ORIGINAL CIVIL.

(77)

Before Sir C. Sargent, Justice.

1879
June 13.

GOCULDAS JAGMOHANDAS AND THE NATIONAL FINANCIAL COMPANY (LIMITED) IN LIQUIDATION (PLAINTIFFS *v.* LAKHMIDAS KHIMJI HARI BHANJI, AND CHATURBHUJ MURARJI (EXECUTORS OF NANJI MURARJI) AND MULJI KANJI (DEFENDANTS.)*

Champerty—Maintenance—Assignment of a right to sue.

In 1869, P., the liquidator of the N. F. Co., compromised for Rs. 15,000 the claims of the company against the fourth defendants M. K., which amounted to Rs. 1,61 400. P. was induced to agree to this compromise in consequence of representations made to him by the friends of M. K. to the effect that M. K. had no available assets and could not meet his liabilities. In 1878 the first plaintiff G. J., alleging that the said compromise had been fraudulently effected, and that the defendant M. K. at the time of the compromise had been and was still possessed of ample property to pay off his liabilities, induced the liquidator of the company to assign to him the company's claim against M. K., and brought this suit, praying that the compromise with P. might be declared not binding, and that M. K. might be ordered to pay the plaintiff, as assignee of the N. F. Co., the sum of Rs. 1,61,500 with interest.

Held that the assignment to the plaintiff G. J. of the claims of the N. F. Co. against M. K. was effected with a view to litigation, and that, under the circumstances, the suit was not maintainable.

THE first plaintiff in this suit was the assignee of certain debt alleged to be due by the fourth defendant Mulji Kanji to the second plaintiff, the National Financial Company.

The following facts were alleged in the piaint :—

The fourth defendant Mulji Kanji was a director of the National Financial Company (Limited) which in April 1867 was ordered to be wound up by the Court. Shortly afterwards one Thomas Fisher Punnett was appointed liquidator.

At the date of the winding-up order, Mulji Kanji was indebted to the company in the sum Rs. 1,61,500, partly as a contributory of the company, partly in respect of certain loans which he had obtained from the company, and partly on account of certain *ultra-vires* transactions in which he had been concerned as a director, which transactions were fully set forth in the plaint.

* Suit No. 76 of 1879.

In May 1867, Nulji Kanji applied for and obtained the benefit of Act XXVIII of 1875.(1) He was at this time possessed of assets amply sufficient to pay all his debts in full. In order, however, to conceal his effects from his creditors and to increase his apparent liabilities to the sum of five lakhs of rupees, so as to enable him to obtain the benefit of the Act,(2) he effected in collusion with the first defendant, who was his uncle, certain fictitious mortgages, and otherwise fraudulently dealt with a large portion of his property. The particulars of the various transactions were set forth in detail.

In June 1869, Raghunath Narayan Khote, the partner of the first defendant, at the instigation and on behalf of Mulji Kanji purchased from Mr. Punnett, the liquidator of the National Financial Company, for the sum of Rs. 15,000 all the claims of the company against Mulji Kanji. Mr. Punnett was induced to agree to this transaction in consequence of the representations made to him that Mulji Kanji had no available assets, and that it was impossible for him to meet his liabilities.

The plaint further alleged that the plaintiff Goculdas Jagmohandas had very recently become aware of the above facts; and that having ascertained that Mulji Kanji was, at the time when he obtained the benefit of Act XXVIII of 1865 and had since continued to be in possession of considerable property he (the plaintiff) in the month of October 1878 purchased from Framji Ruttonji Vicaji, the present liquidator of the National Financial Company, for 2,000 all the claims of the Company against the defendant Mulji Kanji. At the time of this purchase Mr. Vicaji had full knowledge of all the circumstances of the case as appears from the following letter, dated the 3rd October 1878, addressed by him to Messrs. Hearn, Cleveland and Little, the attorneys for the plaintiff Goculdas Jagmohandas :—

"Dear Sir,

"In reply to your letter of yesterday, I have to repeat the facts which I disclosed to your Mr. Little in the presence of your client

(1) An Act to provide for the more speedy liquidation of Insolvent Trader Estates in Bombay.

