

sary, and whatever is required to make such a demand effectual. There seems to be no necessity in the present case, and the defendants are petty traders on whom the burden of a fixed payment might bear oppressively. If the plaintiff chooses to take up her residence with her husband's family, they must support her in such comfort as their means allow ; but in the absence of any special circumstances necessitating her withdrawal and separate residence, we do not think she can claim cash payments from them, to enable her to add to her luxuries while living apart.

We must, therefore, reverse the decrees of the lower Courts, but under the circumstances the parties severally are to bear their own costs throughout.

*Order accordingly.*

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APPELLATE CIVIL.

( 15 )

*Before Mr. Justice West and Mr. Justice Pinhey.*

BHAGVANDAS KISHORDAS (ORIGINAL PLAINTIFF), APPELLANT, v. ABDUL HUSEIN MAHOMED ALI (ORIGINAL DEFENDANT), RESPONDENT.\*

*Assignment—General Power of Attorney—Surety—Principal—Payment—Attachment.*

September 10.

An instrument authorizing a person to receive on behalf of another such sums as should become due in the course of the execution of a certain work, is not an assignment of money but a power of attorney, and is covered by a stamp of Rs. 8, whatever may be the amount recoverable under it. [General Stamp Act XVIII of 1869, sch. II, art. 32.]

The plaintiff was nominally surety, though really the principal, in the case of two contracts entered into by one Rehmu with the Executive Engineer, Ahmednagar. On completion of the works, the Executive Engineer handed over to the plaintiff a cheque on the Government treasury for the amount due on the first contract. Before the cheque was presented by the plaintiff for payment, the defendant, who was the judgment-creditor of Rehmu, served the Executive Engineer with a notice attaching any monies in his hands due by him to Rehmu. The Executive Engineer thereupon stopped payment of the cheque, the amount of which was eventually paid to the defendant;

*Held* that, at the date of the attachment, the cheque had become the property of the plaintiff, and that the defendant should refund the amount received by him.

The second contract was sold to the plaintiff by Rehmu, and the account in the Executive Engineer's Office, relating to it, was closed, showing a sum of money to Rehmu's credit at the date of the defendant's attachment;

\* Second Appeal, No. 247 of 1878.

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*Held* that the plaintiff, being the only person really interested, was entitled to this sum also; for, although the Executive Engineer would have been legally justified in paying it to Rehmu, he was not bound, it being really the plaintiff's property, to pay it to a third person such as the defendant, the judgment-creditor, who, if the sum was paid to him, must refund it to the plaintiff.

THIS was a second appeal from the decision of N. Daniell, Judge of Ahmednagar, amending the decree of the Subordinate Judge, First Class, of Ahmednagar.

One Rehmu contracted with the Executive Engineer at Ahmednagar to execute certain works—(a) on a road, and (b) in the Ahmednagar Police Lines. The plaintiff was nominally surety for Rehmu, but it appeared that the means for carrying out both the contracts were provided by him—Rehmu, a poor man, being put forward as principal in order to save the plaintiff the cost of providing security for himself. The contracts were prepared and the payments made in favour of Rehmu with a full understanding on the part of the Executive Engineer, that the plaintiff was the party having the chief interest in the works.

This suit was brought in respect of two separate sums of money: viz. Rs. 1,700-15-5, due to Rehmu under the first contract, and Rs. 552-15-6 due to him under the second. Rehmu had executed a document (exhibit No. 2) authorizing the plaintiff to receive such sums as should become due in respect of the works he had undertaken. The Executive Engineer accordingly, with Rehmu's assent, handed to the plaintiff a cheque for Rs. 1,770-15-5 due to Rehmu in respect of the first contract. Immediately afterwards the Executive Engineer was served with notices, at the motion of defendant, attaching all moneys in his hands due to Rehmu, and he at once stopped payment of the cheque, the amount of which was eventually paid over to the defendant.

