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ORIGINAL CIVIL.

Before Mr. Justice Marriott.

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SADASHIV BHASKAR JOSHI, *Plaintiff* v. DHAKUBAI AND OTHERS,
Defendants.* [7th, 8th, 10th, 11th, 14th, 15th and 18th
 June, 2nd September and 7th October, 1880.]

Deed of sale set aside—Fraud—Undue influence—Old and illiterate woman near to her death—No independent advice—Inadequate consideration—Terms on which deed will be set aside—Purchase-money declared a charge—Funeral expenses of Hindu widow declared a charge—No allowance for repairs and improvements.

C was the widow of one R, deceased, and from the death of R until her own death remained in occupation of a house and chawl which had belonged to him. D was a sister of C's, and, shortly after R's death, D and her son, B, the first and second defendants, went to live with C on the said property, and lived with C, and were her only companions, until C's death. While so living with C, D and B advanced to C at various times, in joint account various sums of money—amounting to Rs. 3,500—for purposes such as would have justified C in pledging the property of her late husband to secure the repayment of the same. C became very ill; and D and B, fearing she might be going to die, requested her to take some steps to secure to them the repayment of the sums they had advanced to her. C thereupon offered to give D and B an absolute deed of sale of the said house and chawl in consideration of the said sum of Rs. 3,500—already advanced to her—and of an additional sum of Rs. 500 then to be paid to her to defray her funeral expenses and the costs of the said conveyance. D and B consented, and called in their solicitor to take C's instructions and draw up the deed in question, which he accordingly did; and within three days of the said agreement the deed was executed. At that time C was very ill, and twelve days after the execution of the deed, C died. C was an illiterate woman, over sixty years of age, and had in this matter no independent professional or other advice. The additional sum of Rs. 500, agreed to be paid to C, was never so paid to her; but, after her death, D and her son expended moneys in and about her funeral ceremonies, amounting, as they [451] alleged to upwards of Rs. 400. The property in question, so pledged to them for Rs. 4,000, was worth, at least Rs. 5,200. The plaintiff, one of the heirs of R, sued to set the deed aside and for possession of the said property.

Held that the deed of sale must be set aside as obtained under circumstances which amounted to fraud.

Held also, that the advances, amounting to Rs. 3,500, made to C by D and her son B—being made for purposes for which C would have been justified in pledging the said property—the deed of sale should be set aside only on the terms that the property in question should stand charged with the repayment of the sums so advanced.

Held also, that the property must stand charged with the repayment to D and B of such a sum as, having regard to her position and station in life, should be found to be a reasonable sum for the funeral expenses of C.

After C's death, D and B remained in possession of the said property under the deed of sale, and expended considerable sums of money in and about repairs and improvements to the same; and they now claimed that if the sale was to be set aside, the sums so expended should be repaid to them.

Held, that no allowance could be made to D and B for sums so expended by them, such sums having been expended at a time when D and B must be taken to have known that they were fraudulently in possession of the property in question.

[*Appl.*, 6 C.L.J. 490: R. 22 B. 818; 3 C.L.J. 260; 16 *Ind. Cas.* 139 (144)=23 M.L.J. 223=12 M.L.T. 230=1912 M.W.N. 861 (868).]

THE plaintiff sued *in forma pauperis* as one of the heirs or reversioners, according to Hindu law, of his paternal great-uncle, Raghoba

* Suit No. 443 of 1879.

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Raghunath Joshi, deceased, to recover from the first and second defendants, the possession of a house and chawl in Hanuman Lane, in Bombay, alleged to belong to the deceased, and for an account of the rents and outgoings derived from the said property enjoyed by the said defendants. The first defendant, named Dhakubai, was the sister of Chandrabhagabai, the widow of Raghoba, and the second defendant was Dhakubai's son. The remaining defendants were the other heirs of Raghoba according to Hindu law.