(2) The operation of this Act was limited to estates in which the admitted liabilities were not less than five lakhs of rupees.

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during the interview which took place last evening in my chambers, when the letter was personally handed to me. These facts are ; (1) That, so far as I have seen the books, this company appears to have no claim of any kind against Lakhmidas Khimji ; (2) that Nanji Murarji appears only as a puachaser in June 1869 of this company's claim against Mulji Kanji, both 'present and prospective ;(3) that a receipt was given to or in the name of Nanji Murarji by Messrs. Prescot and Winter, acting on behalf of the company, for Rs. 15,000 paid as purchase-money of the then existing and future claims of this company against Mulji Kanji. A copy of the counterpart of this receipt was shown at the interview yesterday, and it is also annexed to this letter ; (4) that the claims against Mulji Kanji, so far as I can now ascertain, are of a threefold nature: (a)claims against him in the character of a contributory in respect of 100 shares ; (b) claim against him as a debtor to the company on loan account ; (c) claims against him as a director in respect of *ultra-vires* dealings. The two former claims, so far as I can now asscertain, were only intended to be sold to Nanji Murarji ; and the claims against Mulji Kanji as a director do not appear to have been at all investigated or ascertain at the time. At least, so far as my knowlege at present goes, I am not prepared to say whether the last-mentioned claim were intended to be assigned away or not, though there is no doubt that they are within the purview of the very words of the receipt, and might have been then within the contemplation of the parties ; and, lastly, (5) that Mulji Kanji has been settled as a contributory in respect of the second and the third contributory calls (of Rs. 40 and Rs. 30 per share respectively) declared since the date of the receipt,—with what consistency I cannot say.

"It is on the fullest possible disclosure of these facts that I have accepted the sum of Rs. 2,000 from you, and given a receipt for the same to you client. The conditions on which I have expressed my acceptance of the sum are as follows :—

"(1) That I agree to assign the claim (if any) of this company against Mulji Kanji (*such as it is*) with all its defects, there being no warranty on my part, either express or implied, that the company has any assignable interest of the claim.

"(2) That, even if it should hereafter appear, on the true construction of the receipt of 5th June 1869, that after is excution there was no spark of assignable interest remaining in the company, the sum of Rs. 2,000 already given to me should in no event be refundable to your client or to any one else claiming through him.

"(3) That I agree to execute an assignment containing the usual powers to enable your client to use the name of this company or its liquidator, if necessary, in any proceeding which he may be advised to adopt at his own expense and risk against any of the three persons above named for setting aside the said sale to Nanji Murarji or for any other purpose.

"(4) That your client undertakes to indemnify and keep harmless this company and myself from any liability as to costs, charges, expenses, &c., the company or I may incure or sustain by reason of any proceedings your client may adopt against any of the three persons above named.

"It is with a due regard to these facts and conditions that I undertake for and on behalf of the company to execute a formal assignment to your client of the claim in question.

Yours faithfully,
(Signed) F. R. VICAJI,
Official Liquidator."

The plaint further alleged that the greater portion of Mulji Kanji's property had come collusively into the hands of the other defendants to the suit, and was still in their possession, and it charged that the compromise of Mulji Kanji's liabilities to the National Financial Company which had been effected with Mr. Punnett, was not binding on the company, nor upon the plaintiff, Goculdas Jagmohands, as assignee of the company, and that Mulji Kanji's property in the hands of the other defendants was still available in satisfaction of his debts.

The plaint prayed that the said compromise with Mr. Punnett might be declared not binding, and that the defendant Mulji Kanji might be ordered to pay the plaintiffs, Goculdas Jagmohan-

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das, as assignee of the National Financial Company, the sum of Rs. 1,161,500 with interest.

