more than it would be a defence to an action by a factor, broker, or agent for another to plead that the contract was made by the plaintiff for his principal. In *Jameson & Co.* v. *The Brick and Stone Campnay (Limited)* the case was argued for the plaintiff on the same principle: and as the Court did no more than follow the decision in *Herbert* v. *Sayer*, it mey be presumed that the same principle was adopted. It is not necessary to express any opinion as to the applicability of these decisions to similar cases arising under the Indian Insolvent Act. It is sufficient to say that they do not, in our opinion, furnish any authority for holding that an insolvent may bring a suit to enforce the terms of a settlement regarding landed property made before he filed his petition in insolvency. Any rights which the insolvent had under such settlement vested, as soon as the Court made its order under section 7 of the Indian Insolvent Act, in the Official Assignee; and a suit to enforce such rights could be maintained by the Official Assignee only.

We reverse the decree of the Court below, and restore that of the Subordinate Judge; and direct that the appellants and respondent bear their own costs in both Courts below, and that the respondent bear all the costs of this appeal, and the costs of the third defendant, Nura Nisa in the Courts below.

Order accordingly.

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ORIGINAL CIVIL.

Before Mr. Justice Green.

IN THE MATTER OF THE NEW FLEMING SPINNING AND WEAVING COMPANY (LIMITED) IN LIQUIDATION.
H. R. CORMACK AND OTHERS, OFFICIAL LIQUIDATORS.

July 16.

Bill of exchange—Liability of a company to third parties on a bill drawn by directors as such—Indian Companies Act (X of 1866), Sec. 47—Company—Winding up—Interest on debts subsequently to date of order to wind up—Rules of Court of 3rd August 1866—Rule No. 24.

The articles of association of the New Fleming Spinning and Weaving Company, Limited, authorized the directors "to raise or borrow from time to time in the name or otherwise on behalf of the company such sums of money as they from time to time think expedient, either by way of sale or mortgage of the whole or

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any part of the property of the company, or by bonds, debentures, or promissory notes, or in such other manner as they deem best, and for the purpose of securing the re-payment of any money so borrowed with interest to make and carry into effect any arrangement which they may deem expedient by conveying or assigning any property of the company to trustees or otherwise."

Held that though power to borrow money on bills of exchange was not specifically given, yet bills of exchange being in many respects analogous to promissory notes, and promissory notes having been specifically mentioned in the article, the power to raise money by an equally well-known and recognized mode, viz., by drawing, endorsing, or accepting bills of exchange, must be deemed to be included in the general words "or in such other manner as they deem best."

Three of the directors of the above company, one of whom was also the secretary, treasurer, and agent of the company, drew a bill in favour of S. in the following form :—" Sixty days after the date of this first of exchange (second and third of the same tenor and date not being paid) pay to the order of S. the sum of Rupees two lakhs only. Value received, and place to account of G. P., K. N., N. K., Secretary, Treasurer, and Agent. The New Fleming Spinning and Weaving Company, Limited, Directors.' The bill was endorsed by S. to the Bank of Bombay, was duly presented for payment to the drawee, and protested for non-payment. Subsequently to the date of the drawing of the bill, the New Fleming Spinning and Weaving Company, Limited, went into liquidation. The Bank of Bombay claimed as endorsees of the bill to prove against the company as drawers.

Held that, assuming that companies under the Indian Companies Act (X of 1866) are by section 47 liable on bills of exchange drawn on their behalf, or on account of persons acting under their authority, the bill in question was not such a bill. Whether or not a note or bill must, on the face of it, *express* that it is made, accepted, or endorsed, "by or on behalf or on account of" the company, yet there must be on the face of it that which shows that it was so made, accepted, or endorsed and which excludes the inference that it was made, accepted, or endorsed by or on behalf or on account of any other person.

