

The English Courts, however, have applied to them the tests applicable to cases of voidable contracts, such as that lapse of time without rescinding will furnish evidence that the party influenced has determined to affirm the contract though delay is not imputable against him till he has such knowledge as he was bound to avail himself of, the onus being on the other side to prove such knowledge and the time of its acquisition; see Leake on Contract, Part I, Chapter VI, section 11.

Since the facts of this case as found by the lower Courts clearly bring it within the scope of section 88 of the Indian Trusts Act, we affirm the decree declaring the sale deed to be null and void. We direct an inquiry as to the amount of the consideration paid by the appellant in discharging the mortgages which were binding on the estate and that on the respondent paying within six months the sum which may be found due on such account, the appellant do deliver to her possession of the property in suit.

The costs of this appeal and the costs in the lower Courts up to date to be paid by the appellant.

Decree confirmed.

J. G. R.

PRIVY COUNCIL

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FOR CITY OF BOMBAY AND ANOTHER—APPEAL: TWO APPEALS CONSOLIDATED.

[On appeal from the High Court of Judicature at Bombay.]

*Bombay City Municipal Act (Bombay Act III of 1888), Sections 297, 301—
City of Bombay Improvement Trust Act (Bombay Act IV of 1898), sections 41, 42, 45 (2)—Bombay Street Scheme—Setting back of new buildings,*

* *Present.*—Lord Shaw, Sir John Edge, Mr. Ameer Ali, and Sir Walter Phillimore, Bart.

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and setting forward in forming lines of new streets—Title of Trustees of Improvement Trust—Taking over by Trustees from Corporation the streets to be formed, and revesting of them in Corporation—Title of owner on change in line of street—Interest—Costs.

The appellant was the owner of a corner block of ground in Bombay having two frontages, one to the Kalbadevi Road and the other to Princess Street, and in 1906 he was under the guardianship of his mother who was desirous of erecting new buildings on it to improve the property. Proper steps as to notices and other preliminary matters were therefore given to the Municipal authorities by whom building lines for the streets had been drawn up under statutory powers which had to be adhered to. On the Kalbadevi frontage requirements were issued that the line of the new buildings should be set back which involved a sacrifice to the owner of 28.41 square yards of site, and that was done. On the Princess Street frontage it was required that the line should be carried forward; that also was done, and the buildings were erected in all respects according to the requirements made, and to plans which were submitted to and sanctioned by both the Corporation, and the Trustees for the improvement of the City constituted under Bombay Act IV of 1898. In suits, one by the appellant against the Corporation for Rs. 5,682 the price of the land where the line of the street was set back; and the other subsequently by the trustees against the appellant for Rs. 5,032 calculated at the same rate for 25.16 square yards, for his ejection and for possession of the land over which he was required to set the line of the street forward, both Courts in India, treating the matter as a case of set-off, decreed the appellant's suit, but without interest or costs, and the Trustees suit against the appellant for Rs. 5,032, and for his ejection if he did not pay that sum.

Held, that on the construction of the City of Bombay Municipal Act (III of 1888) and of sections 41, 42 of the Improvement Trust Act (IV of 1898) there was nothing to indicate that the building line of the street must, once indicated, remain by reason of that original indication, and not be open to change or putting forward, should experience suggest this to be for the best; section 297 of the Act of 1888 and the practice of the Municipality under it confuted there being any such suggestion; and it was clear the Trustees were not prohibited from prescribing a fresh line. Nor was there anything to indicate that the street taken over "to be formed" is anything different in dimension from the street to be handed back when "formed"; section 41 of Act IV of 1898 (as to taking over a street to be formed), and section 45 (2) (as to handing the formed street back) are correlative to each other, and what is to re-vest in the Municipality is just that which when formed as a street had been the subject of that *interim* divestiture to the Trustees as the street-forming authority. The strip of the old street remained under the

Jurisdiction, and was in all respects as before, the property of the Municipality; and when the appellant was required to put forward his building over it, section 301 of the Act of 1888 expressly applied and "the order of the Commissioner to set forward the building" was "a sufficient conveyance to the owner of the said land." The site between the old street and the new one of the appellant's properties became his in ownership, and was still his. The title of the Trustees to it failed and with it failed their suit whether for declaration or ejectment.

Held, also, that while the Act III of 1888 makes provision for the compulsory expropriation of an owner, it makes no provision whatever for payment by the owner in respect of what may be called compulsory impropriation. The right or duty of set-off failed; it was not justified by law.

