of the Civil Procedure Code, with permission to bring such other suit as he may be advised; he forthwith paying to the defendants their costs of the present suit.

Attorneys for the plaintiff: *Macfarlane and Green.*

Attorneys for the defendants: *C. E. & F. Stanger Leathes.*

Note. The plaintiff subsequently elected to take the former order.—ED.

Aug. 6.

Appeal No. 137.

BANK OF HINDUSTA'N, CHINA, AND JAPAN (LIMITED).....*Appellants.*

PREMCHAND RA'ICHAND *et al.*.....*Respondents.*

Appeal No. 138.

AHMEDBHA'I HABI'BHA'I.....*Appellant.*

PREMCHAND RA'ICHAND *et al.*.....*Respondents.*

The Companies Act, 1862 (25 & 26 *Vict., c.* 89, *s.* 87)—*Leave of the Court of Chancery—Stay of Proceedings—Comity of Courts—Sale—Execution Sale—Purchase-money—Civ. Proc. Code, Secs.* 246 *and* 258 *—Hindú Law—Gift of Land—Receipt of Rent.*

A suit may be brought in the Courts in India against a company that is being wound up under "The Companies Act, 1862," without the leave of the Court of Chancery being first obtained.

Semble—The High Court will, in the exercise of its general power, stay the proceedings in a suit against such a company where the circumstances are such as to render it proper to do so.

In a suit, under the latter portion of Sec. 246 of the Civil Procedure Code, brought by the owner against the purchaser of property, which has wrongfully been attached and sold in execution of a decree, the execution creditor is properly made a party, the object being to restore all parties to the position which they occupied previously to such attachment and sale.

When a sale is set aside by reason of the execution debtor having no interest in the property sold, the purchaser of such property is entitled to receive back his purchase-money, as on a consideration that has failed.

To make a gift of land complete under the Hindú Law, there must be either possession or receipt of rent by the donee. The receipt of rent may be by an agent, and, if the transaction is *bonâ fide*, it is immaterial that such agent has before the gift received the rent for the donor.

THESE were two separate appeals from a decree of Arnould, J., made on the 20th of March 1868, in Original Suit No. 383 of 1867.

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The plaint—after stating that the plaintiffs, as trustees of certain religious and charitable trusts, sought to establish their claim to certain immoveable property sold in execution at the suit of the defendant bank; and after stating that one Bái Javerváu had by will devised and bequeathed her whole estate to Kándás Nárandás and his brother (since deceased), and by her said will had directed them to "form an enclosure in which two thousand men could be feasted, in order that the name of her (the testatrix's) husband might be perpetuated;" and after stating that Kándás Nárandás, in order to carry out these directions, had, in June 1857, purchased an *oart* called Telvádi for the sum of Rs. 25,000; and that, in December 1863, Kándás Nárandás, in order further to carry out the said charitable and religious establishment, executed a Gujaráti paper, in the nature of a deed of trust, whereby he conveyed the Telvádi estate to the plaintiffs upon certain trusts therein mentioned; and after stating that the said defendant bank (which had obtained a decree for Rs. 1,12,003-15-0 against the said Kándás Nárandás) had attached in execution, under Sec. 235 of the Code of Civil Procedure, the said Telvádi estate, and (though informed of the existence of the said trust deed) had caused the estate and interest of the said Kándás Nárandás in the same to be sold by the Sheriff, which sale, accordingly, had taken place on the 22nd of November 1866, when the said estate had been sold to Ahmedbhái Habíbhái for the sum of Rs. 56,300, who claimed to hold the said estate as absolute owner—concluded thus:—"The plaintiffs now, under Sec. 246 of the Code of Civil Procedure, seek to establish their title as such trustees of the said estate of Telvádi, and pray that they may be declared, as against the defendant, Ahmedbhái Habíbhái, to be absolutely entitled thereto, and they pray that this Honorable Court will grant them such further and other relief in the premises as shall seem fit, and the circumstances of the case may require."

