APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Crowe.

SHIVRAO NARAYAN (ORIGINAL PLAINTIFF), APPELLANT, *v.* PUNDLIK BHAIRE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1902. *January* 27.

Limitation Act (XV of 1877), article 132—Voluntary payment—Assessment—Payment by A of assessment due on B's land does not give A a charge on such land—Contribution.

The plaintiff filed this suit in 1901 to recover Rs. 30, which he had paid for the defendants in respect of yearly assessments due upon their land since the year 1891. Their land formed part of a larger holding which stood in one name in the revenue records and the assessment on which the plaintiff paid. He now sued the defendants for contribution in respect of the assessment paid for their part of the holding, and contended that their land was charged with the amount so paid by him, and that the period of limitation applying to his claim was that prescribed in article 132 of the Limitation Act (XV of 1877).

Held, that the money paid by the plaintiff for the defendants did not become a charge on the defendants' land, and that article 132 of the Limitation Act did not apply.

The mere fact that the plaintiff was obliged to pay the assessment for the defendants' land in order to save his own might, under the circumstances, give him a right to claim contribution, but a charge is not incident to that right.

SECOND appeal from the decision of J. C. Gloster, District Judge of Kánara, confirming the decree of Ráo Bahádur M. R. Nadkarni, First Class Subordinate Judge of Kárwár.

Suit to recover from defendants Rs. 30, being the assessment from 1891 to 1900 payable in respect of certain land belonging to him which had been paid by the plaintiff for the defendants.

The land in question was part of a large holding, the entire of which stood in the revenue records in the name of one Anant Soir Pai. The plaintiff was the receiver of Anant Soir Pai's property, and since 1891 he had paid to Government the assessment due in respect of the entire holding.

In 1900 he brought this suit to recover Rs. 30, being the amount so paid during that period in respect of the part of the holding which belonged to the defendants. The plaintiff prayed

* Second Appeal No. 318 of 1901.

1902.

SHIVRAO v. PUNDLIK.

for a decree for the amount claimed, and costs "on the security of the said land and personally also."

The Court of first instance held that, except for the three years immediately prior to the suit, the plaintiff's claim was barred by limitation, and it passed a decree for the plaintiff for Rs. 4-4-0 only.

On appeal the Judge confirmed the decree.

The plaintiff preferred a second appeal.

The respondents (defendants) took the preliminary objection that under section 586 of the Civil Procedure Code (XIV of 1882) no second appeal lay, the suit being cognizable by a Court of Small Causes, and the amount claimed being under Rs. 500.

Sitaram S. Patkar for the respondent (defendant) in support of the objection.

Nilkant A. Shiveshvarkar for the appellant (plaintiff) *contra*:—This suit is not cognizable by a Small Causes Court, as we seek to charge the land with the amount of our claim: see Act IX of 1887, schedule II, article 11. A second appeal therefore lies.

We further contend that the lower Courts were wrong in applying the three years' period of limitation to our claim. We say our claim is a charge on the defendants' land, and this suit seeks to enforce that charge. Article 132 of the Limitation Act (XV of 1877) therefore applies, and the period of limitation prescribed is twelve years. We are, therefore, entitled to the whole sum claimed.

The following cases were cited during argument: *Kinu Ram Das* v. *Mozaffer*,(1) *Khub Lal Sahu* v. *Pudmanund*,(2) *Seth Chitor Mal* v. *Shib Lal*,(3) *Evans* v. *The Trustees of the Port of Bombay*,(4) *Ramdin* v. *Kalka Pershad*,(5) *Sheik Gulam Jilanee* v. *Kashinath*,(6) *Sadashiv* v. *Ramkrishna*,(7) *Sheik Hasan* v. *Balaji*.(8)

JENKINS, C.J.:—The plaintiff has brought this suit to recover Rs. 30 on account of arrears of revenue paid by the plaintiff

(1) (1887) 14 Cal. 809.
(2) (1888) 15 Cal. 542.
(3) (1892) 14 All. 273.
(4) (1886) 11 Bom. 329.
(5) (1884) 12 I. A. 12; 7 All. 502.
(6) (1900) 25 Bom. 244.
(7) (1901) 25 Bom. 556.
(8) (1886) P. J. p. 268.

for lands which belong to the defendants, but are included in the *khata* of Anant Soir Pai whom the plaintiff represents. The actual prayer is "that a decree may be passed awarding the amount mentioned below, together with interest up to the time of payment, and also the costs of this suit from the said defendants, on the security of the said lands and personally also." Both Courts have decided against the plaintiff so far as his claim relates to revenue prior to the year 1897, on the ground that it was barred by limitation. From this decision the plaintiff has appealed.