Held, further, that the appellant was entitled to interest on his decree, and also to his costs. Unless there be something in the contract of parties which necessarily implies the opposite, the date when one party enters into possession of the property of another is the proper date from which interest on the unpaid price should run: on the one hand the new owner has possession, use, and fruits; and on the other hand the former owner, parting with those, has interest on the price. This is sound in principle and warranted by authority.

Fludyer v. Cocker (1) per Sir W. Grant; *Greenock Harbour Trustees v. Glasgow and S. W. Railway Co.* (2); *In re Stirling and Dunfermline Railway Co.* (3) per Lord Cowan; and *Birch v. Joy* (4) per Lord St. Leonards.

APPEAL 52 of 1917 being a consolidated appeal from two decrees (16th April 1916) of the High Court at Bombay in its Appellate Jurisdiction, which affirmed decrees (15th October 1914) of the same Court in its Original Civil Jurisdiction.

The above decrees were passed in suits Nos. 189 and 775 of 1913, the former being brought by one Bhikhibai in the name of her infant son, Ratanlal and as his next friend, against the Municipal Commissioner for the City of Bombay. She sought in the suit to recover the value of 28.41 square yards of land belonging to the plaintiff and acquired and taken possession of by the defendant while enforcing a set back in front of a

(1) (1806) 12 Ves. Jun. 25.

(2) (1909) S. C. 50.

(3) (1857) 19 Dunlop 598.

(4) (1852) 3 H. L. C. 565 at p. 590.

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house which she built on behalf of the plaintiff in Bombay at the corner of Kalbadevi Road and what used to be Lohar Chawl Street and is now Princess Street. The set-back enforced was on the Kalbadevi Road side.

The defendant admitted that he acquired the land for a set-back within the regular street line of Kalbadevi Road, and alleged that he had always been ready and willing to pay for the land at the same rate at which he contended the plaintiff was bound to pay for 25.16 square yards of land over which his building had been set forward on the Princess Street side.

The plaintiff denied his liability to pay anything for the set-forward land, though he did not dispute the fact that his house was set-forward on a piece of land which did not belong to him. He also disputed the area of the set-forward plot of land.

In the second suit the Trustees for the Improvement of the City of Bombay sued Ratanlal, the plaintiff in the first suit, to eject him from the set-forward plot of land abutting on Princess Street. The Municipal authorities discovered after the first suit had been instituted that the set-forward land was not vested in the Municipal Commissioner, the defendant in that suit, but in the Trustees for the Improvement of the City of Bombay, and finding that Ratanlal refused to pay for the land and wishing to avoid any legal difficulty in the way of recovering the price of the land, the Municipal Commissioner brought these facts to the notice of the Improvement Trust, whereupon the Trustees brought the second suit for possession of the land which they allege is vested in them, and that Ratanlal had trespassed on it.

Ratanlal contended that the land in question in the second suit was not vested in Improvement Trustees,

and even if it were, the Municipality of Bombay was the beneficial owner; he denied any trespass, and alleged that his mother built over the land in compliance with the requisition of the Municipal Commissioner, who was empowered to make such requisition, and that the plaintiffs were estopped now from claiming the land; and he prayed in case he was ejected that they should be ordered to pay him compensation for being compelled to give up possession of it.

In the second suit Ratanlal took out a third party notice against the Municipality, but beyond obtaining such notice he did nothing to fix any liability on the Municipality, and the Trial Judge took those proceedings as having been practically abandoned.

Further facts will be found sufficiently set out in the judgment of the Judicial Committee.

The Trial Judge (DAVAR J.) in the first suit decreed Ratanlal's claim to compensation at the rate of Rs. 200 per square yard for the set-back land, amounting to Rs. 5,682 and that each of the parties should pay his own costs. He deprived Ratanlal of all interest on the money, and of costs on the ground that the money was always at his own disposal if he had chosen to act with common honesty, and because he considered that his refusal to pay for the set-forward land, and his efforts to retain it without paying for it, had made the litigation necessary. In the second suit it was declared that the set-forward land was the property of and was vested in the Trustees, and a decree was made that Ratanlal should forthwith deliver up to them that piece of land. And it was further ordered that the third party notice, and Ratanlal's claim against the Municipal Commissioner as third party should be

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dismissed, and that he should pay to the Trustees and the Municipal Commissioner their respective costs of the suit, and of the third party notice.