The sum of Rs. 552-15-6, which was due to Rehmu in respect of the second contract, was also attached by the defendant, and was paid over to him by the Executive Engineer. The plaintiff then instituted this suit against the defendant to recover both the above sums.

The defendant contended that exhibit No. 2, by which Rehmu authorized the plaintiff to receive on his behalf such sums as became due to him, was inadequately stamped with a stamp of Rs. 8

it being in the nature of an assignment, and not a power of attorney, and that, at the date of his attachment, Rehmu was the legal owner of the money.

The Subordinate Judge awarded the plaintiff's claim in full. On appeal the Judge was of opinion that exhibit No. 2 was an assignment, and that the stamp of Rs. 8 would cover Rs. 1,500 only. He, therefore, amended the decree of the Subordinate Judge to that extent.

*Manekshah Jehangirshah* for the appellant.—Exhibit No. 2 is a power of attorney, and is properly stamped under art. 32 of sch. II of the General Stamp Act. The real character of the plaintiff was recognized by the Executive Engineer, who was not justified in stopping the payment of the cheque, or refusing the payment of this amount found to be really due to the plaintiff, though nominally to Rehmu.

*Pandurang Balibhadra* for the respondent.—The transaction between Rehmu and the plaintiff was a fraud on the public. The rules of the Public Works Department required that there should be a person capable of performing a contract, and another substantial person as a security for the due performance of that contract. Rehmu being found to be a man of straw, there was only one substantial person, viz., the plaintiff. [WEST, J.—Transactions of this nature are usual, and it is the business of the Public Works Department to see that their rule has been adhered to. We have nothing to do with it.] The Executive Engineer was justified in stopping the payments which were subsequently made to the defendant by order of the civil Court. With regard to the cheque, the plaintiff should be looked upon as a creditor; with regard to the money due under the second contract, it had not vested in him at all.

The Judgment of the Court was delivered by

WEST, J.—The document No. 2 is a power of attorney authorizing the plaintiff to receive, on behalf of Rehmu, from the Executive Engineer such sums as should become due in the course of execution of a contract for work into which Rehmu had entered with the Public Works Department. Such a document is, we think, covered by a stamp of Rs. 8, whatever the amount that might be received under it.

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The plaintiff Bhagvandas, was surety, and real principal, in the case of two contracts made by Rehmu with the Executive Engineer. His connection with them was known, though under the departmental rules it would not be formally recognized. On the first of these contracts, when the account was closed, a balance appeared due, to Rehmu, of Rs. 1,770-15-5. With Rehmu's assent, and in fulfilment of his agreement with Bhagvandas, a cheque for the sum due was handed to the latter by the Executive Engineer at Ahmednagar. Immediately afterwards the Executive Engineer was served with a notice, attaching moneys in his hands due to Rehmu at the instance of the present defendant. He then sent to the treasury, and stopped payment of the cheque, and the amount was eventually paid over to the Judgment-creditor. The latter is now sued for the amount by Bhagvandas and no question having been raised as to the steps that Bhagvandas might have taken against the Executive Engineer, the question has been treated by all parties like one of an attachment of the money in Bhagvandas's hands. If it was his, we are asked to give Judgment for him; if not, we are to pronounce against him. Now, although, down to the moment when the account was closed and the cheque drawn, the Executive Engineer might properly have refused to recognize Bhagvandas as having any interest which the Public Works Department must respect, yet, when, on the balance being struck, he had, at Rehmu's request, given the cheque to Bhagvandas, and taken a receipt from him, he had undoubtedly recognized the assignment of Rehmu's interest to Bhagvandas. He was, by having taken Rehmu's receipt, exonerated also from liability to him, and when the notice was served, there was nothing left on which it could operate. As regards Bhagvandas, whatever might be the state of the accounts as between him and Rehmu on a general settlement, this cheque had been paid to him, and as between them had become completely his. It was not Rehmu's money in his hands, but money, or an order for money, paid to him at Rehmu's request, and entirely at his own disposal. Rehmu's judgment-creditor had no right to take it from him, though, if Bhavandas were in Rehmu's debt, the creditor might attach any balance found due to the latter.