The defendant, Ahmedbhái Habíbhái, in his written statement, alleged (*inter alia*) that the Telvádi estate was the property of Kándás Nárandás, and that the conveyance of

it to trustees in 1863 (if such conveyance ever existed) was an illusory, and not a *bonâ fide* conveyance, and that the trusts alleged to have been therein declared never did in fact affect the said premises.

He further alleged that the trustees named in the deed of 1863 never took possesssion of the property, which remained in the books of the Collector in the name of Kándás Náran-dás, and that it was in his legal and actual possession, and not in that of the trustees, at the date of the said attachment.

He also prayed that, if necessary, the conveyance of 1863 should be declared fraudulent and void, and that he might be declared absolutely entitled to the premises.

The written statement of the Bank of Hindustán stated—

I. That the bank was an English registered joint stock company, and traded by agents only in Bombay, and was not registered under any of the Indian Joint Stock Companies Acts.

II. That it was then, and at the time of the commencement of the suit had been, in voluntary liquidation under The English Companies Act of 1862 (25 & 26 Vict., c. 89), subject to the supervision of the High Court of Chancery in England.

It was submitted, therefore, that, under Secs. 81 and 87 of The English Companies Act, no suit could be maintained against the said bank without the leave of the Court of Chancery having been first obtained. It was also submitted that the said bank should be dismissed from the suit with costs, no relief having been prayed, nor any case having been made against it by the plaint, and the bank having unnecessarily been made a defendant.

25 & 26 Vict., c. 89, s. 81 :—"The expression 'the Court' in this part of this Act shall mean the following authorities (that is to say) * * * * In the case of a Company registered in England that is not engaged in working any such mine as aforesaid—the High Court of Chancery."

Sec. 87 :—"When an order has been made for winding up a Company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court, and subject to such terms as the Court may impose."

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After the attachment mentioned in the plaint had been laid upon the Telvádi estate, the trustees (the present plaintiffs) came in (under Sec. 246 of the Civil Procedure Code) and asked to have the attachment set aside. They were unsuccessful, and consequently brought this suit, under Sec. 246, within a year from the date of such unsuccessful application. The learned Judge found that the plaintiffs were entitled to the relief they prayed; that the suit was properly proceeded with against the Bank of Hindustán, though the leave of the Court of Chancery in England had not been first obtained for proceeding therewith; that the bank was not entitled to be dismissed from the suit with costs for the reasons stated in its written statement. He, however, by his decree, dismissed the bank from the suit without costs.

Pigot and *Dunbar*, for the appellants:—The object of the section on which we rely (Sec. 87 of 25 & 26 Vict., c. 89) is to leave it in the hands of the court under which the company is being wound up, and which is cognisant of all its affairs, to determine whether or not to admit the various claims that may be brought against it. This is for the interest of all parties concerned, between whom the Court of Chancery will do complete justice. Its object being thus beneficial, the words used have been made as wide as possible.

[COUCH, C.J.:—Do you contend that this section applies to the courts in this country, India not being mentioned in the Act?] Yes. The words are general: "No suit shall be brought." Grave inconvenience would arise, and the object of the Act, which, as of a Bankruptcy Act, is to divide the assets rateably amongst the creditors, would be defeated if suits were allowed to be brought without such leave obtained. Suppose most of the assets were in Bombay, and a creditor were to obtain a decree without such leave being obtained and proper terms imposed upon him, he might seize in execution the whole amount of his debt and costs, and leave the other creditors without any assets wherewith to satisfy their claims. [COUCH, C. J.:—This court might and does interfere in such cases to protect the assets.]

