Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Balwant Rao Bishwant Chor v. *Purun Mal Chaube, from the High Court of Judicature, North-Western Provinces, Allahabad; delivered February ~~10th~~* 27th, 1883.

Present:

LORD BLACKBURN.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

IN this case the Plaintiff, who is also the Appellant, filed his plaint on the 12th September 1877, and in it he claimed to remove the Defendant, who is the Respondent, from the management of the worship and service performed at the temple of the god Ganeshji in Muttra; to remove the power and control of the Defendant from the properties belonging to the temple; and to be declared authorised to appoint a second manager for the purpose of carrying out the object of the endowment. The plaint then states shortly the history of the temple; that it was founded by the Plaintiff's ancestor, who dedicated property to it, especially the village or mouzah Mandesi. Then it states that "he"—that is, the Plaintiff's ancestor—"entrusted the management "of the service and worship to Mangu Chaube, "the grandfather of the Defendant; and he "during his lifetime, and after him his son "Titri Chaube, have been, according to the "intention of the Founder of the temple, "taking care of it and superintending its affairs.

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" When, in 1865, the Plaintiff came to Muttra on " pilgrimage, and asked the Defendant's mother " how the income of the village used to be spent, " she refused to render an account of it. The " Plaintiff's complaint was rejected by the " Collector on the 13th September 1865 on the " ground of his having no jurisdiction. The " Plaintiff then sued in the Settlement Depart- " ment, but the Defendant himself denied the " Plaintiff's right, and therefore he could " not obtain redress from that Department. The " claim for entry of name was disallowed on " 14th May 1877, and that is the date of the " cause of action."

The precise tenor of the plaint cannot be understood without reference to the dates of the transactions and to some of the documents referred to in it. It appears that the foundation by the Plaintiff's ancestor was prior to the commencement of the present century, so that for 80 years or upwards the management has been in the family of the Defendant. The Appellant became the heir, or one of the heirs, of the Founder in the year 1847. The Defendant's title or possession as manager accrued on the death of his father Titri Chaube in the year 1863, when the Defendant himself was a child and under the guardianship of his mother. In the year 1865 the Plaintiff presented the petition referred to in the plaint, which was for the purpose of having the trusts of the endowment carried into effect by the Collector's Court under Regulation 19 of 1810, which in fact had been repealed some two and a half years previously. But the petition makes a case which, if it were proved, would entitle the Plaintiff to have the proper management provided for by a Court having jurisdiction, for it shows that the funds were applied improperly, and it prays that inquiries may be made

from the zemindars and respectable residents of the city of Muttra, and that the expenses of the Thakurji may be entrusted to the management of experienced hands and learned divines, as provided by the Regulation. The fate of that petition may be divined from the circumstance that the Regulation had been repealed. It was dismissed for want of jurisdiction.

The Plaintiff did not then institute any suit in the Civil Court. He took no proceeding until nearly 12 years subsequent to the petition, when he again sought a remedy in the Revenue Department. An order was made by the Settlement Officer on the 14tb May, by which it appears that the Plaintiff applied to expunge the name of the Defendant, who was registered as Muafidar of the village Mandesi, and for the entry of the Plaintiff's name in lieu of that of the Defendant. It was ordered that the Plaintiff's claim be dismissed.

That dismissal appears to have led to the present plaint, which has been already stated. It appears then that, in 1865, the Plaintiff conceived that he had a case of malversation of the property of the endowment against the then manager, who was the Defendant's mother, and that he prayed relief on that ground; that having carried his complaint to the wrong Court, and having failed there, he did not pursue the claim any further, but that nearly 12 years afterwards he simply claimed to be entered himself as Muafidar instead of the Defendant; and then he brings the present claim, which is for the purpose of either himself removing or getting the Court to remove the Defendant from his position as manager, and for the Plaintiff to be allowed to appoint another manager.

Now in the defence, the Defendant does not dispute but that the property is an endowment appertaining to the god Ganeshji. He says that

the income of it has all along been spent for the purposes of the temple, and the business of the temple is carried on as before. He then pleads the law of limitation as a bar to the suit. In the Plaintiff's written statement, a sort of replication, he states this: "The Defendant has "only since a short time begun to misappro- "priate the income of the endowed property, "contrary to the object of endowment and in con- "travention of his duty; and he, in the Settlement "Department, declared himself, as against the "Plaintiff, to be the proprietor and Muafidar." That seems to be in answer to the plea of limitation; namely, that it was only a short time ago that the misappropriation had begun.