Another sum of Rs. 552-15-6 was standing to the credit of Rehmu on another contract in the hands of the Executive Engineer, and this, too, was attached by the judgment-creditor. Rehmu had sold the contract to Bhagvandas, who was the person and the only person really interested. But Rehmu was still the only person recognized by the Executive Engineer, who, indeed, was not bound to attend to any third person, except on the command of a Court, as his creditor for the sums coming due to the ostensible contractor. He would have been legally justified in paying Rehmu, because, notwithstanding the existence of a relation of principal and agent between Rehmu and Bhagvandas, that relation, as he was not bound to recognize it and Rehmu could not sub-let his contract, was as if undisclosed. But as between any outsider and the principal and agent, the same considerations would not apply. Bhagvandas being the person really interested, the money being really his, though earned by his agent, a judgment-creditor of the agent could not deprive him of it, except under special circumstances. The Executive Engineer, too, could not equitably be called on to recognize a third party who did not own the money to the detriment of another third party who did own it. If the rule of the Public Works Department was broken through, Bhagvandas's ordinary rights at the same moment came into operation. Here the judgment-creditor had not been induced to deal with Rehmu by an assumption, on Rehmu's part, of the character of a principal under such circumstances that Bhagvandas, the real principal, could not come forward except subject to the equities between the agent and his creditor. The moneys which the judgment-creditor could seize and retain were those that were really Rehmu's, Bhagvandas not having become responsible, or, for this purpose, legally identified himself with Rehmu. In the case of *Cooke v. Hemming*(1) there was a difference of opinion as to whether money due for meat supplied by B in execution of a contract made, and without notice assigned by A, was to be regarded as at the order and disposition of A. The majority thought it was. But the opinion of all the judges will be found to agree with the view we have taken of this case, if it be borne in mind that Bhagvandas's position was known to the Executive Engineer

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and that the effect of reputed ownership under the Bankruptcy Acts is a special consequence of express provisions in those statutes. This money, therefore, having been wrongly realized by the defendants, must be refunded to Bhagvandas.

We reverse the decree of the District Judge in so far as it modifies that of the Subordinate Judge, and restore the latter, with costs throughout on defendants.

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APPELLATE CIVIL.

( 16 )

*Before Mr. Justice West and Mr. Justice Pinhey.*

BALAKRISHNA TRIMBAK TENDULKAR (ORIGINAL DEFENDANT No. 2),  
APPELLANT, v. SAVITRIBAI (ORIGINAL PLAINTIFF), RESPONDENT.\*

September 25.

*Hindu Law—Relinquishment of Share by Son—Inheritance—Private  
Arrangement—Widow.*

The effect of a Hindu son relinquishing for a sum of money his share in the property of his father, natural or adoptive, and agreeing not to claim it during or after his father's life-time, is to place him in the position of a separated son. The relinquishment does not amount to disinheritance. If, therefore, the father on such relinquishment makes an alienation of his estate, it will take effect, but otherwise his separated son will inherit in preference to his widow.

A son by birth or adoption can for adequate reasons be disinherited, but the course of devolution prescribed by the law cannot be altered by a private arrangement; on the disinheritance of the son, the son's son becomes his grandfather's lawful heir.

THIS was an appeal from the decision of Rav Bahadur Vishnu Moreshvar Bhide, Subordinate Judge, First Class, of Thana, at Nasik.

One Govind Tendulkar owned certain moveable and immoveable property at the village of Rewas, in the Alibag Taluka of the Thana District. The plaintiff Savitribai is his daughter. Having no son, Govind adopted Trimbak, (defendant No. 1 in the Court of first instance,) who was the adoptive father of Balkrishna, defendant No. 2, and appellant in the High Court.

\* Appeal No. 1 of 1878.