A bill or note may be in a certain sense on behalf of or on account of a company, though there is upon its face no reference to the company, even in the form of a description of the persons who actually make, accept, or endorse as being directors or secretary. As between such persons and the company such a bill or note may well be on behalf or on account of the company, but it is not, therefore, so as between the company and third parties. So far as third parties are concerned, a company under the Act can be made liable in a bill or note only when such bill or note on the face of it expresses that it was made, accepted, or endorsed by, or on behalf, or on account of the company, or where that fact appears by necessary inference from what the face of the instrument itself shows. The addition to the signatures of individuals as makers, drawers, acceptors, or endorsers of notes or bills, of their description as director or directors, secretary, treasurer and agent of a certain company is not considered to raise such inference, as it does not exclude the supposition that though described as directors, &c., they intended to make themselves personally liable to holders of the instrument,

though as between themselves and the company they may be entitled to be indemnified for anything they may have paid on account of the company in respect of such notes or bills.

Dutton v. *Marsh* (L. R., 6, Q. B, 361) followed.

Rule No. 24 of the Rules, dated the 3rd of August 1866, made by the High Court of Bombay under the powers given by section 189 of the Indian Companies Act (X of 1866) is *ultra vires*, as far as it allows interest on debts or claims subsequent to the date of the order to wind up a company to creditors whose debts or claims do not carry interest.

IN this case a summons was taken out on behalf of the Bank of Bombay, calling on the Official Liquidators of the New Fleming Spinning and Weaving Company, Limited, to show cause why the claim of the Bank on the said commpany for Rs. 5,50,107 in respect of certain bills or drafts, with interest thereon up to the date of the order for winding up the said company, and further interest under the rules of Court, should not be allowed.

The bills in question were four in number. Three of them dated, respectively, the 17th October 1878. the 12th December 1878, and 21st December 1878. were in the following form, and were drawn for the sums of Rs. 50,000, Rs. 1,00,000, and Rs. 2,00,000, respectively.

Bombay, 17th October 1878.

The New Fleming Spinning and Weaving Company, Limited.

Three months after date pay to our order the sum of Rs. (50,000) fifty thousand only for value received.

Kessowji Naik,

Cursetji Nusservanji Cama,

Nursey Kessowji,

Ghellabhai Padumsey,

Sakalchand Nagurdas.

Accepted.
For the New Fleming Spinning and Weaving Company, Limited.
Kessowji Naik,
Cursetji Nusservanji Cama } *Directors*
Ghellabhai Padumsey,
Sakalchand Nagurdas,
Nursey Kessowji, *Secretary, Treasurer, and Agent.*

Seal of the Company.

Witness to all the above signatures
Bapuji Nowroji.

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On the back of the bills was the following endorsement :—

Pay Bank of Bombay or order

Witness to all the above signatures
Bapuji Nowroji.

Kessowji Naik,
Cursetji Nusservanji Cama,
Nursey Kessowji,
Ghellabhai Padumsey,
Sakalchand Nagurdas.

The remaining bill was dated the 24th November 1878, and was in the following form :—

"Sixty days after date of this first of exchange (second and third of the same tenor and date not being paid) pay to the order of Dr. Sidney Smith the sum of Rupees 2 lakhs only.

Value received and place to account of

Ghellabhai Padumsey,
Kessowji Naik,
Nursey Kessowji,
Secretary, Treasurer, and Agent,
The New Fleming S. & W. Co., Limited. } Directors.

To Messrs. Shamji Nursey & Co.,
Calcutta.

This bill was endorsed as follows :—

No. 990.—Rs. 2,00,000.
Due 22nd January 1879.
Pay Bank of Bombay or order.
Sidney Smith.

The only questions argued at the hearing of the summons was whether the last stated bill was in such form as to render the company liable and as to the interest to be allowed in all the above bills.

Latham, for the Official Liquidators, showed cause.—He relied on *Dutton* v. *Marsh*. (1)

Macpherson for the Bank of Bombay, *contra*.

(1) L. R., 6 Q. B., 361.

