the judgment of the Judicial Committee.

The trial Judge granted an injunction and decreed damages against the three defendants.

The present appellant alone appealed to the High Court which affirmed the decree subject to a modification in the damages awarded. The learned Judges (Adami and Kulwant Sahay, JJ.) rejected the plea of limitation, holding that the suit was governed by the Indian Limitation Act, 1908, Sch. I, art. 48, and that it had been brought within three years of the time when the plantiffs first knew of the encroachment. They agreed with the trial Judge that the defendants had acted in good faith, and honestly. They held the appellant liable in damages together with the other defendants on the authority of *Doe* v. *Harlow*(1).

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DeGruyther, *K. C.* and *F. E. Farrer* for the appellant. The suit was governed by art. 39, or possibly art. 49, of the Indian Limitation Act, 1908, Sch. I; in either case the three years' period ran from the time when the coal was extracted. The Courts in

(1) (1840) 12 Ad. & E. 40.

India erroneously held that art. 48 applied, and consequently that time ran only from the date when the plaintiffs first knew of the encroachments. A consideration of the terms of the various articles shows that art. 48 applies only to a "conversion" which is "dishonest", the word "dishonest" governs "conversion" as well as "misappropriation". That view is further supported by the position of the commas in the official print of the Act. *Lodna Colliery Co.* v. *Bipin Behari Bose*(1) which was applied, was wrongly decided.

But in any case this appellant was not liable. The suit was not for an account of profits received by him, but a suit for damages for trover. He was not however the principal of the other defendants, nor a joint tortfeasor with them. There was no evidence that the appellant knew of the encroachments by the other defendants. Although he received royalties upon all the coal extracted, there was nothing to show him that part of the coal was from the land encroached upon. The lease given by the appellant provided for royalties from the "demised land" only. In *Doe* v. *Harlow* (2), which was relied on, the only question was whether there was any evidence to support the verdict of the jury; Lord Denman expressly said that the result would have been otherwise if the defendant had merely put the trespassers in possession. The facts of the present case are similar to those in *Thomas* v. *Atherton* (3). In delivering the judgment of the Court in that case James L. J. said that had the matter not been concluded by an award but had proceeded to trial, the defendants would undoubtedly have succeeded. Reference was made also to *Powell* v. *Aiken*(4) and *Elias* v. *Griffith*(5).

Sir George Lowndes, *K. C.* and *Wallach* for the respondents. The terms of the lease executed by the

(1) (1920) 1 Pat. L. T. 84; 55 Ind. Cas. 113.
(2) (1840) 12 Ad. & E. 40.
(3) (1878) 10 Ch. D. 185, 199.
(4) (1858) 4 K. & J. 343.
(5) (1878) 8 Ch. D. 521.

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appellant and the facts of the case afford ample evidence that the appellant intended the other defendants to encroach and encouraged them to do so. He denied the title of the plaintiffs, and maintained that position in his case in this appeal. The document executed by the appellant was a lease within section 105 of the Transfer of Property Act, not an assignment of the appellant's lease. The observation in *Thomas* v. *Atherton* (1) was obiter; in any case the facts of that case were dissimilar. The appellant was " privy to " the encroachment, and was therefore liable on the authority of *Powell* v. *Aiken*(2). Art. 48 was rightly held to apply. " Conversion " in that article includes a conversion without dishonesty. Otherwise movable property taken by mistake cannot be recovered if the owner does not discover for three years who has it. There is no specific provision in art. 49 as to conversion without dishonesty. No weight can be attached to the position of the commas in the print of the Act; *Duke of Devonshire* v. O'Connor(3).

DeGruyther, K. C., replied.

Dec. 14. The judgment of their Lordships was delivered by Lord Warrington of Clyffe:

The action in which the present appeal arises was, so far as is material to the appeal, an action of trover, the plaintiffs claiming damages for the conversion by the defendants of specific movable property, viz., coal wrongfully gotten from the plaintiffs' mines and sold or otherwise disposed of by the defendants to their own use.

The appeal is by one defendant only—the defendant Pugh—and he raises two points of law: (*1*) that the claim in respect of his own personal working is barred by the Limitation Act, and (*2*) that, as to workings by his lessees, he has wrongly been held to be jointly liable with them, whereas in this respect the

(1) (1878) 10 Ch. D. 185, 199. (2) (1858) 4 K. & J. 343.
(3) (1884) 24 Q. B. D. 468, 478.

plaintiffs' suit ought to have been dismissed as against him.

The plaintiffs' claim alleged fraud as against all the defendants, but this issue was found against the plaintiffs by the trial Judge, and this finding is not questioned now.

On the first of the two points of law referred to above, the trial Judge decided against the defendant Pugh, holding that the case fell within Article 48 in the First Schedule to the Indian Limitation Act, 1908, and accordingly the period of limitation began to run not from the time when the property in question was wrongly taken, but from the time when the plaintiffs first learnt in whose possession the property was. This point was not raised in the appeal to the High Court, but no objection was taken to its being raised before the Board.