Ratanlal appealed from the decree in the first suit so far as it deprived him of interest and costs; and appealed against the whole decree in the second suit. The appeals were heard by SCOTT C. J. and BATCHELOR J. who dismissed the appeal in the first suit with costs, and only varied the decree in the second suit by ordering that Ratanlal should be evicted unless he paid to the Trustees by 15th May 1915 compensation at the rate of Rs. 200 per square yard for the set-forward land (25.16 square yards) amounting to Rs. 5,032. In other respects the decree in the second suit was confirmed, and it was ordered that Ratanlal should pay to the Trustees half their costs of the appeal, and to the Municipal Commissioner the whole of such costs as were attributable to his being made a party to that appeal.

On this appeal.

P. O. Lawrence, K. C. and E. B. Raikes for the appellant contended in the first suit that the lower Courts were in error in depriving Ratanlal of interest on the money decreed to him. There was no misconduct on his part, nor on the part of his guardian. He was entitled on the principles under the Lands Clauses Act to interest from the date when the Corporation obtained possession of the set-back land. It was not open to the Corporation, who did not appeal from the decree for compensation, to contend that the claim should have been made in the Small Cause Court. In the second suit the Trustees had no interest in the set-forward land, which was the property of Ratanlal and the Trustees could not therefore sue to eject him from it. The vesting in the Corporation under

section 289 of the Municipal Act was merely for the purposes of that Act and did not affect the freehold interest in the land: see *Municipal Corporation of City of Bombay v. G. I. P. Railway Co.* ⁽¹⁾. But even if the freehold of the streets was vested in the Corporation, the effect of the notice under section 41 of the Bombay Act IV of 1898 was merely to vest the land in the Trustees for the purposes of that Act. Reference was made to *Rolls v. Vestry of St. George, the Martyr, South Work* ⁽²⁾; *City of London Land Tax Commissioners v. Central London Railway* ⁽³⁾. If the set-forward land ever vested in the Trustees, it reverted in the Corporation; it was submitted, when the Trustees abandoned their street scheme, which was before the appellant commenced to rebuild; and no such interest remained in the Trustees as enabled them to maintain a suit. The appellant was by the order of the Corporation under section 300 of the Municipal Act not only authorised but under penalties required to rebuild on the land. No one but the Corporation was empowered to make the order to set-forward the building, and it must be taken to have been made on behalf of the Trustees as well as of the Corporation. The Corporation were not entitled under section 301 or otherwise to receive compensation where premises when being rebuilt are required to be set forward to the building land. Sub-section 3 impliedly excludes such a right.

Hon. F. Russel K. C. and *W. R. Sheldon* for the respondents contended that the first suit was unnecessary as the appellant had only obtained by it the sum of Rs. 5,682 which had been offered him throughout and which the Municipal Commissioner had at all material times been willing to pay him. He was not

⁽¹⁾ (1916) 41 Bom. 291 :

L. R. 43 I. A. 310.

⁽²⁾ (1880) 14 Ch. D. 785 at p. 797.

⁽³⁾ [1913] A. C. 364 at p. 379.

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entitled to interest. Where a long delay has occurred, as in this case, in taking proceedings interest is not awarded unless the delay was due to the fault of the persons liable; *Caledonian Railway Co. v. Carmichael* (1). Until the amount of compensation was settled by the decree, there was no debt. As to the second suit, it was submitted that on the construction of section 289 of the Municipal Act the streets became absolutely vested in the Corporation. For the purposes of the judgment in *Municipal Corporation of City of Bombay v. G. I. P. Railway Co.* (2), it was immaterial whether the vesting was absolute or not. The question whether a Statute vesting land in a public authority vests the freehold depends on the language of the Statute, and the purpose contemplated: *Rolls v. Vestry of St. George the Martyr, Southwark* (3). It is clear from section 290 of the Municipal Act which gives the Corporation a power of sale, that the streets vested absolutely are those as to which they give notice under section 41 of Bombay Act IV of 1898. Under section 63 they had power to let or sell. They had paid the Corporation as provided by section 41 A. The re-vesting in the Corporation under section 45 was only as to the street actually constructed. The land which had not been used for the new street remained vested in the Trustees. The Improvement Trust is a public body of a permanent character with power to hold land as owners. The appellant in substance was permitted, not required to build on the set-forward land; the set-forward was at his request and for his benefit. Under section 301, subsection 2 of the Municipal Act the Corporation were entitled to set off against compensation payable to the appellant, the value of the set-forward land. But

(1) (1870) 2 Sc. App. 56.