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GREEN, J.—The matter for decision here arises on a summons, dated the 4th August 1879, issued at the instance of the Bank of Bombay calling on the official liquidators of the above company to show cause why the claim of the bank on the said company for Rs. 5,50,107 in respect of certain bills or drafts, with interest thereon up to the date of the order for the winding up of the company by the Court, and further interest according to the rules of this Court, should not be allowed, and why the liquidators should not pay the costs of and incidental to this summons out of the assets of the company. The sum of Rs. 5,50,107 is made up of Rs. 3,50,883 (the aggregate of three bills of exchange drawn on the company by Kessowji Naik and others, and accepted by and in the name of the company, and endorsed to the bank, with Rs. 83 for notarial charges), and of Rupees two lakhs (the amount of a bill of exchange alleged to have been drawn by or on behalf of the company on and accepted by Messrs. Shamji Nursey and Co., of Calcutta, and endorsed to the bank by the payee, with Rs. 24 for notarial charges). With regard to the three bills, aggregating Rs. 3,50,000, it has not been contested by the learned counsel for the official liquidators, and properly, I think, that in form they are bills which would bind the company. The questions, however, raised as to these bills, as also, in the case of the bill for Rs. 2,00,000, are whether the directors and the secretary, tresurer, and agent of this company had power to bind the company by accepting or drawing bills of exchange at all, and how far, as against the company in liquidation, interest on the amount of such of the said bills as are binding on the company is to be allowed. The learned counsel for the official liquidators did not argue, and I think properly, certain other points of objection raised in the affidavit of the official liquidator, and he treated the question of authority to bind the company as depending on the construction to be put on clause (*c*) of art. 102 of the articles of association of the company. This article defines the powers and authorities of the board of directors and the secretary, treasurer, and agent. Among such powers and authorities, power and authority are by clause (*c*) given "to raise or borrow from time to time in the name or otherwise on behalf of the company such sums of money as they from time to time think

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expedient, either by way of sale or mortgage of the whole or any part of the property of the company, or by bonds, debentures, or promissory notes, or in such other manner as they deem best, and for the purpose of securing the repayment of any money so borrowed with interest to make and carry into effect any arrangement which they may deem expedient by conveying or assigning any property of the company to trustees or otherwise." Now, though a bill of exchange is not specifically mentioned, yet it is so analogous in many respects to a promissory note, that in itself it may well be deemed to come within the general words "or in such other manner as they deem best". Had not "promissory notes" been specifically mentioned, I should have had great doubts, taking the whole clause together, whether it was intended to give the directors power to raise money on negotiable instruments as distinct from mortgages, bonds, or debentures; but inasmuch as the power to raise money by some negotiable instruments at least is given by the specific mention of promissory notes, I am of opinion that the power to raise money by an equally well-known and recognized mode, viz., by drawing, endorsing, or accepting bills of exchange, is to be deemed as included in the general words already mentioned which follow the words "promissory notes."

The next question argued was whether the bills of exchange were in such form as to be binding on the company. This depends on section 47 of the Indian Companies Act (Act X of 1866), which is as follows :—"A promissory note, bill of exchange, or *hundi* shall be deemed to have been made, accepted or endorsed on behalf of any company under this Act, if made, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by, or on behalf, or on account of the company, by any person acting under the authority of the company." This section differs from section 47 of the earlier Act, viz.. XIX of 1857, in this, that the earlier Act required all promissory notes, bills of exchange, or *hundies*, in order to be binding on the company, to have been made, accepted, or endorsed *in the name of company* by any person acting under the express or implied authority of the company.