The first and second defendants opposed the claim of the plaintiff to the said property, alleging that they were purchasers of the same from Chandrabhagabai for value; and that, since the sale to them of the said property, they had spent large sums of money in repairs and lasting improvements upon the same. The consideration which the said first and second defendants alleged they gave to the said Chandrabhagabai for the sale to them of the said property, consisted, for the most part, of [452] advances of money—amounting, in all, to Rs. 3,500—said to have been made to her at various times for various stated purposes, and of a further sum of Rs. 500 said to have been advanced to her at the time of the execution of the deed of sale for the purpose of defraying her funeral expenses, and the costs of the said conveyance. The plaintiff denied the payment of the said sums by the first and second defendants, and disputed the right of Chandrabhagabai, in any event, to sell, or even pledge, the property of her deceased husband to the said defendants in order to repay debts incurred for the purposes alleged.

The following issues were raised at the hearing:—

(1) Whether the first and second defendants advanced to Chandrabhagabai such sums as they alleged, for the purposes alleged?

(2) Whether, in consideration of the advances aforesaid, for the purposes aforesaid, Chandrabhagabai sold the property to the first and second defendants?

(3) Whether there was any necessity for the sale of the property at the date of the alleged sale?

(4) Whether such sale was in fraud of the plaintiff's rights?

(5) General issue.

The facts of the case will be found fully set out in the judgment.

Viccaji (with him *Dhurandhar*), for the plaintiff.

Gill (with him *Mankar*), for the first and second defendants.

The other defendants appeared, respectively, in person.

JUDGMENT.

2nd September.—Judgment was this day delivered by

MARRIOTT, J.—In this suit the plaintiff seeks to recover possession, from the first and second defendants, of certain immoveable property, consisting of a house and chawl situate at Hanuman Lane, outside the Fort, with the title-deeds and documents relating thereto.

The property in question formerly belonged to one Raghoba Raghunath Joshi, who died without issue on the 17th May 1874, leaving a widow named Chandrabhagabai.

[453] The plaintiff and the third, fourth, fifth, sixth, and seventh defendants are the heirs, according to Hindu law, of Raghoba Raghunath.

Raghoba in his lifetime on the 16th May 1873, by deed of that date, mortgaged the property in question to Byramji Cursetji Desai for Rs. 2,000.

This mortgage was paid off on the 18th day of May 1875; and one of the principal questions in the case was, whether this mortgage-debt was paid off by Chandrabhagabai out of moneys produced by the sale of her husband's ornaments, or whether it was paid off by the first and second defendants, as they allege, with their own moneys, at the request of Chandrabhagabai.

Chandrabhagabai died on the 28th February 1876, having by indenture—dated the 16th day of February 1876, and made between herself of the one part and the second and first defendants of the other part—conveyed the premises, by way of absolute sale, to the first and second defendants; the consideration for such conveyance being a sum of Rs. 4,000 alleged to be due to them by Chandrabhagabai.

The first defendant is Chandrabhagabai's sister, and the second defendant is the son of the first defendant, and, consequently, Chandrabhagabai's nephew.

The first defendant with her husband, Ganpat Nana Joshi, and the second defendant, her son, came to live with Chandrabhagabai shortly after Raghoba's death; and they continued to reside with Chandrabhagabai, on the premises, up to the time of her death.

It is alleged by the first and second defendants that they, and Ganpat Nana Joshi, advanced the following sums of money to Chandrabhagabai, viz., Rs. 300 on the third day after Raghoba's death for his funeral expenses; subsequently, Rs. 200 for expenses, and to enable Chandrabhagabai to pay municipal bills; in the third month after Raghoba's death, Rs. 500 for maintenance; and Rs. 500 for Chandrabhagabai's pilgrimage expenses to Benares to perform the annual ceremonies of her husband.

[The learned Judge then went into the evidence with regard to the payment of the said sums, by the first and second defendants, [454] to Chandrabhagabai, and found, as a fact, that those sums—making, in all, Rs. 1,500—had been advanced to Chandrabhagabai in the manner and for the purposes alleged; and continued:—]

The purposes for which the sums were advanced to Chandrabhagabai were such as would have entitled her, as a Hindu widow, to charge them on her husband's estate.

