conditions as may be imposed on that foreclosure by the decree made in the suit of the plaintiff against him disposed of in this Court on the 12th of May, 1873.

I, therefore, concur in the order made by my learned colleague.

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BANK OF HINDOOSTAN, CHINA, AND JAPAN v. SHOROSHI-BALA DEBEE.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Mitter.

AHMED MAHOMED PATTEL (DEFENDANT) *v.* ADJEIN DOOPLY AND ANOTHER (PLAINTIFFS).*

1876 *Sept.* 14.

Limitation—Act IX of 1871, *Sch. II., cl.* 113—*Specific Performance—Trust —Laches.*

In 1860 certain shares in a Company then formed were allotted to *S*, on the understanding, as the plaintiffs alleged, that 120 of such shares should, on the amount thereof being paid to *S*, be transferred to, and registered in the books of the Company in the names of, the plaintiffs. In 1862 the plaintiffs completed the payment to *S* in respect of the shares, and during his lifetime received dividends in respect of the said shares. *S* died in 1870, leaving a will, probate of which was granted to the defendant as his executor. In a suit brought by the plaintiffs after demand of the shares from the defendant, and refusal by him to deliver them, to compel the defendant to transfer the shares to the plaintiffs and register the same in their names, the plaintiffs' case was, that the shares had been held in trust for them, and that, consequently, their suit was not barred by lapse of time. *Held*, that the transaction between *S* and the plaintiffs did not amount to "a trust for any specific purpose" within the meaning of s. 10 of the Limitation Act, or to a trust at all, but to an agreement of which the plaintiffs were entitled to specific performance; and the limitation applicable was that provided by cl. 113 of Sch. II, Act IX of 1871, and, therefore, the suit was not barred. Nor were the plaintiffs disentitled to relief by reason of any laches or delay in bringing the suit.

SUIT to obtain delivery of certain shares in the Rangoon Iron Bazar Company. The plaintiffs stated that, in 1860, one

* Regular Appeal, No. 170 of 1875, against a decree of C. J. Wilkinson, Esq., Recorder of Rangoon, dated the 11th of May, 1875.

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J. H. Fowler was possessed of certain immoveable property in Rangoon, known as the Rangoon Iron Bazar, and he agreed with certain other persons to form a limited company to carry on the business of a bazar, he himself to have one-fourth of the total number of shares. The second paragraph of the plaintiffs' written statement was as follows :—"That as the remaining three-fourths of the proposed Company was to be mortgaged to the said J. H. Fowler, and as it was necessary to have seven persons to form the Company, it was arranged to associate six persons only with J. H. Fowler in forming the Company, each of the said persons holding a number of shares in trust for a number of persons, to whom, on the liquidation of the mortgage in favor of J. H. Fowler, and on payment by them of the value of their shares, the shares would be transferred and registered in their names." The Company was started with the issue of 4,000 shares of Rs. 25 each, of which, one Ebrahim Ismailjee Seedat took 1,000. The plaintiffs further alleged that the interest of the said Ebrahim Ismailjee Seedat in the 1,000 shares taken by him did not exceed 160 shares, the rest being held by him in trust, among others, for the plaintiffs, for whom he held 120 shares, which it was agreed should remain in his name until the full value of them should be paid to him by the plaintiffs, and until the mortgage to J. H. Fowler should be liquidated, when the 120 shares would be transferred to the plaintiffs and registered in their names; that the plaintiffs, partly in 1861, and partly in 1862, duly paid the said Ebrahim Ismailjee Seedat for the said shares, and the mortgage to J. H. Fowler had been paid off; but the said Ebrahim Ismailjee Seedat did not transfer the said shares to them; that the plaintiffs had sometimes received from Seedat dividends on the said shares; that Seedat died in June 1870, leaving a will, probate of which was shortly afterwards granted to the defendant as the executor named in the said will; that the plaintiffs, accordingly, after making a demand for the said shares, brought this suit to compel the defendant, as the representative of the estate of Seedat, to transfer to them the said 120 shares, and to have the said shares registered in the plaintiffs' names in the books of the Company. They also sued for Rs. 435 as their shares of the

dividends on the shares, which had been recovered by the defendant in a suit brought by him against the Company. The plaint was filed on the 11th December, 1874. The defence was, that the shares were a portion of the estate of the said Seedat; that he had not held them in trust for the plaintiffs or other persons, but for himself; and that the plaintiffs were not entitled to any portion of the said shares or the dividends thereon. At the trial an objection was raised, that the suit was barred by limitation. The Recorder of Rangoon, Mr. Wilkinson, found that the plaintiffs' case was made out, and held with reference to an issue as to limitation taken at the trial, that the defendant held the shares as a trustee for the plaintiffs, and that the suit was not barred by limitation. He, accordingly, gave a decree for the plaintiffs. The defendant appealed from his decision to the High Court.