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The section of the Indian Acts, viz., section 47 of Act XIX of 1857 and section 47 of Act X of 1866, are, with the exception of the introduction of the word *hundi*, word for word identical respectively with sec. 43 of the English Joint Stock Companies' Act of 1856 and section 47 of the English Companies' Act of 1862, and the English decisions on the construction and effect of those sections in the English Acts are directly applicable to the corresponding sections of the Indian Acts. It was admitted, as I have mentioned, by the learned counsel for the official liquidators, that as to the three bills aggregating Rs. 3,50,000 they are in point of form bills accepted "on behalf or on account of" the company within section 47 of Act X of 1866, and that supposing the question as to the authority of the directors and secretary, treasurer, and agent to accept bills of exchange on account of the company at all, to be decided on the construction of clause (*c*) of article 102 of the articles of association of the company in favour of the bank, such bills are binding on the company, and that the claim of the bank to rank as creditor of the company in liquidation in respect thereof must be allowed. In fact, the point as to the form of these three bills is too clear to admit of argument. They are all bills drawn by four persons (who were also, it appears on the face of the bills, directors of the company, though as drawers not so described) on the company by name and accepted, "for the New Fleming Spinning and Weaving Company, Limited," by the same person that drew the bills, but here described as directors, and by the secretary, treasurer, and agent. But as to the form of the bill for Rs. 2,00,000, a serious matter for argument arises. The bill is addressed to Messrs. Shamji Nursey and Co., of Calcutta, and requires them "sixty days after sight to pay to the order of Dr. Sidney Smith the sum of Rupees two lakhs only, value received, and place the same to account of." Then follow the drawers' names thus—"Ghellabhai Pudumsey, Kessowji Naik, Nursey Kessowji, secretary, treasurer, and agent : The New Fleming Spinning and Weaving Company, Limited, directors." The first two signatures are in the Gujarati character, with the names in English character following. The third is in English character. The words and letters "*secretary, treasurer, and agent*" and "*The*" and "*S. and W. Co., Limited*" are in printed letters, as are other

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formal parts of the instrument. All that can be said of the fact of there being a printed form is that it was caused to be prepared by some person as a form of bill to be drawn by some one—whether alone or with others—who was secretary, treasurer, and agent of some spinning and weaving company, limited. It is not even a form, on the face of it, perpared for the use of the New Fleming Spinning and Weaving Company, as the words "New Fleming" are in writing, not in print. The words "place the same to the account of" appear, so far as relative locality is an indication, to be connected with the names of the drawees. The bill was endorsed by the payee to the Bank of Bombay, and presented on the 22nd January 1879 to the drawees in Calcutta. It does not seem to have been accepted or presented for acceptance as distinct from payment; at least no acceptance appears on it, and the only note on it is under the above date, which was the day on which the bill became due, and consists of the letters P. N. P., or protested for non-payment. It may be, however, that I am mistaken as to this, as the affidavit of the secretary and treasurer of the Bank of Bombay states that this bill was accepted by Shamji Nursey and Company; so that the claim of the bank is as endorsees and holders of a dishonoured bill of exchange against the drawers. The question is, who were the drawers? the New Fleming Spinning and Weaving Company, or the three persons whose names are on the bill as drawers? A point might, perhaps, be raised under section 47 of Act X of 1866, viz., whether a company under the Act can be made "liable, accepted, or endorsed," the word "made" evidently applying to the first subject of the sentence, viz., "promissory notes." In recognized legal phrase, a bill of exchange is not *made* by the drawer of it, nor is the drawer of it called the *maker*. But this point has not been raised here, nor do I think it necessary to express any opinion upon it. Assuming, then, that companies under the Act are by section 47 liable on bills of exchange drawn on their behalf, or on account of persons acting under their authority, was this such a bill? The conclusion at which I have arrived is that it was not. I am of opinion that the cases show that whether or not a note or bill must, on the face of it, *express* that it is made, accepted, or endorsed "by or on behalf