[The learned Judge next found, as a fact, that the first and the second defendants did, at the request of Chandrabhagabai, pay off Byramji's mortgage for Rs. 2,000 on the property in question, and were by her authority put in possession of the title-deeds of the same, and thereupon became equitable mortgagees of the said property for the sum of Rs. 2,000 and that Chandrabhagabai was quite competent to impose such a charge upon the said property.

The learned Judge then continued:—]

According to the case of the first and second defendants, the conveyance of the 16th February, 1876, was executed by Chandrabhagabai under the following circumstances. Chandrabhagabai became ill with chronic dysentery after her return to Bombay from her pilgrimage to Benares. The second defendant says that, when Chandrabhagabai became ill, he demanded payment of the several sums he had advanced, and that she said she would pay him when she recovered; that, when she daily got worse, he on two or three occasions asked her to make some arrangement regarding the repayment of the money, and that she then said that he should advance a further sum of Rs. 500 for her funeral expenses and conveyancing charges, and cause a declaration of the advance to be taken

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down by an attorney; and in cross-examination he added: "Chandrabhagabai said when we demanded the money, that we should cause a conveyance to be prepared for the money," and, "on Sunday, the 13th February, at noon, Chandrabhagabai told me she wished us to take the property absolutely. She expressed that wish of her own accord; that was after our repeated demands upon her in her sick bed to repay the money: no lawyer or law-agent was consulted before Mr. Balkrishna. It was all arranged between us and Chandrabhagabai." And he added: "She offered to pay the costs of the conveyance when she asked us to deposit the Rs. 500 for her funeral expenses."

[455] Ganpatrav Nana in his cross-examination stated—"I went to Balkrishna to get a conveyance prepared. Chandrabhagabai told me to do so. She said—"I have no hopes of my recovery: save your money, I have no other means to pay it off. You had better get a conveyance prepared of this property." She said that two days before Balkrishna came there."

Ganpatrav first went to request Mr. Balkrishna to come to his house on Sunday, the 13th February, 1876. Ganpatrav went to him at 4 P.M., but did not find him at home, and went again at half-past 10 the same night, and then found Mr. Balkrishna, who accompanied him to Chandrabhagabai's house.

There is no doubt that Ganpatrav and his son Krishnarav then considered Chandrabhagabai in a precarious state, and were anxious to have the conveyance prepared as soon as possible.

Mr. Balkrishna accompanied Ganpatrav to the house; saw Chandrabhagabai; and took instructions from her for this conveyance. He took rough notes of the instructions; and the next day, from those rough notes, made an entry in his diary, which was put in as an exhibit at the hearing.

It will be observed that the entry in the diary states—"The lady informed me she was unable to repay all these sums to her sister, and, consequently, was going to sell absolutely the property to her for Rs. 4,000, already due by her to them." Whereas the sums deposited to by the defendants as having been borrowed by Chandrabhagabai from her sister amounted to Rs. 3,500 only, and, with reference to that difference, Mr. Balkrishna said on cross-examination—"I have no note of it, but think I asked her about the difference between the amount of the different sums given and the Rs. 4,000, and she said that the anticipated costs of preparation and execution of the conveyance and registration would cover the difference. I believe she also mentioned her own funeral expenses. She did not mention any amount, but she said her funeral expenses were to be defrayed by her sister and sister's son."

The conveyance was prepared by Mr. Balkrishna, and was on Wednesday, 16th February, executed by Chandrabhagabai in the presence of Mr. Balkrishna and his clerk. Mr. Balkrishna's [456] account of the execution is contained in the extract from his diary before alluded to. Previously to execution the deed had been interpreted to Chandrabhagabai by Survotum Sakharam, an interpreter of this Court; and previously to the execution she had been professionally examined by Mr. Pandurang Gopal, a graduate of the Grant Medical College, who had been specially called in for the purpose; and I think there can be no doubt that she understood the nature of the instrument she executed.

It will be observed that Mr. Balkrishna's diary says—"I have asked her (Chandrabhagabai) whether she had received the full sum of Rs. 4,000, and she replied that she had."