The grounds of appeal were, that the shares were not held by the defendant in trust for the plaintiffs; that the claim was barred by limitation; and that even if it was not barred by limitation, the plaintiffs, by their laches, had disentitled themselves to any relief.

Mr. *Ingram* for the appellant.

Mr. *Evans* and Mr. *Sheill* for the respondents.

The judgment of the Court was delivered by—

GARTH, C.J. (who, after finding on the facts in favor of the plaintiffs, continued):—It is now further contended that, assuming the plaintiffs are entitled to the shares, their present claim is barred by limitation. The plaintiffs (no doubt, foreseeing this difficulty) have attempted to guard against it in their plaint by stating that the shares were held for them by Seedat in trust; and we observe that the learned Recorder has so dealt with the case, and has considered that, upon this ground, the suit is not barred by limitation.

We feel great difficulty in adopting this view; and even if we could look at the transaction in the light of a trust, we do not see that there would be any answer to the plea of limitation.

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If the facts proved by the plaintiffs gave rise to any trust, it would clearly not be "an express trust," or, in other words, "a trust for any specific purpose," within the meaning of s. 10 of the Limitation Act. It could only be one of those implied trusts, which result from particular relations existing between parties not created for any specific purpose, or by any express declaration of, or conveyance to, the persons who undertake the trust (see the notes to s. 2 of Act XIV of 1859, and authorities there cited) (1).

The transaction in this case as described by the plaintiff himself in his evidence is simply a contract, and nothing more. It was agreed, he says, between Seedat and the plaintiffs, that the plaintiffs should take 120 of the 1,000 shares, which were allotted to Seedat; and that when the plaintiffs paid for those shares, Seedat should transfer them into the plaintiffs' names. The plaintiffs then paid Seedat for the shares within a reasonable time, and Seedat was bound to transfer them, and the breach of his agreement to do so would clearly have been good ground for an action for damages in England in a Court of law.

But the plaintiffs had another remedy against Seedat, and that is the one which they seek to enforce in this suit,—*viz.*, to compel him specifically to perform his contract by transferring the shares, and there is no difficulty in the plaintiffs' way as regards limitation, because by clause 113 of the 2nd schedule of the Limitation Act, the three years limitation does not begin to run till "the plaintiff has notice that his right is denied."

The plaintiffs' right in this case, so far as appears, never was denied until immediately before the suit was brought. Indeed, so far as Seedat was concerned, he constantly and invariably admitted it; so that the Statute of Limitation is really no bar.

But then the defendant says, that, in order to entitle the plaintiffs to a specific performance of this contract, they should, according to a well-known rule in equity, have come to the Court as early as they reasonably could. But this is one of that well-known class of cases where one party to a contract

(1) Thomson on Limitation, 1st ed., pp. 233—237.

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has been allowed for years by the other party to enjoy all the beneficial interest which the contract could confer, but without being clothed with the title which would perfect his legal rights—as for instance, where a lessee under an agreement for a lease has enjoyed the property for years, as completely as if the lease had actually been granted. Under these circumstances if the intended lessor were to refuse the tenant his lease, or any of the benefits which he had a right to enjoy under it, the tenant might always come into a Court of equity, and compel the landlord to grant the lease. (See per Lord Redesdale in *Crofton* v. *Ormsby* (1), *Clarke* v. *Moore* (2), *Ridgway* v. *Wharton* (3), *per* Lord St. Leonards, and other cases cited in Fry on Specific Performance of Contracts, 322.

In the same way here, the plaintiffs have, from the time when they paid these shares, enjoyed the beneficial interest in them; and they never had occasion to insist upon their legal title to the shares being completed by transfer, until their title to them was denied by the defendant.

We, therefore, consider that, in the result the decision of the learned Recorder was perfectly just, and we, accordingly, dismiss this appeal with costs.

Appeal dismissed.

PRIVY COUNCIL.

ABIDUNNISSA KHATOON (DEFENDANT) *v.* AMIRUNNISSA KHATOON (PLAINTIFF).

P. C.*
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24, 25, 28.

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Res judicata—Execution Proceedings—Act VIII of 1859, *ss.* 102, 103, *&* 208—*Act XXIII of* 1861, *s.* 11.

The questions which, under s. 11, Act XXIII of 1861, may be determined by a Court executing a decree, must be between parties to the suit in which the decree was passed, and must relate to the execution of the decree.

Present:—SIR J. W. COLVILE, SIR B. PEACOCK, SIR M. E. SMITH, and SIR R. P. COLLIER.

(1) 2 Sch. & Lef., 583, at p 604. (2) 1 Jon. & Lat., 723.
(3) 6 H. L. C., 238, at p. 292.