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or on account of" the company, yet that there must be on the face of it that which shows that it was so made, accepted or endorsed, and which excludes the inference that it was made, accepted, or endorsed by or on behalf, or on account of any other person. A bill or note, of course, may be in a certain sense on behalf of, or on account of a company, though there is upon its face no reference to the company even in the form of a description of the persons who actually make, accept, or endorse as being directors or secretary. As between such persons and the company such a bill or note may well be on behalf or on account of the company ; but it is not therefore so as between the company and third parties. So far as third parties are concerned, a company under the Act can be made liable on a bill or note only when such bill or note on the face of it expresses that it was made, accepted, or endorsed by, or on behalf, or on account of the company, or where that fact appears by necessary inference from what the face of the instrument itself shows. The addition to the signatures of individuals as makers, drawers, acceptors, or endorsers of notes or bills, of their description as director or directors, secretary, treasures, and agent of a certain company, is not considered to raise such inference, as it does not exclude the supposition that though described as directors, they intended to make themselves personally liable to holders of the instrument, though as between themselves and the company they may be entitled to be indemnified for anything they may have paid on account of the company in respect of such notes or bills. But if they intended or may have intended to make themselves personally liable, then they did not intend or may not have intended to make the company liable to the holders, and in either case it would be impossible to say with certainty, or as a matter of necessary inference, that the note or bill was made, accepted, or endoreed on behalf, or on account of the company. I feel quite unable to distinguish the present case from the case of *Dutton* v. *Marsh* (1) The form of note there in question was, it may be contended, more strongly in favour of the liability of the company than in the case of the bill now in question in this respect, that the words "We, the directors of the Isle of Man Slate and Flag Company, Limited, do promise,

(1 L. R. 6 Q. B, 361.

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&c.," were in the body of the note itself, and not, as here added to the signatures of the drawers. It was contended that that decision was not a decision with reference to section 47 of the English Companies' Act. It is true that the section is nowhere specifically mentioned in the report, but it is, I think evident that the case was decided with reference to the section in question. The note is suit there, dated as it was the 7th January 1864, shows that the company in question was a limited company, a word of description applicable, so far as I am aware, only to companies formed under the English Acts of 1856 and 1862, and, if so, it must have been a company under the English Companies Act of 1862, whether registered under that Act or an earlier Act, and so a company to which section 47 of such last-mentioned Act as to the liability of companies on bills and notes would apply Besides, the whole tenor of the argunent and judgment in that case shows that the question was whether the note was made "on behalf of" the company or not, which are the very words used in the section in question. Nothing of the nature of an authority was referred to, to meet *Dutton* v. *Marsh*, except a note to section 47 in Buckley's Treatise on the Companies Acts, (3rd ed., p. 138) citing case of *Okell* v. *Charles* (34, L. T. 822). The report itself is not available here, and the only means we have of knowing what was really decided, is from the note in Buckley, and the entry of the case in Fisher's Digest for 1876, p. 67. The statement of the case by Buckley, however, shows that it was the case of bill of exchange addressed to the company by name and signed (I suppose it is meant, signed in the way of acceptance) *A*, *B*, *C*, and *D*, directors of the company. It is said to have been there held that such a bill bound the company and not the directors as individuals. But that is a very different case from the present. *There* the bill was drawn on the company itself: *here* on persons, viz, Shamj Nursey and Company, who, so far as appears, are wholly strangers to the company. I think the line of reasoning on which decision in *Okell* v. *Charles* was based, was in all probability the same as is to be found in *Mare* v. *Charles* (1) though that was what is commonly called a converse case to *Okell* v. *Charles*. In *Mare* v. *Charles* a bill was drawn by John E. Mare

(1) 5 E. & Bl. 978.