The result then would be still more unfortunate. The creditor who had obtained judgment here must needs resort to the Court of Chancery for satisfaction, and that court might refuse to recognise the judgment of this court, its sanction for bringing the suit not having been obtained. On the other hand, a slight delay is the only disadvantage under which the creditor labours, and that is a result occasioned by the fact of a creditor dealing with the agents of a company registered in England. There is no authority directly in point, but the case of *Ronald* v. *Edwards* (*a*) determined that a certificate in bankruptcy (and proceedings in bankruptcy must be taken to be analogous to proceedings under the Winding-up Acts) was a bar to proceedings against the bankrupt in the Supreme Court of Calcutta taken by a creditor who had no notice of the bankruptcy. That case seems to have been followed by the High Court in Calcutta, which, when applied to under Sec. 87, stayed all proceedings: *Peitsch* v. *The Commercial Bank Corporation* (*b*).

[COUCH, C. J. :—The court has a discretionary power to stay proceedings.] The judgment of Phear, J., goes much further than that. Even supposing the court here is not bound to stay proceedings, it ought, in its discretion, to do so. That is the mode in which the Act is taken advantage of in England: *Langley* v. *Smith* (*c*); Lindley on Partnership 1255; see, too, *Wilson* v. *The Natal Investment Co.* (*d*). Further, it is contended that the bank ought not to have been made a party to this suit. This is practically an action of ejectment. No relief is sought for as against the bank, nor could any be obtained: *Dhondú Mathurádás* v. *Rámji valad Hanmantá* (*e*). The Sheriff sold this property; the bank did not, nor did it in any way guarantee the title. It is not even alleged in the plaint that the bank is a wrongdoer. If the bank acted maliciously or without due caution, it would be reasonable to make it a party; but nothing of the kind is even alleged. [COUCH, C.J. :—The bank has in a

(*a*) 1 Knapp P. C. C. 259. (*b*) 1 Ind. Jur., N. S. 263.
(*c*) 3 B. & S. 938. (*d*) 15 Law Times 658.
(*e*) 4 Bom, H. C. Rep., A.C.J. 114.

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formal way attacked the title of the plaintiffs. Have not, then, the plaintiffs a right to make the bank a party?] [SARGENT, J.:—Where a decree-holder directs the Sheriff, through the court, to attach certain property, does he not set up such an objection to the title of the owner as to justify the latter in making him a party to a suit to establish his title?] In the present suit, at any rate, no relief is prayed against the bank; therefore, none can be obtained. On the merits of the case, the decree ought to have been in favour of the bank with costs—also in favour of the other defendant: *The Attorney General* v. *Poulden* (*f*). The gift to the trustees was incomplete under the Hindú law, as there was no delivery of possession nor receipt of rent: *Harjivan Anandrám* v. *Náran Haribhái* (*g*).

White and *McCulloch*, for the respondents:—It is difficult to draw any analogy from the Bankrupt Laws. A certificate in bankruptcy seems to operate upon the status of the bankrupt. [COUCH, C.J.:—That is not the ground on which the decisions on that point are founded. The principle seems to be, that it is unjust to hold a man still liable for his debts who has parted with all his property to his creditors.] At any rate, it is a principle which ought not to be extended. If the contention on the other side were well founded, this Court would be actually bound,—not by the comity of courts, but by *law*,—to say that, even as against a wrong-doer, no action could be maintained in the case of a company being wound up. Cases may be imagined in which, the law here being different to the law in England, the Court of Chancery would refuse its leave to file a suit. Is this Court, then, to abrogate its own functions, and refuse relief? This Court would never do that unless compelled to do so. The general law is clear. English statute law does not extend to India, unless India is specially mentioned. There are provisions in the English Companies Act for putting it in force in Ireland and Scotland, none as to India—*expressio unius exclusio alterius*. If, then, there be nothing in the nature of this Act which shows that

(*f*) 8 Sim. 472. (*g*) 4 Bom. H. C. Rep., A.C.J. 31.