(2) (1880) 14 Ch. D. 785.

(3) (1916) 41 Bom. 291; L. R. 43 I. A. 310.

that the appellant's agents led the Corporation to understand that they agreed to the compensation being payable on that basis, it would have been made a condition of the conveyance under section 301, sub-section 3. The appellant was estopped from claiming to hold the land free from any condition.

P. O. Lawrence K. C. replied citing *In re Duke of Northumberland and Tynemouth Corporation*⁽¹⁾, as to the right to interest.

1918 July 26th :—The judgment of their Lordships was delivered by

LORD SHAW :—These are consolidated appeals from two decrees of the High Court of Judicature at Bombay, dated the 16th April, 1916, confirming decrees which are dated the 15th October, 1914, in two suits which were instituted in its Original Jurisdiction.

The object of the suit by the respondents, the Trustees for the Improvement of the City of Bombay, against the appellant, is for a declaration of the plaintiff's property in a certain piece of land, and for the ejection therefrom of the defendant, the present appellant, and for delivery forthwith by him of possession thereof. The land has been built over. The issue raised is serious, affecting as it may do many other frontage sites in Bombay.

The position of the block of property (of which the piece just mentioned forms a part) is as follows. It is a corner site having one frontage to the east—Kalbadevi Road, the other frontage to the north—to Princess Street, in the City of Bombay. Princess Street is made on the site of what was formerly Lohar Chawl Street. The piece of land from which the appellant is sought to be ejected faces Princess Street. The primary

⁽¹⁾ [1909] 2 K. B. 374.

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question for the consideration of the Board is—who owns that piece of land?

The plaintiff, Ratanlal Choonilal Panalal, is the proprietor of the corner block of ground. In the year 1906 his mother and natural guardian, he being then an infant of nine years of age, wished to develop the property by erecting certain new buildings thereon. Steps were accordingly taken to give the notices required in the circumstances to the Corporation. No question arises as to the regularity of these proceedings. Building lines had been drawn up for the streets of Bombay by the Municipal authorities under statutory powers, and in the course of disposing of the application to put down the new buildings on the corner block in question, orders or requirements were issued that these lines should be conformed to.

With regard to the east frontage, namely, that to Kalbadevi Road, the order required that the line of new buildings to be erected should be set back. This was done. This involved the sacrifice to the owner of 28.41 square yards of site. It is admitted by the respondents that the Corporation must pay for this ground under the Bombay Act No. III of 1888.

With regard to the frontage to Princess Street, formerly Lohar Chawl Street, it was required of the plaintiff not that he should set back his building line, but that that line should be carried forward. This also was done and the buildings were erected, according, in all respects, to the requirements made and to plans which were submitted to and sanctioned by both the authorities, namely the Corporation and the Improvement Trust. Details of these points need not be given: the real facts are admitted.

The attitude of the Corporation appears to be that one of these transactions is a legitimate set-off in law against the other. In this they are supported by the

Bombay Improvement Trust, which puts forward the claim that it, under its Act of Constitution, is the owner of that projecting piece of ground facing Princess Street, which had to be so to speak absorbed into the block so as to comply with the throwing forward of the building line. This would seem to be an answer to the plea of set-off, as the debt due by the Corporation could not be compensated in respect of a claim by the Improvement Trust. But these two authorities are hand and glove, and this not improperly. It is in the public interest that they should work together, if this can be done in conformity with the various statutes. The mode of co-operation adopted in the present case was somewhat unusual. The Corporation, claiming as owner, made a demand to be paid a price for the site fronting Princess Street over which the appellant had been forced to throw his building forward so as to conform with the required building line. At first there was an inclination to consider that demand; but differences, delays, and further enquiry ensued, and finally the plaintiff refused this demand. Thereupon the Trust instituted their suit, craving *inter alia* ejection of the plaintiff. This, if decreed, would of course mean the total destruction of a large and important section of the plaintiff's buildings, all erected according to plan and by the sanction and with the knowledge of the Corporation and Trust as stated.

This situation involves an investigation as to the important and fundamental question already stated, namely, who owns this piece of ground? Unless the Improvement Trust can establish its ownership of the site of the projection in question, namely, that facing Princess Street, it cannot of course have any title to eject the plaintiff therefrom.