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and Company, and addressed—"To Mr. W. Charles, 27, Austin Friars, London." It was accepted thus —"Accepted for the Company," payable at the Union Bank, "William Charles, Purser." It was held that Charles was personally liable on this bill, though he expressly accepted *for the company*. This decision went on the ground that inasmuch as—apart from the case of an acceptance for honour after protest for non-acceptance by the drawee—a bill can be accepted only by the drawee and not by any one else, to hold that a bill drawn on the individual, Mr. W. Charles, had been accepted by the Mining Company, of which he was purser, would be to hold the acceptance a nullity: yet that, having regard to the consideration that Charles must have intended to give an acceptance which was valid, the only way of giving effect to such acceptance was to hold that he accepted as drawee, that is, as Mr. W. Charles, the individual, and not as the company, notwithstanding that the words "for the company were found in the acceptance itself. Now, I have little doubt in my own mind that if we had the report itself, *Okell* v. *Charles* would be found to have been decided on the same ground. The bill was drawn on the company. Unless the acceptance was by or on behalf or on account of the company it would have been a nullity, and this consideration was considered sufficient to raise the inference (and this, too, wholly from what appeared on the face of the instrument itself) that the persons who wrote the acceptance, "*A*, *B*, C, and *D*, directors of the company," did so on behalf and account of the company, on whom, and not on them as individuals. the bill was drawn, and that though they used such form of acceptance as standing by itself, and apart from the fact that the bill was drawn on the company, would have charged them as individuals, and would not have charged the company. The case of *Lindus* v. *Melrose* (1) was also cited on behalf of the bank. But that was a very different case. The Court read the words in the body of the promissory note in question there "on account of the London and Birmingham Iron and Hardware Company, Limited," which immediately preceded the signatures of the persons signing the note, who were described as directors and secretary, as in connection with the signatures themselves of the makers. So it

(1) 2 H. & N, 293.

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was simply a case of directors and secretary signing a promissory note on the face of it purporting to be on account of a company. In the present case I am of opinion that the addition, after the signatures Ghellabhai Pudumsey, Kessowji Naik and Nnrsey Kessowji, of their description respectively as directors and secretary, treasurer, and agent of the New Fleming Spinning and Weaving Company, does not make the bill in question a bill drawn by or on behalf or on account of such company, and that the company is not liable on it, and that the claim of the Bank of Bombay, so far as it is founded on that bill, must be disallowed.

Then, as to the question of allowance of interest, we have the 24th rule of the rules dated 3rd August 1866, (1) made by the Judges of this Court, the powers given by section 189 of Act X of 1866, to make rules "concerning the mode of proceeding to be had for winding up a company, &c., as may from time to time seem necessary, and as may be consistent with the other provisions of this Act and with the Code of Civil Procedure." Section 189 of Act X of 1866 agrees substantially, and for the present purpose precisely, with section 170 of the English Companies' Act 1862, and under that section the Judges of the Court of Chancery in England made the general order and rules in winding up proceedings, which came into force on the 25th November 1862. Among these, rule 26 is identical with rule 24 of the Bombay rules of August 1866, except as to the rate of interest to be allowed. But Lord Westbury in *The Hatfield Cask* Co., (2) Lord Romilly in *The Hrrefordshire Banking* Co., (3) and Lord Cairns in *The East of England Banking* Co. (4) were all of opinion that the rule 26 was *ultra vires* of the Judges to make, and was not warranted by the Act; the simple ground of such opinion being that under a power to make rules concerning the mode of proceeding in winding up, there is no authority given to make a rule which allows interest not

(1) The following is the rule referred to :—"Interest on such debts and claims as shall be allowed shall be computed as to such of them as carry interest after the rate they respectively carry: any creditor whose debt or claim so allowed does not carry interest shall be entitled to interest after the rate of six per centum per annum, from the date of the order to wind up the company, out of any assets which may remain after satisfying the costs of the winding up, the debts of claims established, and the interest of such debts or claims as by law carry interest."