its provisions are intended to apply to India, there is nothing in its words which would necessarily have that effect. The words of the Wagering Act (8 & 9 Vict., c. 109, s. 18) are equally general, yet it has been held that its provisions do not apply: *Ramloll Thackoorseydass* v. *Soojumnul Dhondmull* (*h*). *Edwards* v. *Ronald* (*suprà*) stands alone. That seems to have been decided upon the words of the Act, which said "that a certificate should be a bar in any of His Majesty's Courts," of which the Supreme Court of Calcutta was one. [COUCH, C. J.:—*Sidaway* v. *Hay* (*i*) was like it. All the cases on this subject are reviewed in *Bartley* v. *Hodges* (*j*).] A curious point on this anomalous case of bankruptcy is, that the benefit is not reciprocal between the Colonies and England: Westlake, Internat. Law, 230, 240, 241. In the case of *Peitsch* v. *The Commercial Bank* the suit was stayed. That was done in accordance with the principle of the comity of courts.

As to the question whether or not the bank was a proper party, a distinction must be taken between necessary and proper parties. We do not contend that the bank was a necessary party. Is the judgment creditor to be made a party in any case? If he *can* be made a party in any case, he is *liable* to be made a party in every case. It must be that he is interested. Take the case of moveable property attached and sold; the purchaser goes away with the chattel. Is the owner without remedy? Is not his course to proceed against the person who has the proceeds of his chattel in his pocket. Is the latter to be allowed to say: "I did not sell your chattel, but only the interest of my judgment debtor in it"? [COUCH, C. J.:—The sale is the act of the Court.] True, but the court acts upon the representations of the judgment creditor. [COUCH, C. J.:—The act of the Court is not ministerial only; it is judicial. The Court, under Sec. 246, decides against the claimant, and in favour of the execution creditor.] When the sale is set aside under Sec. 258, the purchaser is entitled to recover back his purchase-money as on a failure of consideration: *Greesh Chunder Pottar* v. *Lookhooda Moyee*

(*h*) 4 Moo. Ind. App. 339.
(*i*) 3 B & C. 12. (*j*) 3 0 L. J. Q. B. 352.

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Dabee (*k*); *Brojendur Roy Chowhry* v. *Jugunath Roy* (*l*); *Mohanund Holdar* v. *Akial Mehaldar* (*m*). These cases have given to Sec. 258 of the Code a broad construction. In the case relied upon on the other side, *Dhondú Mathurádás* v. *Rámji valad Hanmantá*, the very narrowest construction was applied to Sec. 258, merely because it follows a section which speaks of setting aside a sale for irregularity. If this narrow construction be adopted, it will be disadvantageous to all parties concerned. The purchaser will not be secure in his title. The creditor will not be able to sell the attached property to advantage, which of course will react upon the judgment debtor. In this case we substantially ask to have the sale set aside. We are also entitled to succeed upon the merits.

Pigot in reply :—The cases cited on the other side are not in point. In all of them the sale was set aside, which has not been done here, nor was there any prayer to that effect. If it should turn out that this Telvádi estate was the property of the plaintiffs, nothing at all was sold. [SARGENT, J. :—If your argument is sound, a third person whose property is proposed to be sold by the judgment creditor is not interested, and ought not to interfere.] He comes in to prevent his property being handed over. [COUCH, C.J. :—Not only that, but to prevent the order for sale from being made.] [SARGENT, J. :—If the bank had not been made a party, could not the defendant, Ahmedbhái Habíbhái, have insisted on its being joined as a co-defendant. Such is the course in Courts of Equity, to avoid multiplicity of suits. A man sues for a claim against me, in consequence of which I have a claim against some one else. I can ask to have that person made a party, so that complete justice may be done in the suit.] That might be so if the sale were to be set aside; but that is not done. The case of *Dhondú Mathurádás* v. *Rámji valad Hanmantá* is conclusive.

Cur. adv. vult.

(*k*) 1 Calc. W. Rep., Civ. R. 55. (*l*) 6 Calc. W. Rep., Civ. R. 147.
(*m*) 9 Calc. W. Rep., Civ. R. 118.