The first plaintiff, Goculdas Jagmohandas, took out a summons for inspection of documents in the defendants' possession. The defendants connected that the suit was not maintainable by Goculdas Jagmohandas; and Bayley, J., thereupon, under section 135 of the Civil Procedure Code (Act X) of 1877, adjourned the further hearing of the summons untill this question should be determined. The case now came on before Sargent, J., for the trial of this issue.

Latham and *Macpherson* for Goculdas Jagmohandas.

The *Advocate General* (Hon'ble *J. Marriott*), *Starling* and *Pigot* for the first defendant.

Farran and *Kirkpatrick* for the second defendant.

Lang for the third defendant.

Mulji Kanji was not represented.

The *Advocate General* (Hon'able *J. Marriott*) for the first defendant.—This suit is not maintainable. It is brought by Goculdas Jagmohandas as assignee of the company's claim against the defendants. The liquidator of the company does not complain of fraud. In his letter of 3rd October he treats the compromise of June 1869 as valid. He apparently does not believe there is any case against the defendant, but he sells the right to charge fraud. Apart from his purchase the first plaintiff was not interested in the transaction, as he was neither a creditors nor a shareholder of the company: *Prosser* v. *Edmonds*, (1) *Chedambara* v. *Renga Krishna*, (2) *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*, (3) *Sheik Abed Hossein* v. *Lalla Ram Saran*. (4) In *Dickinson* v. *Burrell* (5) the assignor alleged fraud, although he left it to his assignees to take proceedings. This distinguishes that case from *Prosser* v. *Edmonds*. In *De Hoghton* v. *Money*, (6) Turner, L.J., says: "The right to complain of a fraud is not a marketable commodity." The learned counsel also cited *Hill* v. *Boyle* (7) and *In re Paris Skating Rink Company*.

(1) 1 Y. & C. Exch. 481.
(2) L. R. 1 Ind. Ap. 241 at p. 264.
(3) L. R. 4 Ind. Ap. 23 at p. 46.
(4) 13 Calc, W, R, 426 (Civ. Rul,)
(5) L. R. 1 Eq. 337.
(6) L. R. 2 Ch. 164 at p. 169.
(7) L. R. 4 Eq. 260.
(8) L. R. 5 Ch. Div. 959.

Latham for the plaintiff Gokuldas Jagmohandas.—The rule is this that, one cannot assign to another a bare right to sue ; but if property be assigned, the assignment is good, although a suit is necessary in order to recover the property. In such a case the assignee may sue. In *Dickinson* v. *Burell* (1) it was held unnecessary even to make the grantor a co-plaintiff. The case of *Prosser* v. *Edmonds* (2) is irreconcileable with *Dickinson* v. *Burell*, which is a latter case. In all the cases which have been cited there are, no doubt, *dicta* as to the impolicy transferring a right to sue. But these *dicta* are to be taken in connection with the special circumstances of each case. In *De Hoyton Money* (3) no property passed, and, moreover, it was a suit for specific performance. The present suit is not of that class. There are many agreements which are valid when completed, of which the Court would not give specific performance. [SARGENT, J.—The official Liquidator who is the assignor here, does not appear to have believed that there had been fraud, or that the assignee could sue.] The right to sue cannot depend on the opinion of the assignor. His opinion may change. Is the right to sue to fluctuate accordingly? We contend that the right to sue depends on the assignor's opinion as expressed by his conduct at the institution of the suit. Here the assignor is a co-plaintiff. For the purpose of this argument we must assume the truth of the fraud we allege. If so, the litigation here does not fall within the description of the suits the right to which cannot be assigned as stated in *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*. (4) In that case it is said that the Court will not give effect to agreements "for improper purposes, as for the purpose of gambling in litigation, or of injuring and oppressing others by abetting and encouraging unrighteous suits so as to be contrary to public policy." This suit is not "gambling in litigation", for there was property assigned ; nor is it brought for the purpose of "injuring and oppressing others". The object here is to punish the guilty. Nor is it a suit contrary to public policy, for it is brought to expose fraud. [SARGENT, J.—The difficulty here is that the assignor does not allege fraud himself, but allows a third person to allege it for him.] The ossignor

(1) L. R. 1 Eq. 337.
(2) 1 Y. & C. Exch. 43.
(3) L. R. 2 ch. 264.
(4) L. R. 4 Ind. Ap. 23 at p. 47.