There can be no doubt that she had not received the sum, and that nothing more had actually been paid to her than the beforementioned sums amounting to Rs. 3,500.

The expenses attending the preparation, execution, and registration of the conveyance were paid by the second defendant, and must have amounted, it seems, to about Rs. 170. As before stated, Chandrabhagabai died on the 28th February—twelve days after the execution of the conveyance.

The second defendant stated that he paid Chandrabhagabai's funeral expenses, amounting altogether to 400 or 425 rupees. He also stated that, shortly after Chandrabhagabai's death, he repaired the house and chawl—such repairs being necessary in consequence of the whole of the interior wood-work of the chawl being rotten, and that it had to be repaired in order to make the rooms habitable. He spent Rs. 3,000 on such repairs, out of which Rs. 40 or 50 were expended on the house. That, to complete the repairs, he borrowed Rs. 1,000 from the witness Byramji Cursetji Desai, to whom the property was then re-mortgaged by the first and second defendants for that amount. But the second defendant stated that he had no account of the sums spent on repairs, and that the amounts he mentioned were from memory; and at the close of the case, in answer to me, stated that he employed a Katchi, named Husan Ali, to do the repairs to the chawl, that he had gone to Katch, and that he had no books, as he paid him monthly.

No reliable evidence of the value of the property was given in the course of the case by either side; and at the close of the case [457] I gave the first and second defendants leave to call Mr. James Morris, a surveyor, who stated that he valued the chawl at Rs. 5,000 and the dwelling-house at Rs. 2,200, but that he could not tell what the value of the property was in 1876.

[The learned Judge then went into the evidence given by Mr. Morris with regard to the cost of the repairs alleged by the defendants to have been executed by them, and continued:—]

Thus according to Mr. Morris, the total expense of the repairs to the chawl and stables would not exceed Rs. 1,600. On a sale, I should think the expense of the repairs would not be realized; and, taking the total value of the present premises to be what Mr. Morris puts it at, *viz.*, Rs. 7,200, and assuming that Rs. 2,000 were expended on repairs after Chandrabhagabai's death, I think the value of the property, at her daughter's death, must have been at least Rs. 5,200, and, consequently, that Rs. 4,000 was an inadequate price.

I think the repairs done to the chawl and stable were necessary for the preservation of the building, and to render it habitable, and were done *bona fide* for that purpose.

It was contended that there was no legal necessity for the sale by Chandrabhagabai to the first and second defendants, and that the price was inadequate, and, consequently, that the sale by Chandrabhagabai was invalid as against the plaintiff and other heirs of Raghoba. But I think the case presents other and important features, and that the sale is invalid upon another ground.

I have found that the alleged consideration for this conveyance—Rs. 4,000—was below the value of the premises.

Chandrabhagabai was an illiterate woman, and at the date of the conveyance was sixty years old. She was at the time suffering from dysentery, and died only twelve days afterwards. She was then and had

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been, from a time shortly after her husband's death in 1874, living with the first defendant her sister, Raghunath, her sister's husband, and her nephew, the second defendant. After they came to live with her, a Parsi servant she previously had, was discharged, and the second defendant collected the rents of the property for her and did her bazar business;—in fact, he managed her affairs and continued to do so, up to the time of her death.

[458] It appears she was not on good terms with her husband's relatives, and that they did not visit her, and no mention is made of any other relatives.

Thus it may fairly be inferred that the first and second defendants and Raghunath exercised considerable influence over her; and it would appear that there was no person to give her independent advice and assistance.

It cannot be said that she had the advice and assistance of a professional man, for Mr. Balkrishna was called in by the second defendant and his father. He advised her, it is true, that her power, as a Hindu widow, of selling her husband's estate was limited; but he made no enquiries respecting the value of the property or the adequacy of the price; and, although she told him that the conveyance was to be made for the purpose of paying her debts, he did not consult with her upon the advisability or feasibility of attaining her object by a mortgage, instead of a sale, but contented himself with taking her instructions for the conveyance, and the particulars of the sums making up the consideration money. Mr. Balkrishna, therefore, must, I think, be considered as employed by the first and second defendants—with the result that Chandrabhagabai had no independent advice, professional or other.