The defendant has taken the objection that no second appeal lies, as the suit is of the nature cognizable in Courts of Small Causes, and the amount or value of the subject-matter does not exceed Rs. 500. To this Mr. Nilkant Atmaram replies that, so far as he seeks a remedy against the land, the suit comes within article 11 in the schedule to the Provincial Small Cause Courts Act. So that what we have to determine is whether the plaintiff can be awarded that remedy, for, if he can, then the preliminary objection fails, and the Statute of Limitation would present no bar.

In favour of his view Mr. Nilkant Atmaram has relied on what was said by Sir Charles Sargent in *Achut Ramchandra Pai* v. *Hari Kampti*.[1] The facts on which the Court had in that case to pronounce are set out in the head-note, and in reference to them the learned Chief Justice said:

In *Nobin Chunder Roy* v. *Rup Lall Das*[2] the case of *Syud Enayet Hossein* v. *Muddun Moonee Shahoon*[3] was again followed. However, in *Kristo Mohinee Dossee* v. *Kaliprosono Ghose*[4] the Calcutta High Court, consisting of Garth, C.J., and Pontifex, J., dissented from the rulings in *Ram Dutt Singh* v. *Horakh Narain*[5] and *Syud Enayet Hossein* v. *Muddun Moonee Shahoon*,[3] and expressed the opinion (although not necessary for the decision of the case, as they held that although the lien might exist, the actual defendant could not be affected by it), that a payment of the assessment by a part owner gave him no equity to a charge on the shares of the co-owners. They distinguished the case from that of mortgagees paying the assessment,

(1) (1886) 11 Bom. 313.
(2) (1882) 9 Cal. 377.
(3) (1874) 14 Beng. L. R. 155.
(4) (1882) 8 Cal. 402.
(5) (1880) 6 Cal. 549.

1902.

SHIVRAO v. PUNDLIK.

and who, as in *Nugender Chunder* v. *Kaminee* (1) and *Shaik Idrus* v. *Vithal Rakhmaji*,(2) have been held entitled to tack on the payment to their mortgage, on the ground that the co-owners have no interest in one another's shares.

This distinction, however, does not appear to us to affect the principle enunciated in *Nugender Chunder* v. *Kaminee*,(1) viz., that such payments are in the nature of salvage payments, and which is also the ground on which the decisions in the Irish cases and in *Shaik Idrus* v. *Vithal Rakhmaji* (2) proceed. The payment of the assessment by the part owner is by a person entitled to pay it, and who does so *ex hypothesi* under circumstances which make it necessary, in order to save the estate for himself and co-owners, and, in either view of such payment, he becomes equitably entitled to a charge on the whole estate as against the other co-sharers; and if this be so, the mere circumstance that he has no existing charge on their shares at the time would appear to be no sufficient reason in equity, justice and good conscience for not allowing him to realize the payment from the shares of his co-owners for their respective quotas. The judgment of Fry, L.J., in *Leslie* v. *French* (3) doubtless shows that the question as to the effect of analogous payments in England in creating a charge on the other interests which share in the benefit of it is still far from settled, although there are many cases which support the above principle; but, however that may be, we think that the Calcutta decisions, to which we have referred as recognizing a charge in those cases in which the assessment is paid by a part owner to save the estate, are in accordance with equity, justice and good conscience, and should be followed in this country.

We have thought it right to express our opinion on the general question, although in the present case the undisputed facts do not allow of its application. They show that the plaintiff paid the assessment as full owner of the property, and it was entirely by his own action that the defendants were excluded from the property and did not pay their quotas. We think that, under such circumstances the payments cannot be regarded as salvage payments. We must, therefore, confirm the decree with costs.