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is not a position to give an opinion upon the subject. He was not the liquidator when the fraud took place. Under such circumstances it cannot be mischevious to allow a third person to sue. [SARGENT, J.—It may be that this question should not be decided until the case is fully heard, so that all the circumstances may be disclosed. We say the case ought to be heard. No evidence has been given as yet, and the Court is ignorant of the facts of the cases which have been cited. Only *Prosser* v. *Edmonds* (1) and *Dickinson* v. *Burell* (2) have been decided on demurrer. This proceeding is one analogous to a demurrer.

SARGENT, J.—The plaintiffs in this suit are one Goculdas Jagmohandas and the National Financial Company in liquidation. The circumstances which have led to the institution of the suit are, as alleged in the plaint, as follows :—

On the 27th April 1867 the company was ordered to be wound up by this Court, and Thomas Fisher Punnett was appointed liquidator. At the date of the winding-up, the last defendant, Mulji, Kanji, was a director of the company, and was, it is said, indebted to the company in the sum of Rs. 1,61,500 arising out of claims against him both on account of advantages and as a contributory of the company, and also in respect of damages for acts, *ultra vires*, done by him as a director. In May, 1867, Mulji Kanji applied for and obtained the benefit of Act XXVIII of 1865, and it is alleged that, in order to conceal his effects from his creditors and to enable him to take the benefit of the Act, he effected by conclusion with his uncle, the defendant Lakhmidas Khimji, certain colourable and fictitious mortgages and otherwise fraudulently dealt with his property, and that, in order to conceal these transactions, Lakhmidas Khimji obtained the consent of the creditors to his purchase of the assets of the insolvent from the trustees of the winding-up, which said purchase was effected in the name of Nanji Murarji. Further it is alleged that in June 1867 one Raghunath Narayan Khote, partner of Lakhmidas Khimji, at the instigation of Mulji Kanji and in conclusion with Lakhmidas Khimji, contracted with the then liquidator of the company for the purchase of the claims of the company against

(1) Y. & C. Exch. 481, (2) L. R. 1 Eq. 337.

Mulji Kanji for Rs. 15,000, and that the liquidator was induced to sell the assets as aforesaid by false representations that Mulji Kanji had no assets.

The plaint further states that the plaintiff Gokuldas Jagmohandas, having recently discovered that Mulji Kanji had considerable property when he took the benefit of the Act XXVIII of 1865, purchased from the present liquidator, Framji Rustomji Vicaji, for the sum of Rs. 2,000 all the claims of the company against the defendant Mulji Kanji. The plaintiffs charge that the compromise, by the company, of Mulji Kanji's liabilities having been effected in consequence of false and fraudulent representation, is not binding on the company or the said plaintiff Goculdas Jagmohandas as assignee of the company, and they conclude by praying that it may be declared that the said compromise of Mulji Kanji's claims is not binding on plaintiffs or either of them; that Mulji Kanji is liable to pay the plaintiff Goculdas Jagmohandas as such assignee of the company, Rs. 1,61,500; and, lastly, that it may be declared that the properties described on the plaint are, notwithstanding the dealings with the same, the property of Mulji Kanji, and available in satisfaction of his debts.

The defendants Lakhmidas Khimji and Hari Bhanji contend by their written statement that, even if the allegation in the plaint were true, the first plaintiff Goculdas Jagmohandas is not entitled to maintain this suit, and it has been agreed between the parties that I should give my decision on this preliminary point before hearing the suit on the merits. It has been contended for the defendants that the plaintiff Goculdas was merely the assignee of a right to impeach certain transactions, in which he had no interest, on the ground of fraud, and the case of *Prosser* v. *Admonds*, (1) decided by Lord Abinger, was relied on as establishing that a suit by such an assignee could not be maintained. In that case Lord Abinger thus expressed himself: "In a case where a party assigns his whole estate, and afterwards makes an assignment generally of the same estate to another person, and the second assignor claims to set aside the first assignment as fraudulent and void, the assignor himself making no complaint of fraud whatever, it appears

(1) 1 Y. & C. Exch. 481.