By the City of Bombay Improvement Act, No. IV of 1898, the respondents as a Board of Trustees were

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constituted. Among its powers are those of making street schemes, and by section 31 it is provided that the street scheme "shall, within the limits of the area comprised in the scheme, provide for (a) the acquisition of any land which will, in the opinion of the Board, be necessary for or affected by the execution of the scheme; (b) re-laying out all or any land, including the construction...of buildings and the formation and alteration of streets."

It is admitted that Lohar Chawl Street was in 1905 vested in the Corporation. The Trust state in their plaint that on the 17th January 1905, they intimated to the Corporation that that street so vested in it was required by the plaintiff to form part of Princess Street, a street which was then about to be formed by the Trust under a scheme to be carried out by it as provided for by the City of Bombay Improvement Act. The meaning of this is that, to begin with, the Trust took over Lohar Chawl Street just as it found it.

This was two years before the appellant began to build. In point of fact, he began in February 1907; and he began upon lines prescribed by the Corporation and known and approved by the Trust as so prescribed. His building line did *de facto* project over the old line of Lohar Chawl Street and come forward to a new line arranged by the authorities as that upon which Princess Street was to run.

How had this change from the old frontage of Lohar Chawl Street to a new frontage for Princess Street occurred? It had occurred for the simplest of all reasons, namely, that between 1905 and 1907 the Trust in working out its scheme of reconstruction, discovered that it would be more advantageous to run the line of Princess Street so as to carry it forward at certain portions, of which the bit of site in question is one,

and to carry it back at other portions. The Trust accordingly communicated that new Princess Street line to the Corporation, sending a plan showing exactly the new and forward regular building line. To that line the Corporation officers duly worked, and to that line the appellant was ordered, most properly, to conform. And, most properly, he did so. In obedience to this requirement the buildings were erected, and they conformed exactly with the forward frontage demanded. As Mr. Delves, the Trust's Deputy Land Manager, testifies—

"The Trust officers knew that the defendant's building was being constructed on this set-forward land.....The Trust took no objection to the construction of the defendant's building while the building work was going on.....The Trust never claimed nor thought of claiming the set-forward land back from the defendant till the Municipality asked us to do so."

It was in these circumstances that the suit for ejection of the plaintiff was brought by the Trust, upon the averment that in 1907 his mother "unlawfully entered into and took possession thereof." This is how the matter stands in fact. How it stands in law depends upon the claim which the Trust puts forward and asks to be judicially declared, that the piece of land "is the property of and vested in it." This claim in law will now be examined.

As stated, the history of the buildings has been that they have been erected to conform to requirement, upon the new and forward Princess Street line and not upon the old Lohar Chawl Street line. The question is, what is the fate of the property between these two lines? The Trust maintains that when it gave its original intimation to acquire up to the Lohar Chawl Street line the effect of that was to vest in the Trust all the ground so embraced, that is to say, not only the ground on which Princess Street was in fact formed,

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but also the strips on which it was not formed. The Municipality for the purposes of this litigation appears to acquiesce in this view, and the learned Judges in the Courts below agree. In the opinion of the Board this is a mistake.

The effect of the mistake would be to produce in the City of Bombay an extraordinary situation. Many properties fronting ordinary streets belonging to the Corporation would find themselves fronting property belonging to the Trust by virtue, it is contended, of the mere intimation that the Trust required the old street for making the new. But when the new street came to be constructed it would be within the power of the Trust to throw the new and actual building line forward with the result that not only would it become the owner of the street as ultimately formed, but it would also become *de facto* the owner of all the strips between the line of the old street and the line of the new. All the frontagers so situated in Bombay would consequently and *de jure* be put into the position of owning hinterland instead of frontage land and be subject to the disadvantages for commercial and other purposes of all that this implies. It was contended by the learned counsel for the respondents that legally and logically the Trust being the owner of these strips it could do with them what it liked with the assent of the Corporation, that is to say, it could let them or build upon them as its own property, thus "blinding" all the old frontagers' sites and buildings.