6th Aug. COUCH, C.J.:—In these appeals, which were heard together, the Court has to determine three questions: Whether, in order to maintain a suit against the Bank of Hindustán, which is now in liquidation under the orders of the Court of Chancery in England, the leave of that court is not necessary; whether, supposing such leave not to be necessary, the bank was properly made a party; and whether there was a complete gift of the property in this suit to the trustees of the charity. In the last question two are included: one, whether there was a complete gift according to the Hindú law; and the other, whether there was not a secret trust in favour of, or a power of revocation reserved to, the grantor. As to the first question, it was contended that leave was required by Sec. 87 of the English Companies Act (25 & 26 Vict., c. 89). The words of that section are: "When an order has been made for winding up a Company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the Company, except with the leave of the Court, and subject to such terms as the Court may impose." The Court in this section is defined by Sec. 81 to mean the Court of Chancery in England. It was argued before us that this provision extended to actions brought in this country and by persons domiciled in India, as the plaintiffs in this suit were.

The rule as to the English statute law since 1726 applying here, is stated by Mr. Morley at page 23 of his Introduction. He says that the law which governs the courts is the statute law expressly extending to India, which has been enacted since 1726, and has not since been repealed. It appears to me that this definition is defective, and it is necessary to add to the word "expressly" the words "or by necessary implication." That seems to me to be the result of the decision in *Edwards* v. *Ronald* (*ubi suprà*). No reasons are given in the judgment, but, looking at subsequent cases in which that decision was discussed, especially the case of *Sidaway* v. *Hay*, and the reasons relied upon by counsel before the Privy Council, I think we are justified in concluding that the grounds of the judgment were, that this particular statute extended, by reason of its terms, to

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the Supreme Court at Calcutta. What we then have to consider here is, whether the Act (25 & 26 Vict., c. 89, s. 87) is by necessary implication extended to India, and to persons domiciled in India. The words of the section, no doubt, are general, but that of itself is not a sufficient ground for saying that its provisions apply in India. If that were so, the Act relating to gaming and wagering would also have so applied, the words being equally general; and yet the Privy Council, in the case to which we have been referred, would not allow that point to be even discussed. Therefore the *words* of this section are not sufficient to oblige us to hold that its provisions extend, as contended for, to this country. Except the general words, there is nothing in the statute to show that there was any intention of the Legislature to apply this provision to India. I think, therefore, that we may, and ought, to hold that this clause of the English Companies Act is not extended by necessary implication.

Although, however, this Court would allow a suit to be brought without leave obtained, yet, on a representation being made to it, showing circumstances that would render it proper that a suit should be stayed, the Court would undoubtedly entertain the application, and, in the exercise of the general power which it possesses, would do what is just and right to assist the Court of Chancery in winding up the company. That is a different matter from saying that no suit or action *can* be brought without leave first obtained, as was contended for. The result of holding the contrary would be, that a person, who may have a trifling cause of action against the bank, would be compelled, either himself to go to England and bring his suit there, or else ask for and obtain the leave of the Court through the expensive medium of agency. In many cases this would operate as a complete denial of justice.

I now proceed to consider whether the Bank of Hindustán was a proper party to the suit. The circumstances are these. The bank, having obtained a decree, applied to the Court to attach and sell the property which is the subject of

this suit. The present plaintiffs then came in under Sec. 246 of the Code of Civil Procedure. Upon that application the decision was against them. It would seem that after that, the defendant, Ahmedbhái Habíbhái, purchased the property, knowing that an application had been so made. The plaintiffs then brought a suit in accordance with the latter part of Sec. 246, which says: "The order which may be passed by the Court under this section shall not be subject to appeal, but the party against whom the order may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order." What is the nature of the suit thus brought? It is a suit to establish a right. What, then, is that right? Sec. 246 empowers a party to apply to the court to release the property from attachment. What, in fact, he claims is, that the lands are not to be sold. It is his right that the lands should not be sold. When a suit is brought, it is a suit to establish that right, namely, that the lands ought not to have been sold. The course to be pursued under that section is not an appeal, but what the Legislature has substituted for an appeal, probably deeming that in a suit the facts would be better and more thoroughly investigated than in an appeal.