The Subordinate Judge finds that the Defendant's father in his lifetime repudiated the Plaintiff's right to manage the institution, and that the Defendant has followed his father's conduct. "This," he says, "was done in bad faith, "and with the hope of escaping the control of a "superior over his proceedings, so that he might "independently deal with the endowment. This "is calculated gradually to ruin the property, to "divest the donor of his power, and disturb the "management proposed by him." On those grounds he holds that the Defendant deserves to be dispossessed.

The Subordinate Judge does not find that there has been any malversation or misappropriation of the property on the part of the Defendant. All that he finds is that he opposes the right of the Plaintiff. He says in the earlier part of his judgment that the plaint specifies the Defendant's misconduct and improper acts on the ground of which he is said to have rendered himself liable to be removed, but on reading the plaint it is clear that the plaint does not specify any misconduct or improper act, unless it be the resistance to the Plaintiff's claim.

Neither does the written statement carry the case any further, because, although it uses the expression "misappropriate the income," it does not specify any mode in which the income was misappropriated.

The Subordinate Judge deals with the question of limitation by saying that the Defendant has distinctly admitted that the property is an endowment, and that he holds it as manager of an endowment; consequently, he says, his possession cannot, with reference to its very nature, be regarded as adverse. He thinks, therefore, that if the property is affected by trusts, as both the Plaintiff and Defendant allege, any question is open that may arise between the Plaintiff and the Defendant respecting the right to manage the trusts. The Plaintiff gets his decree upon those grounds, and the Defendant appeals to the High Court. The High Court hold that in so far as the suit is for a declaration that the Plaintiff is, by right of inheritance, chief manager of the temple services and properties, it falls within Article 123 of the Limitation Act, —the Act applicable to this suit is Act 9 of 1871, —and, in so far as it seeks recovery of possession of the temple property, it falls within Article 145 of the same Act. Therefore they reverse the decree of the Subordinate Judge, and dismiss the suit with costs. The Appeal is now presented from that decree, and the question is whether the suit is barred by the Limitation Act of 1871.

The reasons now given for avoiding the bar of limitation are, first, that the suit is to be treated as one for the administration of the trusts of the endowment, and that it is open to the Court to dismiss the Defendant for misbehaviour in his office, and on this point the Plaintiff seeks to incorporate in the present plaint the allegations in his petition of 1865. What other difficulties there may be in the way of such a suit, such as

the omission to get the leave of the Court under Act 20 of 1863, their Lordships desire not to discuss on the present occasion, because there is a complete answer to the Appellant's argument in the fact that no evidence whatever of misbehaviour on the part of the Defendant has been adduced. There is, as has been stated, no direct or sufficient allegation of misconduct in the pleadings. There was no issue framed upon that point, neither has anything been found on that subject by the Subordinate Judge. That ground therefore entirely fails.

The next ground is that the case must be taken as falling within section 10 of Act 9 of 1871, which deals with trust property. That section is as follows:—"No suit against a person "in whom property has become vested in trust "for any specific purpose, or against his "representatives for the purpose of following in "his or their hands such property, shall be barred "by any length of time." Their Lordships are of opinion that the expression used by the Legislature, "for the purpose of following in his or their hands such property," means for the purpose of recovering the property for the trusts in question; that when property is used for some purpose other than the proper purpose of the trusts in question, it may be recovered, without any bar of time, from the hands of the persons indicated in the section. But here there is no question of recovering the property for the trusts of the endowment, because the Defendant admits that he is a trustee and says that he is applying the property to the trusts of the endowment. There is no evidence that he is not applying the property to the trusts of the endowment, and there is no reason to conclude that the property would be more applied to those trusts if the Plaintiff were to succeed in his suit than it is at this moment.

The Plaintiff is suing only for his own personal right to manage or in some way to control the management of the endowment. The consequence is that the case does not fall within section 10 of the Limitation Act. If it does not, then it must be within one of the articles of the schedule. Their Lordships do not see any reason to differ from the High Court in thinking that it may fall within Article 123 or Article 145, but they desire to express no opinion upon that point, and there is some difficulty in ascertaining the exact nature of the suit, owing to the obscurity with which the Plaintiff's title is stated in the plaint. But if it does not fall within either of those sections then the case is caught by the general Article 118, which provides for every case that is not previously provided for in the Act. Therefore either the suit is barred in six years or in 12 years,—it matters not which, for the cause of action arose at all events before the year 1865.

The consequence is that the Appeal must be dismissed; and as the Respondent does not appear, nothing will be said about costs. Their Lordships will, therefore, humbly advise Her Majesty to affirm the judgment of the High Court and to dismiss this Appeal.