

WESTROPP, C.J.:—We do not think that Secs. 256 and 257 of the Code of Civil Procedure are of any application in the present case, as they do not relate to cases in which fraud is shown. Mr. Anstey says, and says correctly, that in the first petition of the appellant there was a clause which alleged what is tantamount to fraud; and if that had been inquired into by Mr. Sandwith, and if he had made his order on it, there would have been some difficulty in interfering with it. But Mr. Sandwith did not at all inquire into the fraud. His attention may have been diverted from the charge of fraud by its long sequel in the petition, and there has been no investigation of that charge. Mr. Sandwith took no evidence on the collusion between the Názar and the execution-creditor. The charge of fraud is, therefore, not *res judicata*. We think, accordingly, that, as a case of fraud has been clearly made out, the order confirming the sale, as well as the order of Mr. Naylor refusing to set aside the confirming order, should be reversed. We order the property to be put up again to auction, a proper time for which will be fixed on by Mr. Naylor. The respondents must pay the costs of these proceedings. The purchase-money, if lodged in court by the purchasers (the respondents), should be refunded after deducting those costs, and any other expenses relative to the sale or otherwise which may be just.

1870.
VIRSINGA'PPA'
BASLINGA'PPA'
v.
SADA'SHIV-
APPA' A.
GOLKHANDI
et al.

Order reversed.

Referred Case.

July 12.

BA'BA'JI bin LAKSHMAN *Plaintiff*.
MA'RUTI bin RA'GHOJI *Defendant*.

Promissory Note bearing English and Native Dates—Computation of Time—Payment.

The period of payment stipulated in a promissory note bearing both English and Native dates should, when the parties are Hindús, be reckoned according to the Native calendar.

CASE stated by Ráv Bahádur Janárdhan Vásudevji, Judge of the Court of Small Causes at Puná, for the orders of the High Court:—

1870.
BÁBÁJI
LAKSHMAN
v.
MA'RUTI
RÁ'GHOSH.

“Whether the period of payment stipulated in a promissory note should be reckoned according to the English or the Native calendar when the note bears both the Native and English dates.

“This question has arisen in reference to a plaint which has been presented to this court by one Bábáji bin Lakshman, suing on a promissory note bearing the Native date Mág Shudh 14th, Shake 1787, and the English date 29th January 1866, and payable in one year. If the year be calculated in reference to the English calendar, it expires on the 29th of January 1867, and the claim was barred at the date of the presentation of the plaint. If it be calculated in reference to the Native calendar, it expires on the 17th of February 1867, and the claim is within the period prescribed. This difference arises from an intercalary month (Adhik Jesht) having occurred in the Native year Shake 1788.

“When the parties use both Native and English dates in the instrument executed between them, I should think that the period of payment stipulated in the contract may be calculated in reference to the English, and not the Native, calendar.”

The reference was considered by GIBBS and MELVILL, JJ.

PER CURIAM:—The court is of opinion that, as the parties in the case are Hindús, the presumption is that they intended to calculate the time according to the Hindú era, and this presumption is not rebutted by the circumstance that the English as well as the Native date appears in the document.