Present: Lascelles C.J. and Wood Renton J. 1913.

SENARATNA *v.* JANE NONA.

69—D. C. Matara, 5,698.

Prescription—Cause of action—When it arises—Trust—Land bought by A in his name for B and with B's money—Possession by B after purchase—Action to compel a transfer.

A bought a land at a Fiscal's sale in 1890 with B's money and for B, but the conveyance was executed in A's favour. B possessed the land since the purchase. In 1912 the administratrix of A's estate included the land among A's lands in the inventory. B therefore brought this action, *inter alia*, to compel A's administratrix to execute a conveyance in his favour.

Held, that the action was not barred by prescription, as no cause of action arose until the administratrix sought to disturb the *status quo* by including the land in suit in the inventory.

LASCELLES C.J.—The point of time when the right to bring the action accrues is at the time when the party has been interfered with in the enjoyment of his rights. So long as he receives all that he considers himself to be entitled to, he cannot be expected to take action, and the legal cause of action cannot be said to have arisen.

Martelis Appu v. Jayewardene [1] over-ruled on this point.

THE plaintiff in this case averred in his plaint that the land in dispute was purchased at his request and with his money by one Senaratna at a Fiscal's sale (December 18, 1890); the Fiscal's

[1] *(1908) 11 N. L. R. 272.*

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conveyance was executed in favour of Senaratna on April 26, 1895, when it was handed over to plaintiff; plaintiff was in possession of the land since the purchase; Senaratna died on February 13, 1912; the administratrix of Senaratna's estate refused to execute a conveyance in favour of the plaintiff, hence this action.

The following issues were framed at the trial:—

(1) Was the money paid for the purchase of the property in question advanced by the plaintiff?
(2) Did the plaintiff make all the plantations since the Fiscal's sale?
(3) Has plaintiff had prescriptive possession?
(4) Damages.
(5) Is plaintiff's cause of action prescribed?
(6) Is this action maintainable without a notarial agreement?
(7) Can plaintiff, in the circumstances, acquire title by prescription?

The learned District Judge (G. W. Woodhouse, Esq.) delivered the following judgment:—

This is an action by the beneficiary or *fidei commissary* against his trustee's legal representative, who has the legal estate of the land Edandagawawatta *alias* Godewatta, situated at Polwatta, praying for a declaration that he (the plaintiff) is the *de facto* owner and that he is entitled to a conveyance of the land, and for damages and costs.

It is abundantly proved by the evidence that, though the Fiscal's conveyance was for convenience made out in Benjamin A. Senaratna's name, the land was purchased by him with the plaintiff's money and for the plaintiff.

It was clearly on that understanding that the plaintiff entered into possession and built a substantial house on it at great cost. If, as is alleged by the defendant, the arrangement was simply that plaintiff should possess Benjamin's land, while Benjamin for convenience used plaintiff's land Muttettuwatta, it is obvious that neither party would put up valuable buildings without some definite agreement as to compensation for the buildings.

It is admitted that Benjamin Senaratna put up some valuable boutiques on Muttettuwatta. There was a partition, I understand, of that land, and plaintiff was declared owner, and Benjamin was paid compensation for the buildings. If it is true that the building concessions were dependent on a similar concession by Benjamin to plaintiff, it would at any rate have been referred to in that case.

I also find that soon after this land was purchased the plaintiff began living on it and planting it. All the plantations subsequent to the sale are plaintiff's. The attempt on the part of defendant to prove that they were partly made by Benjamin's horsekeeper (?) and another failed utterly.

With reference to issues (3) and (7), I am of opinion that there is no question of prescription here, unless it is held that Benjamin bought the land with his own money and let plaintiff into possession as tenant of some smaller estate, and at some period of his tenure he began to

possess adversely. No more is plaintiff's cause of action prescribed, seeing that it was only when defendant filed the inventory of Benjamin's estate that it was discovered she claimed rights in the land at all. The 6th issue presents some difficulty, but I fail to follow Mr. Jayewardene's argument. If, as I find, plaintiff gave Benjamin money to pay for the land, and authorized him to take a conveyance in his own name for plaintiff's benefit, and Benjamin did so, then Benjamin certainly committed no fraud. In that case the plaintiff's case is established.