It is accordingly necessary to see what actually is the true extent of the powers of the Trust on this topic. These are contained in the City of Bombay Municipal Act No. III of 1888, which gave certain powers to the Corporation, which powers were by section 42 of Act IV of 1898 declared to "apply to streets or parts

thereof which may become vested in the Board under this Act, during such periods as the same shall respectively remain so vested, and for the purposes of this Act." The language of this section reflects pretty clearly the main object of the Statute, which was to set up with sufficient powers a street-making authority, and, when its function as such was expired, to have the street which had been reconstructed or made by the Trust thereupon handed back to the Corporation.

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By section 41 it was provided as follows :—

"Whenever under any improvement or street scheme the whole or any part of an existing public street or other land vested in the Corporation is included in the site of any part of a street to be formed, altered, widened, diverted, raised, rearranged, or reconstructed by the Board, the Board shall give notice to the Commissioner that the whole or a part, as the case may be, of such existing street or other land (hereinafter called the 'part required') is required by them as part of a street to be dealt with as aforesaid, and the part required shall thereupon, subject to the provisions of sub-section (2) of section 45, be vested in the Board; provided that nothing in this section contained shall be deemed to affect the rights or powers of any Municipal authority under Chapters IX and X, respectively, of the Municipal Act, in or over any Municipal drain or water-work."

By section 45 (2) it was provided that "the Commissioner shall, on being satisfied that any street formed by the Board has been duly levelled, paved", &c., and drained and lighted, and, in short, thoroughly completed and the work of the Trust as a street-making authority finished, then "such street shall thereupon vest or re-vest, as the case may be, in the Corporation, and the Corporation shall thenceforward maintain, keep in repair, light and cleanse such street."

Not a word is said in these sections to indicate either (1) that the building line of the street must, once indicated, remain by reason of that original indication, and not be open to change or putting forward should experience suggest this to be for the best; nor (2) is anything said to indicate that the street

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taken over "to be formed" is anything different in dimensions from the street to be handed back when formed.

Upon the first point the Bombay Act No. III, and no doubt the practice of the Municipality thereunder confute it. The section referred to is as follows:—

"297.—(1) The Commissioner may—

- (a) prescribe a line on each side of any public street ;
- (b) from time to time, but subject in each case to his receiving the authority of the Corporation in that behalf, prescribe a fresh line in substitution for any line so prescribed, or for any part thereof.

(2) The line for the time being prescribed shall be called 'the regular line of the street'."

It cannot be suggested that the Trust were, as compared with the Municipality prohibited from "prescribing a fresh line."

As to the second point, their Lordships are clearly of opinion that these two sections, the one as to taking over a street "to be formed", and the other as to handing the formed street back are correlative to each other. The section does not mean merely "intended to be formed" when a notice is made, but it refers to that ground and no other which is used as a street and for the purposes thereof, and that no transfer from the Municipality is effected to the Trust of anything else. If, therefore, a line originally indicated is changed, the line of the street to be formed is changed and the whole transaction is modified in this sensible and practical manner. It is only in this way that the word "re-vest" in the Corporation becomes intelligible. What is to re-vest in the Municipality is just that which when formed as a street had been the subject of that *interim* divestiture to the Trust as the streetforming authority. And the whole theory of the Trust's case, namely, that in virtue of a notice taking over from the

Municipality a certain street of Bombay to be formed as a new street by the Trust, thereby vested the whole of the old street in it, although a strip of the old street never was formed as a new street, falls to the ground.

The Trust's action was—in conjunction with that of the officers of the Municipality—much more reasonable, namely, that when the line of the new street was made the frontager was required to put forward his building to conform to it. And this, in the opinion of the Board, was not only reasonable in practice but was correct in law and in accordance with a sound construction of the Statutes.

What then happened to the strip of old street which was never “formed” into the new street? The answer is that nothing happened to it. It remained under the jurisdiction, and in all respects as before the property of the Municipality. To it as such accordingly when the frontager was required to put forward his buildings over it the third sub-section of section 301 of the Municipal Act of 1888 expressly applies. It is as follows:—

“(3) If the additional land which will be included in the premises of any person required or permitted under the last preceding section to set forward a building belongs to the Corporation, the order or permission of the Commissioner to set forward the building shall be a sufficient conveyance to the said owner of the said land; and the terms and conditions of the conveyance shall be set forth in the said order or permission.”

The result is plain: the projection, that is to say, the site between the old street line and the new, *ex adverso*, of the appellant's property, became his in ownership. It is his now. The title of the Trust to it fails and with it fails, the suit, whether for declaration or ejection.