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to me that the rights of the said assignee to make such a claim would be a question deserving of a great consideration. My present impression is, that such a claim could not be sustained in equity, unless the party who made the assignment joined in the prayer to set it aside. In such a case a second assignment is merely that of a right to file a bill in equity for a fraud, and I should say that some authority is necessary to show that a man can assign to another a right to file a bill for a fraud committed upon himself." And further on (p. 497) he says: "What is this but the purchase of a mere right to recover. It is a rule, not of our law alone but of that of all countries, that the mere right of purchase shall not give a man a right to legal remedies. The country doctrine is no where tolerated, and is against good policy. All our cases of maintenance and champerty are founded on the principle that no encouragement should be given to litigation by the introduction of parties to enforce those rights which others are not disposed to enforce." On the other hand, *Dickinson* v. *Burrell* (1) before Lord Romilly was cited on behalf of the plaintiff Goculdas as clearly establishing his right to maintain this suit. There the plaintiffs claimed under a voluntary settlement of property which had been previously conveyed to the defendant Edens, and which conveyance they sought to set aside as having been obtained in fraud of their settler, James Dickinson. Lord Romilly, M. R., says: "James Dickinson had thought fit, after the sale to Edens in December 1860, to sell the same property to A. B., saying that the previous sale was a fraudulent one, and that, though he would not take any step to set it aside, if A. B. thought fit to do so he might, and that he would sell all his interest in the property to A. B. for an sum of money then agreed on, in such a case, in my opinion, A. B. could have maintained this suit." And he adds: "The distinction is this: if James Dickinson had sold or conveyed the right to sue to set aside the indenture of December 1860 without conveying the property or his interest in it, which was the subject of that intendure, that would not have enabled the grantor A. B. to maintain this bill; but, if A. B. had brought the whole of the interest of James Dickinson in the property, then it would. The right of suit is a right incidental to the pro-

(1) L. R. 1 Eq. 337.

perty conveyed." This distinction will not, however, account for the opinion expressed by Lord Abinger, inasmuch as in *Prosser* v. *Edmonds* the property had been conveyed to the plaintiffs, and much of Lord Abinger's reasoning proceeds on the supposition that it has been so conveyed. In *Harrington* v. *Long*,(1) Milligan, who was a creditor of the deceased testator Long, instituted a suit against the executrix for the benefit of himself and other creditors. During the pendency of the suit, Milligan assigned his debts to Harrington, and the latter and Milligan filed a supplementary bill, praying that Harrington might have the benefit of the decree which Middleton had obtained in the original suit, and further that a deed alleged to have been executed to the executrix by testator five days before his death might be set aside as fraudulent and void as against creditors. The Master of the Rolls, Sir J. Leach, in delixering judgment, said : "There is no principle which prevents a person from assigning his interest after the institution of a suit. Maintenance is where there is an agreement by which one party gives to a stranger the benefit of a suit, upon condition that he prosecutes it. In *Wood* v. *Downes*(2) Lord Eldon thought this was done indirectly, In *Hartley* v. *Russell*(2) it appeared to me that it was not done. Maintenance is properly discouraged, because it promotes litigation and leads to oppression." At a subsequent hearing of the case, Sir J. Leach, after reading a bond of indemnity given by Harrington to Milligan against any costs which he might incur, expressed his opinion that the assignment was solely for the purpose of enabling Harrington to prosecute the suit, and accordingly dismissed it. In *Wood* v. *Downes*,(4) referred to by Sir J. Leach, the plaintiffs had claims upon certain property, but, being unwilling to incur the expense necessary for enforcing their rights, had, in consideration of £100 paid down and of £1,000 to be paid as agreed, conveyed to the defendant their interest in the estate. By their bill the plaintiffs sought to set aside the conveyance, sale or assurance on the ground that the defendant had been their solicitor, and had not made them aware of the real value of the property. Lord Eldon set aside the con-

(1) 2 My. & K. 590.
(2) 18 Ves. 120.
(3) 2 Sim. & St. 214.
(4) 18 Ves. 120.