If, however, Benjamin took a conveyance for his own benefit, which is defendant's case, then Benjamin is at once guilty of a fraud; and all the law to the effect that a man may not set up the statute of frauds to commit a fraud, &c., comes to plaintiff's aid.

Enter decree for plaintiff as prayed for with costs. No damages, as none have been proved.

The defendant appealed.

De Sampayo, K.C. (with him *De Zoysa*), for the appellant.

A. St. V. Jayewardene, for the respondent.

April 15, 1913. LASCELLES C.J.—

In this case there is no dispute with regard to the findings of the learned District Judge on the facts. But it is contended by the appellant that the learned District Judge was wrong in holding that the plaintiff's action was not prescribed. On the other hand, the respondent contends that the learned District Judge ought to have held that the plaintiff had obtained a title to the land in dispute by prescription. As to the latter point, I do not consider it necessary to definitely decide it. I will only say that, on the findings of the learned District Judge, I do not see why the plaintiff should not have been held to have obtained a prescriptive title. He entered into possession of the land in 1895. He improved the land, and he remained in possession without any dispute or without his right being in any way questioned until the year 1912, when the property was included in the inventory of the deceased's estate. In these circumstances, it is hard to see why the plaintiff should not be held to have prescribed. As to the finding of the learned District Judge that the plaintiff's right of action is not prescribed, the question turns on the time when the cause of action accrued. The plaintiff entered into possession, as I have said, in 1902, and as long as he remained in possession without any interference on the part of his brother or his representatives he had obtained all that he had bargained for. He was in the enjoyment of the right to which he was entitled under the arrangement effected between him and his brother. It cannot, I think, be said that any cause of action accrued until something had accrued which interfered with or placed in jeopardy his rights under that deed, and it is not contended that anything of that nature occurred before the property in question was included in the inventory. The

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English case of *Cowper v. Godmond* [1] shows clearly the principle which is applicable in such cases. The point of time when the right to bring the action accrues is at the time when the party has been interfered with in the enjoyment of his rights. So long as he receives all that he considers himself to be entitled to, he cannot be expected to take action, and the legal cause of action cannot be said to have arisen. I think that the ruling of the learned District Judge on this question is right, and as it is conclusive of the action on the findings of fact, which are not disputed, I would dismiss the appeal with costs.

WOOD RENTON J.—

I am of the same opinion. The learned District Judge has held that the plaintiff-respondent in 1895, on the strength of the purchase by Benjamin Senaratna with his money and on his behalf, entered into possession of the land in question, and held it without dispute till it became apparent that the defendant-appellant proposed to set up a claim of title on behalf of Benjamin Senaratna's estate. That finding is of importance from two points of view. In the first place, it would, in my opinion, have justified a decision of the present case in the respondent's favour on the ground of prescription; in the second place, it throws an important light on the question of the point of time at which the respondent's cause of action arose. He was in undisturbed possession of the land. He was improving it. There was no pretence of any counter claim of title on Benjamin Senaratna's behalf. For compensation was paid to him on the basis that title was in the respondent. In that state of the facts, it cannot, apart from authority, be fairly said that the respondent's cause of action arose till the appellant sought to disturb the *status quo* by including the land in suit in the inventory of Benjamin Senaratna's estate. The only decision that could have been cited on the other side is that of the Supreme Court in *Martelis Appu v. Jayewardene*.[2] It was a decision by Sir Joseph Hutchinson and myself. The facts were somewhat different, but there is no doubt that we there held that the cause of action for the refund of money advanced on a consideration which had failed arose immediately upon payment. That case has subsequently come before me on several occasions, and I have always entertained some doubt whether the decision on that point was right. Now that my attention has been called to the case of *Cowper v. Godmond*,[1] and to the reasoning of the Court of Common Pleas in that case, I do not think that it ought to be followed on the point with which I am dealing. I have taken this opportunity of making this observation seeing that I was myself one of the Judges who decided the case.

Appeal dismissed.

[1] *(1833) 9 Bingham 748.*

[2] *(1908) 11 N. L. R. 272.*