

*Before Mr. Justice Markby and Mr. Justice Prinsep.*

RAGHUMONI AUDHIKARY (ONE OF THE DEFENDANTS) v. NILMONI  
SINGH DEO (PLAINTIFF).\*

1877  
April 23.

*Limitation— Act IX of 1871, Sch. II, art. 60—Money obtained by  
Collusion and Fraud.*

A suit for the recovery of money obtained by fraud and collusion is a suit for money received by a defendant for the plaintiff's use, and, therefore, under art. 60 of the second Schedule of Act IX of 1871 is barred unless brought within three years of the date when the money was received.

SUIT for the recovery of Rs. 507-6. The plaint stated that one Prankisto Mitter had deposited the sum claimed in the collectorate in the name of the plaintiff, and that the first defendant, in collusion with the second defendant, on the 13th of January, 1869, without the knowledge or consent of the plaintiff, took out the said sum of money from the collectorate. The plaint was filed on the 21st January, 1874. The defendants pleaded limitation.

The lower Appellate Court held that the suit came under arts. 48 and 90 of Act IX of 1871. The period of limitation was, therefore, to be computed from the date on which the money was demanded by the plaintiff. Such demand having been made within three years of the filing of the plaint, the suit was not barred.

Against this decision the first defendant preferred a special appeal to the High Court.

Baboo *Hem Chunder Banerjee* and *Tarruck Nath Sen* for the appellant.

Baboo *Bhubany Churn Dutt* for the respondent.

The judgment of the Court was delivered by

MARKBY, J.—It seems to us that the decision of the lower Appellate Court is wrong. The suit is brought to recover a

\* Special Appeal, No. 1610 of 1875, from the decision of J. S. Davies, Esq., Judicial Commissioner of Manbhoom, dated the 29th March, 1875.

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specific sum of money which the plaintiff says the defendant No. 1, in collusion with defendant No. 2, without his knowledge and consent, had obtained from the collectorate. The defendants pleaded limitation. The Court below thinks that the case is governed either by art. 90 of the 2nd schedule of the Limitation Act or by art. 48. Art. 90 provides for a suit by a principal against his agent for moveable property received by the agent and not accounted for. The plaintiff does not sue the defendant as his agent; he does not admit that the defendant was his agent. On the contrary, he denied that the defendant was his agent, and the Court below does not find that the defendant was so. Therefore it cannot possibly be brought under that head. Art. 48 clearly provides for a case in which a suit is brought to recover moveable property acquired by means of a criminal offence. The words used are: "For moveable property acquired by theft, extortion, cheating, or dishonest misappropriation, or conversion," following exactly the language of the Penal Code. Now the plaintiff in this case does not allege that the defendant committed either of those criminal offences. He does not sue the defendant on the ground that he had committed a criminal offence, but that by means of some fraud in combination with another person he got possession of the plaintiff's money. Now, that is exactly the case which would be covered by art. 60 of the schedule of the Limitation Act, if we read that article as we think we ought to do in connection with the English law. A suit for money received by the defendant for the plaintiff's use evidently points to the well-known English action in that form, and it appears from two cases quoted in Bullen and Leake on Pleading, 3rd edition, page 47 (1), that that form of action is appropriate to the recovery of money under such circumstances as these. It is said there that where the defendant has wrongfully obtained the plaintiff's money from a third party, as by a false pretence, it may be recovered in this Court. So, where defendant wrongfully obtained from the plaintiff's debtors the

(1) The cases alluded to by the learned Judge are *Litt v. Martindale*, 18 C. B., 314; and *Andrews v. Hawley*, 26 L. J., Ex., 323.

payment of their debts under a fraudulent misrepresentation that he had an authority to collect them, the plaintiff was held entitled to recover the amount under this count. We think, therefore, that art. 60 of the 2nd schedule of the Limitation Act contains the law which ought to govern this case, and that the limitation ought to run not from the time when the money was demanded but from the time when the money was received. The money in the present case was received so long ago as January, 1869, and this suit was not brought until 1874. Therefore the claim is clearly barred. The decision of the lower Appellate Court is reversed, and the suit dismissed with costs in all the Courts.

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*Appeal allowed.*

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Birch.*

HENDRY (ONE OF THE DEFENDANTS,) v. MUTTY LALL DHUR AND  
OTHERS (PLAINTIFFS).\*

1876  
March 31.

*Sale in execution of decree against representative of deceased Mahomedan—  
Mahomedan Law—Debts—Purchaser of share of estate, Right of.*

*B R*, a Mahomedan, had incurred debts for repairs to a house of which he owned an 8-anna share, and after his death his daughter *S*, who was entitled to a 5-anna share of his estate, and who had taken charge of his property and obtained a certificate under Act XXVII of 1860, directed further repairs to be done to the estate. The debts then incurred by *B R* and *S* not having been paid, the creditor brought a suit against *S*, as representing her father's estate, to recover them, and having obtained a decree, the house was sold in execution thereof, and purchased by *H* in May 1874. *B R* at his death left also a sister, who was entitled to a 3-anna share of his estate, but who had been for some years absent on a pilgrimage to Mecca. On her return she in January, 1874, sold her interest in the house to *M*. In a suit by *M* against *S* and *H* for possession of the share so purchased by him—*Held*, that *S* did not represent the whole estate of *B R*, and the share purchased by the plaintiff did not pass under the execution sale to *H*; the plaintiff, therefore, was entitled to recover.

THIS was a suit to recover possession after partition of a share in a certain dwelling-house and land in Sealdah, which

\* Special Appeal, No. 1200 of 1875, against a decree of Alex. J. Maclean, Esq., Judge of Zilla 24-Pergannas, dated the 4th of June, 1875, reversing a decree of Baboo Mohendro Nath Bose, First Subordinate Judge of that district, dated the 5th of April, 1875.