(2) 9 Jur. N. S., 997. (3) L. R. 4 Eq., 250. (4) L. R. 4, Ch, 14.

otherwise given by law, this being a matrer of right, not a mode of proceeding. The rule, however, is to be considered *ultra vires* only so far as it purports to alter what otherwise would be the general rule of law in such a case; that is, so far as it purports to give interest on debts not otherwise carrying interest (see Selwyn, L. J., in the last cited case). But the first part of the rule only expresses the general rule of law that "interest on such debts and claims as shall be allowed shall be computed as to such of them as carry interest after the rate they respectively carry." So it may be considered that so much of the rule as expresses what without such rule would already have been the law is superfluous, and so much of it as directs interest to be allowed which the law would not otherwise have allowed is *ultra vires* as not being a matter relating to the mode of proceeding. But in the present case the claim of the bank is on bills of exchange payable at a certain time, viz., on the bills aggregating Rs. 3,50,000 three months after date, and on the bill for Rs. 2,00,000 sixty days after date, and the bank would, on principles applied every day in this Court, be entitled from such date to the ordinary mercantile rate of interest, viz., 9 per cent. at least down to the commencement of the winding up. The point, however, as I understand, does not arise in the present case, as the bills all became due not merely after the commencement of the winding up, viz., on the 28th December 1878, the day on which the petition was presented, but after the day, viz., 17th January 1879, on which the winding up order was made. As to my claim for interest *subsequent* to the winding up, with which, however, the present summons has nothing to do, it will be governed by the rule of law as laid in the *Warrant Finance Company's case* (1) and the *Ebbw Vale Company's case.* (2) The claim, therefore, of the Bank of Bombay upon the company on the three bills mentioned in the earlier part of Schedule A to Mr. Balfour's affidavit of the 31st July 1879, amounting to Rs. 3,50,000, with Rs. 83 for notarial charges, is allowed; the right of the bank to claim interest at 9 per cent. per annum from the due dates respectively of such bills being reserved for future determination; but the claim of the said bank on the bill for Rupees 2 lakhs

(1) L. R. 4, Ch, 643. (2) L. R. 5, Ch. 112.

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mentioned in the latter part of Schedule A aforesaid, and for Rs. 24 notarial charges in respect of such bills, is disallowed. Each party to bear their own costs.

Order accordingly.

Attorneys for the Official Liquidators.—Messrs. *Ardesir* and *Hormasji.*

Attorneys for the Bank of Bombay.—Messrs. *Rimington, Hore,* and *Conroy.*

NOTE.—An appeal has been filed in this case. The above report was prepared before the appeal was filed.

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APPELLATE CIVIL.

Before Mr. Justice Green and Mr. Justice West.

January 21st to April 26th.

BHASKARAPPA, SON OF MARTOBARAO, BY HIS BROTHER AND HEIR SHRINIVASRAO (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE COLLECTOR OF NORTH KANARA (ORIGINAL DEFENDANT), RESPONDENT.*

Land tenure in Kanara—Land revenue—Kumri cultivation—Kumri assessments—Rights of vargdars—Korlaya.

The plaintiff sued to recover possession of four specified tracts of forest land situated in the district of North Kanara from which he alleged he had been wrongfully ejected under an order made by the collector in 1861, and to recover certain sums of money exacted from him between 1849 and 1861 by the revenue authorities as a tax or rent for the exercise, by him, of his propietary rights by way of *kumri* cultivation.

As to three of the tracts of the land in question the plaintiff based his claim on certain *sanads* alleged to have been granted by the officers of Tippu Sultan to his ancestors; and as to the fourth, he claimed a title by prescription, alleging that the land had been in the possession of his family for forty years prior to 1870, the date of the institution of the suit. The plaint contained no indication of a claim which was put forward during the argument of the appeal, that the payment, to the Government, of assessment in respect of *kumri*, pepper and *farmaish*, or in particular of *kumri* assessment, and the entry of such charge in the *chitta* of a vargdar *muli or geni* gives to such vargdar, or at least is a recognition by Government that such vargdar has a right of ownership in the forests in respect of which it was contended such assessment was imposed. The plaintiff admitted a right on the part of Government to take certain kinds of timber from the forests; but subject to this he contended that the timber, as the soil

* Regular Appeal, No. 49 of 1872. See Printed Judgments for 1879, p 37.