The second of the two points was decided against the appellant by both the Courts in India. There were two concurrent findings, but the appellant contends that such findings were wrong in law, inasmuch as the learned Judges misdirected themselves, and there was in truth no evidence which would justify their findings.

The plaintiffs have in the suit established as against the defendants their right to the coal in an area called by various names, but referred to in the appellant's case and in this judgment as Gaurigram, under a mining pattah, dated the 3rd April, 1914, granted by the Rajah.

The appellant, under a purchase deed dated the 5th February, 1915, acquired from a company called the Kohinoor Coal Company, Ltd., its liquidators and mortgagees, certain mining rights granted by the Rajah in 1908 in an area called Pathargarda, adjoining part of the western boundary of Gaurigram, together with the benefit, if any, of a sannad of the 16th September, 1913, therein mentioned, and to be referred to presently.

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By an indenture dated the 3rd September, 1917, the appellant granted, demised and leased to the defendant Bagchi such right, title and interest as he had in (amongst other places) Pathargarda, together with the benefit of and rights under the above-mentioned sannad of the 16th September, 1913.

By an indenture dated the 3rd September, 1919, the interest of Bagchi in Pathargarda was assigned by him to the defendants, Pilcher & Co., Ltd.

To return now to the sannad of the 16th September, 1913, and the story connected with it. By that document the Rajah for value promised to grant to the Kohinoor Company above-mentioned settlement of 20 bighas of coal within Gaurigram within four months of its date and that the Company should have a lease similar to its Pathargarda lease. The sannad contained the following condition :—

"If the mining lease is not executed and registered within the said four months you shall not be competent to make any claim for obtaining this settlement. I shall be competent to settle the said land with anyone else according to my sweet will."

This condition was not performed by the Kohinoor Company.

The plaintiffs at the date of the mining pattah of the 3rd April, 1914, had no notice of the sannad of the 16th September, 1913.

The conveyance of the 5th February, 1915, to the appellants of the mining rights in Pathargarda recited the sannad with the condition above referred to, and stated that no lease had ever been executed in accordance therewith, but, as above mentioned, included in the property and rights conveyed

"the benefit, if any, of the sannad."

The appellant on taking possession under his conveyance found that the Kohinoor Company had extended its workings into Gaurigram. Having no notice of the grant to the plaintiffs or their predecessors of the grant of the 3rd April, 1914, he immediately approached the Rajah for the purpose of obtaining from him, if possible, an extension of the sannad.

He believed that he had obtained a promise to this effect, and in this belief and still without notice of the plaintiffs' rights, continued the workings under the 20 bighas referred to in the sannad. It was not until the 23rd June, 1919, that the appellant heard of the grant of the 3rd April, 1914, and then realised that a lease of the mining rights within the 20 bighas in Gaurigram could not be obtained. By this time, as mentioned above, he had parted with his interest in Pathargarda by the grant of the 3rd September, 1917, to Bagchi.

The appellant's workings in Gaurigram ceased in January, 1917. The suit was begun on the 26th June, 1920.

On the question whether the Courts in India were right in holding that the appellant was jointly liable with Bagchi and Pilcher & Co., Ltd., respectively, for their workings in Gaurigram, it is necessary to mention a few further facts.

The deed of the 3rd September, 1917, was, in their Lordships' opinion, an assignment of the appellant's rights and interests under his conveyance of the 5th February, 1915, and not a mere under-lease. It is true that the appellant is therein described as "lessor" and Bagchi as "lessee," but the grant is of the whole of his interest. No sub-term is created and therefore no reversion expectant on a sub-term.

To this deed was annexed a copy of the deed of the 3rd February, 1915, which showed clearly that the rights under the sannad had expired. The deed reserved to the appellant royalties in respect of coal "raised from the demised premises". It contained a covenant by the appellant to keep the lessee, his estate and effects indemnified against, amongst other things, the encroachments (if any) already committed or made by the appellant in working the collieries, and a further covenant that he would use his best efforts to obtain from the Maharajah a lease of the additional 20 bighas adjoining Pathargarda.

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Royalties have been received by the appellant under the last-mentioned deed in respect of coal raised from the colliery generally without distinction as to the particular portion from which such coal was raised.

Their Lordships now proceed to consider the two points raised by this appeal.

First, was the action against the appellant in respect of his own workings barred by the Indian Limitation Act, 1908? It is agreed that, if Article 48 applies to the case, the action is not so barred.

The action was clearly one of trover, and the damages awarded were damages for conversion of specific movable property, viz., the coal when separated from the land, the conversion consisting in the fact that the appellant converted such coal to his own use by selling or otherwise disposing of it. The Courts in India have held that he acted in the honest belief that he had obtained or would obtain sufficient authority for what he did. The conversion, therefore, was not dishonest.

The Schedule to the Act contains two material articles:—

"*Description of Suit.*

"*Art.* 48.—For specific movable property lost, or acquired by theft or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same."

"*Art.* 49.—For other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same. In each case the period of limitation is three years."

Under Art. 48 the time from which the period begins to run is

"when the person having the right to the possession of the property first learns in whose possession it is,"

and under Art. 49

"when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful."