It is obvious, then, that these remarks were *obiter dicta*, and though they proceed from one whose authority must ever stand high in this Court, they, like the *dicta* of all other modern Judges, are open to the criticisms expressed by Sir George Jessel and adopted by Kay, L.J., in *Dashwood* v. *Magniac*.(4) Sir George Jessel, in reference to these dicta, said: "The Judge ought with all due respect to examine into them, but he must not allow any number of dicta.....to affect his judgment." This is the attitude I propose to adopt in this case, and the necessity for it

(1) 11 Moore's I. A. 241.
(2) (1879) P. J. p. 407.
(3) (1883) 23 Ch. D. 552, 564.
(4) (1891) 3 Ch. 306 at p. 376.

is the more apparent when it is seen that the law laid down in the Calcutta decisions and relied on by Sir Charles Sargent has since been rejected by a decision of a Full Bench of that Court.

Now the charge for which the plaintiff contends has no sanction in the Land Revenue Code, under which the assessment was paid, nor can it be referred to any contract: the plaintiff has to appeal to the principles of justice, equity and good conscience, or in other words, to "the principles of English Law applicable to a similar state of circumstances" (*Dada Honaji* v. *Babaji Jagushet*[1]). Now, as a general rule, unsolicited expenditure in respect of the property of another, even if made for the purpose of its preservation, gives no lien outside maritime law. "A man by making a payment in respect of property belonging to another, if he does so without request, is not entitled to any lien or charge on that property for such payment": per Cotton, L.J., *Falcke* v. *Scottish Imperial Insurance Co.*[2] In the same case, Bowen, L.J., at page 248, said: "The general principle is, beyond all question, that work and labour done or money expended by one man to preserve or benefit the property of another do not according to English Law create any lien upon the property saved or benefited, nor, even if standing alone, create any obligation to repay the expenditure. Liabilities are not to be forced upon people behind their backs any more than you can confer a benefit upon a man against his will."

We can see nothing to take this case out of those principles. No request is suggested, nor is it even alleged that the defendants had any knowledge of the plaintiff's intention to pay. The mere fact that the plaintiff had to make the payment for the purpose of saving his own property does not, in our opinion, make any difference, for though this fact may, under the circumstances, have given a right to claim contribution, a charge would not be an incident to that right, for "it is plain that the right to contribution is a personal right, and the remedy is a personal remedy, and that there is no lien in respect of which the right to contribution arises": per Fry, J., in *Leslie* v. *French*.[3]

(1) (1867) 2 Bom. H. C. 36 at p. 38. (2) (1886) 34 Ch. D. 234 at p. 241.
(3) (1883) 23 Ch. D. 552 at p. 564.

1902.

SHIVRAO v. PUNDLIK.

In our opinion, then, there is no charge, and we come to this conclusion with the more confidence, as it is in accord with the Full Bench decision both of the Calcutta and Allahabad High Courts: *Kinu Ram* v. *Mozaffer*,(1) *Seth Chitor Mal* v. *Shib Lal*.(2)

The result is that no appeal lies and it must be dismissed with costs.

Appeal dismissed.

(1) (1887) 14 Cal. 809. (2) (1892) 14 All. 273.

APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

1902. *February* 3.

TALSHIBHAI NARANBHAI (ORIGINAL PLAINTIFF), APPELLANT, v. RANCHHOD GOBAR (ORIGINAL DEFENDANT), RESPONDENT.*

Landlord and tenant—Ejectment—Adverse possession—Plea by tenant of adverse possession—Limitation Act (XV of 1877), schedule II, articles 144, 139.

The plaintiff sued to recover certain land, alleging that the defendant was in occupation as his tenant. The defendant pleaded adverse possession and contended that the suit was barred by limitation. The plaintiff proved that up to 1879 the defendant admitted the plaintiff's ownership of the land. The two lower Courts found that the land was the plaintiff's, but held that the suit was barred.

Held, (reversing the decree) that the defendant having admitted the plaintiff's ownership up to 1879, it lay upon him to show when the alleged adverse possession under article 144 commenced, or under article 139 when the tenancy terminated. As the land was shown to belong to the plaintiff, and defendant had not proved any agreement under which he could remain in possession after plaintiff had signified his intention to resume, he must surrender possession. He was entitled to remove the superstructure of houses which he had erected on the land.

SECOND appeal from the decision of Ráo Bahádur Chandulal Mathuradas, First Class Subordinate Judge, A. P., at Ahmedabad, confirming the decree passed by Ráo Sáheb Chimanlal Lallubhai, Subordinate Judge of Nadiád.

Suit to recover possession of land.

The plaintiff alleged that the defendant and his father before him were his tenants. They had been permitted to build two

* Second Appeal No. 470 of 1901.