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veyance on the ground urged by plaintiffs and also on the ground that the transaction amounted to maintenance and champerty. In *Stanley* v. *Jones*(1) Tindal, C.J., says: "The object of the law was not so much to prevent the purchase or assignment of a matter then in litigation as the purchase or assignment of a matter in litigation for the purpose of maintaining the action, as is evident from Lord Coke's reading on Statute *Westm.* 2, *c.* 49, where he remarks 'True it is that, if any other persons (than the Chancellor, Treasurer and other persons mentioned in the Act) purchase *bona fide*, defending the suit, he is not in danger of champerty, but these persons here prohibited cannot purchase at all; neither for champerty nor otherwise depending the plea,' evidently pointing to the distinction that the offence of champerty consisted in purchasing an interest in the thing in dispute with the object of maintaining and taking part in the litigation." The remarks of Best, C.J., in *Williams* v. *Prothero*(2) are to the same effect, as also those of Wightman, J., in *Cook* v. *Field*,(3) where that learned judge says champerty is "where a party not willing to litigate for a right conveys to some person who is."

In *De Hoghton* v. *Money*(4) Lord Justice Turner says: "I do not hesitate to say that, in my opinion, the right to complain of a fraud is not a marketable commodity, and that, if it appears that an agreement for purchase (in that case the property was purchased) has been entered into for the purpose of acquiring such a right, the purchaser cannot call upon this Court to enforce specific performance of the agreement. Such a transaction, if not in strictness amounting to maintenance, favours of it too much for this Court to give its aid to enforce the agreement." These authorities appear to me to establish decisively that the real test in cases of this nature is whether the transaction was a *bona fide* purchase of the matter in dispute, or one for the purpose of maintenance or proceeding with the litigation, and that where such is the case, Courts of Law and Equity will treat that transaction as an infringment of the laws against champerty and maintenance,

(1) Bin. 369.
(2) 3 Y. & J. 129.
(3) 15 Q. B. 460 at p. 471.
(4) L. R. 2 Ch. 164 at p. 169.

and as having neither validity between the parties thereto nor conferring any right of action against third persons.

In *Ram Coomar* v. *Chunder Canto Mookerjee*(1) it is laid down by the Judicial Committee of Privy Council that the English law of maintenance and champerty is not applicable to India (whether Mofussil or Presidency towns) ; but their Lordships go on to say that contracts of that character are under circumstances to be held to be invalid as against public policy, as decided in 8 Moore's Ind. App. 170 and L.R. 1 Ind. App. 264. In the former case it was stated that "such a contract must be something against good policy and Justice, something leading to promote unnecessary litigation, something that in a legal sense is immoral, and to the constitution of which a bad motive is in the same sense necessary." In the latter their Lordships adopt the language of Peacock, C.J., (p. 265) that "administering, as they are bound to administer, Justice according to the board principles of equity and good conscience, these Courts will consider whether the transaction is merely the acquisition of an interest in the subject of litigation *bona fide* entered into, or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil or of litigation, disturbing the peace of families, and carried on from a corrupt or other improper motive."

These principles are, doubtless, more elastic than the rules which are to be gathered from English decisions on the Law of Maintenance and Champerty, and it may be that some transactions effected under special circumstances, albeit for the purpose of and with a view to litigation, might be supported in this country. The Judicial Committee suggest such a transaction. In the present case the purchaser of the company's claims against Mulji Kanji is neither a creditor nor shareholder of the company, but a complete outsider as regards all matter connected with the company, and appears, from motives which are not explained, to have applied to Mr. Vicaji for information respecting those claims. After an interview between him and Mr. Vicaji, the latter writes to the plaintiffs' solicitor on 3rd October 1878 to the following effect :—After recapitulating all the information he had

(1) L. R. 4 Ind. App. 46.