In their Lordships' opinion the decision of the trial Judge in this case is correct, and Art. 48 is the Article that applies. The two Articles are the only ones that apply to claims in respect of specific movable

property. Art. 48 alone refers to conversion, and their Lordships can see no ground for splitting up conversion into two classes, one dishonest and the other not dishonest. If such were the intention one would have expected to find such a distinction between different classes of the same tort made clear by the express inclusion in Art. 49 of the second of the two classes. The truth is that, if the Article is read without the commas inserted in the print, as a Court of Law is bound to do, the meaning is reasonably clear. "Conversion," a well-known legal term for a particular class of tort, is referred to as one of the modes by which specific movable property may be wrongfully acquired, the others being theft and dishonest misappropriation. The opposite view involves giving a different effect to "or" preceding conversion to that which it has before "dishonest misappropriation". In fact, in each case it is equivalent to "or by".

If this view is not correct, then there is no reference to what one may call simple conversion except by general words. On this point their Lordships agree with the careful judgment of Das, J. in the *Lodna Colliery Case*(1). He says—

"Art. 48 deals only with specific movable property which falls under one of two classes, viz., (1) such property as has been lost, or (2) as has been acquired by (*a*) theft, (*b*) dishonest misappropriation, or (*c*) conversion. No other kind of movable property is affected by this Article."

It is true, he goes on to say, that in his opinion the defendant's conduct was equivalent to theft, but he adds a passage which shows clearly that he would have come to the same conclusion in a case of simple conversion :—

"The plaintiff's complaint is that the defendant has without authority taken possession of the coal belonging to the plaintiff with the intention of asserting some right or dominion over them. The plaintiff company is therefore charging him with conversion..... It will be noticed that the word 'conversion' is used by the Legislature in Article 48; it finds no place in Article 49. It must be presumed that when the Legislature has deliberately used a term which has a known legal significance in law it has attached to that term that known legal significance."

(1) (1920) 1 P. L. T. 84; 55 Ind. Cases 113, 133.

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Foster, J. stated that on legal points he agreed fully with the judgment of Das, J.

Their Lordships have not been referred to any other Indian case which deals with the precise question. They are of the same opinion as that expressed by Das, J., and the appeal on this point therefore fails and ought to be dismissed.

Secondly, as to the question whether the appellant can be made jointly liable for the acts of Bagchi and Pilcher & Co., Ltd., respectively.

The trial Judge so held on the ground that his position as lessor would render him liable, and cited *Doe* v. *Harlow*(1) as his authority. In the High Court, Adami, J., did not dissent from this view, but added that in his view there were facts which established an encouragement of the wrongdoers on the part of the appellant and that this fact was sufficient to render him liable for their acts.

In their Lordships' opinion the learned Judges in both Courts have misapprehended the question they had to try, viz., whether the appellant was a joint torfeasor with Bagchi and Pilcher & Co., Ltd., respectively. Neither the fact that he was their lessor —assuming, contrary to their Lordships' view, that he was a lessor in the proper sense of the term—nor that he "encouraged" the wrongdoers, whatever this may mean, would be sufficient by itself to support a finding that he was a joint tortfeasor.

Doe v. *Harlow* (1) is certainly no authority for the view expressed in the Courts below. It established no principle at all. The question there was whether there was some evidence against one of two persons charged as tortfeasor with having wrongfully kept the plaintiff out of possession of certain premises. The one in question was Warren; he had let the premises to Harlow, who held over after the cesser of Warren's term. The plaintiffs demanded possession from them both, and both refused. The Lord Chief Justice held

(1) (1840) 12 Ad. & E. 40.

that there was some evidence against Warren, and he left it to the jury to say on the case against all how long the three had been jointly keeping out the rightful proprietors. On a motion for a new trial on the ground of misdirection the Lord Chief Justice, in the course of argument, says: "Warren encouraged Harlow to remain and received rent from him." As encouragement he is apparently referring to his joining with Harlow in refusing to give up possession for there is no other fact mentioned in the Report which could be regarded as encouragement. He says in conclusion, "If there had been no evidence here but that the under-tenant remained in possession I should have left the case differently."

The fact is *Doe* v. *Harlow* (1) settles no principle at all. The Court merely held that there was evidence on which a jury might properly find that Warren had made himself a party to the tort.

Their Lordships are of opinion in the present case that there is no such evidence, and on this point the appeal ought to be allowed and the decree of the Subordinate Judge varied by striking out the words "and 3 (2)" from the direction for payment of Rs. 10,350 with proportionate costs and from the direction for payment of Rs. 3,900 with proportionate costs. The appeal substantially succeeds inasmuch as the point as to the statute involves a comparatively small sum of money and can hardly have caused a material increase of costs.

In their Lordships' opinion, therefore, the appellant should have the costs of the appeal and proportionate costs both in the Subordinate Court and in the High Court attributable to the items on which he has succeeded. They will humbly advise His Majesty accordingly.

Solicitors for appellant: *Pugh and Co.*

Solicitors for respondents nos. 2, 3 and 4: *Watkins and Hunter.*

(1) (1840) 12 Ad. & E. 40.

(2) *i.e.* defendant no. 3.