If that is the nature of the right and of the suit that is to be brought, the suit is practically one to set aside the sale already made, and to restore the parties to the position which they originally occupied. And if the right of the plaintiff is established, the proper decree to be made is that the sale should be set aside. It is, therefore, impossible to say that the bank is not a proper party. It is not now necessary to determine what is the proper course to be pursued by the purchaser in order to recover back the purchase-money. It may be that, under Sec. 258, in a properly constituted suit, the Court ought to direct the money to be restored. I give no opinion upon that; but it is quite clear that, the object of the suit being to set aside the sale, the bank is interested, and was properly made a party to the suit, and that on that point the learned Judge came to a correct conclusion.

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The remaining question goes to the merits of the case. Was the gift complete according to Hindú Law? The case quoted in the argument shows that, according to that law, to give effect to a gift, there must be possession or receipt of rent. I have read over, and fully considered, the evidence on this point, and I think the result of it is that there was a receipt of rent. Vithaldás Vittandás was appointed to collect the rents of the property. It is true he had collected them for Kándás Nárandás, but still it was quite allowable for the plaintiffs to appoint him. He did collect rents. Was it done for the plaintiffs? The books were produced, in which it appears that the rent collected was credited to the charity, and against the sums so credited other sums were debited, as having been expended for the purposes of the charity. The plaintiffs could not receive the rents in person; they were at perfect liberty to appoint an agent, and receipt of rent by him is sufficient, according to Hindú Law.

It only remains to consider whether this was a gift for charitable purposes; and upon that point I am satisfied that it was what is sometimes called a gift "out and out." From the time the deed was executed, and for a considerable period, the proceeds were credited to the trustees, and the trusts were to some extent carried out;—very little, it is true, with respect to this property, but still to some extent. Some allowance must be made for the dilatory way in which these matters are carried out by natives, and also for the circumstances of the time, which caused the performance of the trusts to be postponed to a future occasion. I need not go at length through the evidence, which was fully discussed in the course of the argument, and which I have since considered with my brother Sargent: and, though not without difficulty, I have come to this conclusion. I think the parties were acting *bonâ fide*, and that the property passed to the plaintiffs.

SARGENT, J.:—I see no reason to change the opinion which I formed when the case came before me in chambers.*

* Upon motion made on behalf of the bank to reject the plaint.

That Sec. 87 of the Companies Act does operate as a bar to a suit brought without leave of the Court of Chancery can be put upon two grounds only: that the section extends to India; or that, from the comity existing between the Courts here and at home, this Court is bound to treat the want of that leave as a bar to the suit. Now that an Act of the English Legislature subsequent to 1726 may extend to India, it must be so by express words or necessary implication. Here there are no express words, but it was contended, from the analogy of the case of *Edwards* v. *Ronald*, that this section must be so extended by necessary implication. There are no reasons given for the decision in that case, and it was probably decided on the ground that the Act applied to the Supreme Courts in India, as included in the expression "any of His Majesty's Courts."

Here, however, we have only such ordinary general language as was necessary to effect the object of the section within the United Kingdom, for which the Imperial Legislature must *primâ facie* be presumed to legislate.

Then as to the comity of courts. On looking at the English cases decided on the effect of a discharge under Colonial and Scotch bankruptcy laws, it is to be remarked that they one and all assume that no such comity or international law exists. In *Bartley* v. *Hodges* it was simply said that the Victoria statute did not apply to Great Britain. So in the Scotch sequestration case the judgment proceeded on the ground that the Act was an imperial Act, and that there was nothing in it which showed that it did not extend to England. Still less should comity require a foreign court to give effect to a section which would oblige every man having a claim against the company to lay all the particulars of that claim before the Court of Chancery in England, before attempting to establish it in the courts to which he was of right entitled to resort.

