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March 16.

Special Appeal No. 605 of 1868.

Ramrav Khanderav... ... ... *Appellant.*

Govind Pandsbet *et al*.... ... ... *Respondents.*

Champerty—Public Policy—Void agreement.

R. entered into an agreement with G., that if a suit, which was then about to be brought by G. for the recovery of certain land, should be decided in favour of G., R. was to pay G. rupees 85, and G. was to make over to R. half the land recovered. R. was to pay G. Rs. 50 in certain proportions which R. was to lose if the suit was not decided in favour of G. G. recovered the land and R. then sued him upon the above agreement.

No issue was taken in the Court of first instance on the question whether the agreement was void for champerty.

An issue was raised on this question by the Appellate Court and (no evidence being taken) was decided in favour of the defendant.

Held in Special Appeal that, as it was not manifestly apparent on the face of the proceedings that the agreement was against morality or public policy, the Appellate Court ought not to have held it void.

Semble, that the above agreement was not void on the ground of champerty; at any rate, that it was capable of explanation by a consideration of the surrounding circumstances which the plaintiff should have had an opportunity of giving in evidence.

This was a Special Appeal from the decision of A. Bosanques, Acting District Junge of the Konkan, in Cross Appeals Nos. 516 and 521 of 1867, amending the decree of the Munsif of Panwel.

The case was heard on the 2nd March 1869, before COUCH C.J., and GIBBS, J.

Shantaram Narayan for the Appellant.

Pandurang Balibhadra for the Respondents.

Cur. adv. vult.

The facts of the case fully appear from the following judgment delivered this day by.

COUCH, C. J.—This suit was brought on an agreement which, in the judgment of the District Court, is stated to be in Substance as follows:—" I mortgaged four fields to Khanderav and Nanji, but they refuse to give up the fields to me, and I have to sue them for possession; you and I have agreed that, if the suit be decided in my favour, you are to pay me Rs. 85 and I am to make over to you half the land

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awarded to me, but if the suit be not decided in my favour you are not to get anything. You are now to pay me Rs. 50. I have received from you Rs. 40 of that sum, and you are to pay me the balance of Rs. 10 on the suit being decided. If the suit be not decided in my favour, you are to lose the above Rs. 50." The Munsif of Penwal decreed that the plaintiff should recover one quarter of the claimed, on payment of Rs. 47-8-0 to the defendant Govind. Both the parties appealed from this decree to the District Court. The Acting judge Mr. A. Bosanquent, in this Judgement, after stating pervious proceeding, says. "In appeal No. 516 the defendant, Govind, urged that (1) the agreement sued on is of the nature champerty, and a claim based upon it is untenable in a Court of Justice; (2) under the agreement the plaintiff was only entitled to one-eight and not to one-fourth share of the land. In appeal No. 521 the plaintiff urged that the money taken by Pandu (the father of the defendant Govind) from the plaintiff was spent on the redemption of ancestral property, and Ravji took half of it, therefore Pandu's agreement is binding on Ravji. Hence the claim to half of the land has been wrongly dismissed. The 1st issue for decision is whether this action is maintainable. My finding on this issue is in the negative and for the defendant. The agreement by Pandu Datta to Ramrav Khanderav, Exhibit No. 4, dated the 23rd of December 1861, on which this suit is based is in substance as follows (stating it). Before this agrement was made, Ramrav had no interest in the land. Such an agreement as the above is void at law, and, according to the best anthorities it is, I believe, void at Equity. The policy of the law on this subject may be considered doubtful by modern jurists, but their veiws have not, as far as I am aware, been acted upon by Courts of Equity much less by Court of Law (*See* Norton's Jurisprudence, pages 259 to 262; Smith's Manual of Equity, pages 236 to 238). I amend the Munsif's decree by dismissing the plaintiff's claim entirely with costs." We must remark that the Acting Judge would seem to have thought that he was to decide the case as a Court of Law, and not, as he ought to do, according to Equity and good conscience.

Now, the objection that the agreement was void as being of the nature of champerty was not raised by the defence before the Munsif, and no issue upon that was framed by him. The plaintiff had no opportunity of giving evidence in explanation of, or in answer to, this objection; and, unless it is manifestly apparent on the face of the proceedings that the agreement was against morality or public policy, the Appellate Court ought not to have held it to be void: *Fischer* v. *Kamola Naicker* (*a*). The Judicial Committee of the Privy Council in their judgment in that case say that the champerty or maintenance which makes an agreement void is something which must have the qualities attributed to champerty or maintenance by the English law; it must be something against good policy and justice; something tending to promote unnecessary litigation; something that in a legal sense is immoral, and to the constitution of which a bad motive in the same sense is necessary; and that it is necessary to look at the substance of the transaction and not merely the language of the instrument. Possibly, if the question of the validity of the agreement had been raised before the Munsif and the plaintiff had been allowed to show the real nature of the transaction, it would have appeared not to have any of the qualities above mentioned.

In *Harrington* v. *Long* (*b*) it was held by the Court of Chancery that it is not maintenance to purchase an interest which is the subject of a suit; but if the purchaser give an indemnity against all costs which have been, or may be, incurred by the seller in the prosecution of the suit, the transaction amounts to maintenance. There is no such indemnity in this case, and, except that in the vent of the suit being decided against the seller the purchaser is to lose the Rs. 50, the transaction is a simple purchase of an interest which was about to be the subject of a suit. But, if the purchase had been complete at the date of the agreement, and the purchaser had paid the whole of the money, he would lose it, if the suit was decided against the seller,

(*a*) 8 Moo. Ind. App. 170, & see 187.
(*b*) 2 My. & K. 590.

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and the agreement would not, on that account, be void. A legatee too poor to sue assigned his legacy for less than it was worth to a person who bought it for the purpose of enforcing payment by suit; and the Court of Chancery held that this did not amount to champerty or maintenance, *Tyson* v. *Jackson;* (*c*). It may be that in this case Pandu was too poor to sue without raising money by selling half of the land in this way. Upon the face of the proceedings in the suit it is not clear that the agreement was against morality or public policy, and we are of opinion that the decree of the Appellate Court must be reversed and the suit remanded to it for re-hearing. The costs to follow the final result.

GIBBS J.—Concurred.

Decree reversed and case remanded.

(*c*) 30 Beav. 384.

Special Appeal No. 53 of 1869.

March 23.

Lakshuman Ramji ... ... *Appellant*
Ramlal valad Mahipati ... ... *Respondent*

Limitation—Mirasdar—Land allowed to lie waste by Mirasdar.

Where a *Mirasdar* left his *miras* in 1850 without executing a *razinama* resigning it, and the *miras* lay waste until 1855, when the defendant took it up and cultivated it.

It was held that the cause of action of the *mirasdar* arose in 1855, when the *miras* was taken up by the defendant.

This was a Special Appeal from the decision of M. B. Baker, Assistant Judge of the District of Khandesh, in Appeal Suit No. 28 of 1867 reversing the decree of the Munsif of Tengora.

Lakshuman Ramji Patil in 1866 sued Ramlal valad Mahipati to obtain possession of his *miras* land which, in 1850, when he left his village, he had made over to Ramlal on condition that the latter should give up possession to him if he ever returned to the village.

The defendant replied that the field was Government land, that the plaintiff never allowed him to cultivate it, nor did he