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(1877) 04 CAL CK 0001

Calcutta High Court

Case No: None

Nilmoni Singh Deo APPELLANT

Vs

Raghumoni Audhikary RESPONDENT

Date of Decision: April 23, 1877

Citation: (1877) ILR (Cal) 393

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

It seems to us that the decision of the lower Appellate Court is wrong. The suit is brought to recover a 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 Article 90 of the 2nd Schedule of the Limitation Act or by Article 48. Article 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. Article 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 Article 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, The cases alluded to by the learned Judge are Litt v. Martindale 18 C.B. 314 and Andrews v. Haioley 26 L.J. Ex. 323 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, us by a false pretence, it may ho recovered in this Court. So, where defendant wrongfully obtained from the plaintiff''s debtors the 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 Article 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.