The Courts here might indeed, under proper circumstances, and where no injustice would be worked, give effect to it partially, by staying proceedings; but that is quite a different

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matter from saying that no suit can be instituted until leave of the Court of Chancery is first obtained.

As to the second point, I think that a suit under Sec. 246 was intended to restore all parties to their former state. The section says the suit is to establish the plaintiffs' right, and that right is clearly to have it declared that the property belongs to the plaintiff, and should not have been sold, and to have the sale consequently set aside. If so, all parties interested in the proceedings in execution must be affected by the judgment, and on this ground the bank is a proper party to the suit. But I think the bank was also properly made a party, to avoid multiplicity of suits. A question must arise between the execution creditor and the purchaser. There must be an equity on the part of the latter to recover back his purchase-money, as the consideration for it has failed. This depends on the general principles of Equity, and it also appears that it is so under Sec. 258 of the Code of Civil Procedure. That section, in my opinion, being general in its terms, applies to all cases in which a sale is set aside, and not merely when it is set aside by reason of some irregularity in the proceedings: and so it would appear to have been decided by the High Court in Calcutta. Whether, therefore, we look to the words of the Code, or the general principles of Equity, there must be a question between the execution creditor and the purchaser in such a case as this. The former is, therefore, interested in the subject-matter of a suit in which the whole question might be gone into.

Mr. Pigot, however, contended that in this particular case the bank ought not to have been made a party, as no relief is prayed against it. The plaintiffs have, however, set out all the circumstances of the case, under Sec. 246. They ask for a declaration of right to the property, and then follows a prayer for general relief, which would include the setting the sale aside. It is true the declaration of right to the property is prayed "as against the purchaser," but that when made in this suit must be equally binding as against the bank, and, therefore, the Court could, under the prayer for

general relief, grant that to which the plaintiffs and the purchaser are alike entitled, namely, to have the sale set aside. It is true that a prayer for general relief is not in accordance with the provisions of the Code, which in Sec. 26 declares that the plaintiff must ask for the specific relief he claims. If the defendant had raised that point at the outset, the Judge would doubtless have ordered the requisite amendment to be made, but as the bank did not object in the Division Court, it cannot now be allowed to do so.

As to the question that arises on the merits of this case, I agree with what has been said by the Lord Chief Justice.

Decree confirmed.

Appeals dismissed with costs.

Attorneys for the plaintiffs: *Macfarlane and Green.*

Attorneys for the defendants in both cases: *Rimington, Hore, and Langley.*

Appeal Suit No. 141.

Sept. 3.

KHARSHEDJI NASARVA'NJI CA'MA' *et al.*.....*Appellants.*
THE SECRETARY OF STATE IN COUNCIL OF INDIA.....*Respondent.*

Land required for public purposes — Appointment of Arbitrators— Laches—Waiver of Right to have entire Manufactory taken—Neglect to put forward Defence in written statement—Surprise—Act VI. of 1857, *Sec.* 32.

By a Government notification of the 3rd of June 1863, published in the *Gazette*, it was declared, under the provisions of Act VI. of 1857, that a certain strip of land passing by the mill of the defendants was required for a public purpose, the B. B. and C. I. Railway, a plan of which land was to be seen in the Collector's office.

On the 4th of November following, the Secretary of the defendants' company received a notice, signed by the Collector, requiring the owner of the mill to call at the Collector's office to signify his acceptance or otherwise of the compensation for the land required.

The Secretary went to the Collector's office, and there saw a plan, from which it appeared that an adjoining well from which the engine of the mill was supplied with water was intended to be taken, but no compensation for the well or land required was then agreed upon.