There remains to be dealt with the suit by the appellant for the price of the ground taken from him as the result of the compulsory throwing back of his line.

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of building facing Kalbadevi Road and the absorption into that road by the Municipality of a portion of appellant's ground. Payment for this has been decreed and the decree in this respect will stand.

But two further questions arise in regard to that suit, viz., as to costs and as to interest on the price.

Costs were refused on account of the view entertained in the Courts below as to the conduct of the appellant in refusing to set off against that price a price for the Princess Street projection. The question of whether a price is exigible for that projection does not arise directly as matter of suit; but it is necessary to express an opinion upon it because a determination upon it will govern the questions both of costs and of interest.

In the opinion of the Board while the Act makes provision for the compulsory expropriation of an owner, it makes no provision whatever for a payment by the owner in respect of what may be termed compulsory impropriation. Some reasons occur for the view that it might have been so, and some occur for an opposite view. These were for the Legislature. What the Legislature has done, and all that it has done upon that subject, is contained in section 301 (2) of the Municipal Act. It is as follows:—

“(2) If, in consequence of any order to set forward a building made by the Commissioner,.....the owner of such building sustains any loss or damage, compensation shall be paid to him by the Commissioner for such loss or damage.”

Such loss or damage may be easily figured; the compulsory projection may involve most serious cost; the whole foundations of the old building may be rendered useless, and the cost of new may be heavy; alterations of plans, levels, elevations, and the like might all be involved in particular cases, and, in short, the

Legislature has recognised, not a price to be paid by the owner for compulsory appropriation, but damages to the owner if such can be qualified in consequence thereof. Their Lordships in these circumstances cannot look upon the suggested right in the Trust or the Municipality to receive a compulsory price for the Princess Street proprietors to be justified by the Statute. Accordingly, the alleged right or duty of set-off fails.

In these circumstances the plaintiff and his advisers were, of course, entirely warranted in refusing to concede the set-off claimed. It was not, in the opinion of the Board, justified by law. This renders it unnecessary to deal in detail with certain derogatory observations, more particularly by Davar J., culminating in his assertion that the appellant's conduct "has been conspicuously unscrupulous and transparently dishonest." When it is remembered that in all the most important of these transactions the appellant was an infant of nine years of age, the suggestion of such precocity in wickedness in Bombay seems sufficiently answered. But it may suffice to say that, hard to bear as these accusations must have been, they do not appear to their Lordships to have been in any respect warranted by the facts or by the law of either case. In the opinion of the Board the position taken up by the appellant in these suits has been completely justified, and was throughout in accordance with law. Costs will accordingly follow the event.

On the point of interest, on the price payable by the Municipality, two matters were agreed at the Bar. In the first place, the rate of interest, should it be allowed, was arranged at 6 per cent. In the second place, it was agreed that the Municipality has been in possession of the ground since the 30th June, 1909.

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The Board is of opinion that the right to interest depends upon the following broad and clear consideration. Unless there be something in the contract of parties which necessarily imports the opposite, the date when one party enters into possession of the property of another is the proper date from which interest on the unpaid price should run. On the one hand, the new owner has possession; use, and fruits; on the other, the former owner, parting with these, has interest on the price. This is sound in principle, and authority fully warrants it: see especially Sir W. Grant's judgment in *Fludyer v. Cocker*⁽¹⁾, and also see *Greenock Harbour Trustees v. G. & S. W. Railway*⁽²⁾; in which the judgment of Lord Cowan in *In re Stirling & Dunfermline Railway Company*⁽³⁾ is adopted. Also *Birch v. Joy*⁽⁴⁾, in the judgment of Lord St. Leonards at p. 590.

Their Lordships will humbly advise His Majesty that the appeals be allowed, and that in the first suit the decrees appealed from be varied, and that a decree pass in favour of the appellant for the sum of Rs. 5,682 brought out in the judgment of date the 15th October, 1914, with interest thereon at the rate of 6 per cent. per annum from the 30th June 1909, until payment; and that further in the second suit the judgment and decree be recalled, and that that suit stand dismissed; the appellant to have his costs in both suits, here and in the Courts below.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

Solicitors for the respondents: Messrs. *Cameron, Kemm & Co.*

Appeals allowed.

J. V. W.

(1) (1806) 12 Ves. Jun., 25.

(2) (1857) 19 Dunlop, 598.

(3) (1909) S. C. 50.

(4) (1852) 3 H. L. C. 565.