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given to plaintiff and his solicitor respecting the compromise of Mulji's claims as it appeared on the books of the company, he says that it is on the fullest disclosure of those facts that he has accepted Rs. 2,000 from the plaintiff, and he than proceeds to state the conditions on which he accepted the money, viz., (1) that he is to assign the claim of the company against Mulji Kanji, such as it is, with all its defects, there being no warranty on his part that the company has any assignable interest. (2.) That, event if it should appear that there was no spark of assign able interest remaining in the company, the sum of Rs. 2,000 should not be refundable. (3.) That he should execute an assignment containing the usual power for plaintiff to use the name of the company in any proceeding he may be advised to adopt. (4.) That plaintiff should undertake to indemnify the company and Mr. Vicaji against any costs or expenses he may incure by reason of any proceedings plaintiff may adopt.

On the 21st January 1879, Mr. Vicaji executed an assignment of the claims of the company to the plaintiff. This deed recites that a receipt had been given to one Nanji Murarji by Mr. Punnett for Rs. 15,000 paid by him in full discharge of the company's claim against Mulji Kanji, and that it was alleged on behalf of the plaintiff that the receipt was null and void, and did not operate in discharge of the company's claims, and, further, that plaintiff had contracted with Mr. Vicaji to assign to him the said claims, which Mr. Vicaji had consented to do. Lastly, it state that Mr. Vicaj was unwilling to embark in litigation at his own risk when he entered into the above transaction with plaintiff, and concludes with a covenant by plaintiff to indemnify Mr. Vicaji all costs and expenses which may be incurred by him in and about all proceedings that may be paid for recovering the premises assigned.

This statement of the circumstances attending the assignment of the company's claims to plaintiff, coupled with the recitals and provisions contained in the deed of assignment, can leave no doubt I apprehend that the assignment was effected with a view to litigation contemplated by the plaintiff for reasons and from motives best known to himself, and that we have here, in the language of Wightman, J., "apartly not willing to litigate for a right conveying it to some person who is." It is, moreover, to be remarked that the

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liquidator does not allege case of fraud in the letter of 3rd October 1878, and in the deed of assignment the imputation of fraud is studiously attributed to Goculdas, nor has the liquidator verified the plaint which alleges fraud. In other words, the company is, to all intents and purposes, merely a nominal plaintiff. The case is, therefore, the simple one of a stranger officiously interfering for reasons of his own, and in no way at the request or even suggestion of the company or liquidator, in a matter in which he has no connexion whatever, with the sole object of enabling himself to dispute transactions which occurred ten years ago, and in which, independently of the assignment of those claims, he has no interest whatever, so far at least as appears on the plaint.

A suit of such nature and instituted under such circumstances falls, in my opinion, within the class of cases which both English law and the principles enunciated by the Judicial Committee alike forbid. This suit must, therefore, be dismissed, and with costs.

Attorneys for first plaintiff.—Messrs. *Hearn, Cleveland and Little.*

Attorneys for the defendants.—Messrs. *Jefferson and Payne, Mr. R. Skipsey,* and Messrs. *Prescot and Winter.*

PRIVY COUNCIL.

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NARAYANRAO RAMCHANDRA PANT (ORIGINAL DEFENDANT), APPELLANT, *v.* RAMABAI (ORIGINAL PLAINTIFF), RESPONDENT.

P. C.* 1879 *March* 15, 18.

On appeal from the High Court of Judicature at Bombay.

Maintenance—Limitation—Act XIV of 1859, *Sec.* I, *Cl.* 13—*Widow leavin ancestral house—Demand and refusal—Cause of action.*

By the Hindu common law the right of a widow to maintenance is one occruing from time to time according to her want and exigencies. A statute of limitation might do much harm if it should force widows to claim their strict rights and commence litigation which, but for the purpose of keeping alive their claim, would not be necessary or desirable.

*Present:—Sir J. W Colvile, Sir Montague E. Smith and Sir R. P. Collier.