Thus we have here a sale of property made in payment of debts, and not for cash; for a consideration clearly inadequate; obtained by the near relatives of the vendor an aged, sick, and illiterate woman, over whom the vendees must under the circumstances, have had considerable influence, and who had no professional or other independent advice;—a sale, moreover, effected with some degree of precipitation, for Chandrabhagabai is stated to have consented to the sale on the Sunday at noon, and the conveyance was executed between four and five on the following Wednesday afternoon.

These being the facts, I think it is unnecessary to consider the question whether or not Chandrabhagabai was entitled to dispose of this property by way of absolute sale, since I am clearly of opinion that, assuming she had such a power, a sale made by her under such circumstances must nevertheless be set aside.

[459] The facts of this case bring it well within *Clark v. Malpas* (1), in which case a purchase from an illiterate man, who was ill at the time, was set aside—the price being inadequate, and the vendor having no professional advice, and the transaction being completed in haste, and in terms unduly disadvantageous to him. In *Baker v. Monk* (2), also, it was held that a purchaser from an old, infirm, and ignorant woman, having no professional advice, was bound to prove that he gave the full value for the property, and, failing in such proof, the transaction was set aside with costs; and in the latter case Lord Romilly said: "A man who comes to a lorn, aged woman, in a lower rank of life, and buys from her property without her having any consultation or advice on the subject with

(1) 31 Beav. 80; 4 DeG. F. & J. 401.]

(2) 33 Beav. 429; 4 DeG. J. & S. 398.

any one else except his solicitor, can only support the transaction, if questioned in a Court of equity within a reasonable time, by proof that he gave the full value of the property for it.”

The sale, then, must be set aside; but upon what terms, remains to be now considered. In the case of *Baker v. Monk* the conveyance was ordered to stand as a security for the money advanced; and the order in *Clark v. Malpas* would, it seems, have been to the like effect if money had been paid.

In *Phoolchandlall v. Raghoobans Sabhaye* (1), which was a suit by reversioners to set aside a deed of sale made by a Hindu widow of part of her husband's estate, on the ground that there was no necessity for such sale, Sir Barnes Peacock said: “If the widow was not authorized to sell any part of the estate, because it would have been more beneficial for the reversioners that she should raise the amount by mortgage instead of sale, I am of opinion that the reversioners could not set aside the deed of sale without placing the purchaser in the same position as that in which he would have been if the widow had mortgaged instead of selling.”

I think this sale, therefore, ought only to be set aside upon the condition that the first and second defendants be placed in the same position as that which they would have held if Chandrabhagabai had executed, as she might have executed, a deed of mortgage instead of a deed of sale.

[460] I am of opinion, as I have already stated, that Chandrabhagabai might have executed a mortgage to secure the repayment of the various sums before mentioned—amounting, in all, to Rs. 3,500—advanced to her by the first and second defendants, and shall, therefore, direct that the conveyance stand as a security for the repayment of that sum.

Then, as to the sum alleged to have been expended by the first and second defendants in and about Chandrabhagabai's funeral expenses, I find no case in which the question whether a Hindu widow can charge her husband's estate with the payment of a sum of money raised for the payment of her funeral expenses has been decided. But it has been held that a Hindu widow may validly charge her husband's estate with the payment of money received for her maintenance, if the income of the estate be insufficient; and I see no reason why she should not likewise be able to charge the estate with a reasonable amount for the purpose of her proper and necessary funeral expenses, according to her station in life.

The second defendant states he expended Rs. 400 to Rs. 425 for Chandrabhagabai's funeral expenses. I cannot allow the first and second defendants any sum they might choose to pay; but such a reasonable sum, as would be sufficient for the due performance of her funeral ceremonies, according to her station in life, should, I think, be allowed; but as to what would be such a reasonable sum, I must first be satisfied.

I cannot allow the costs of the conveyance, which, in my opinion, ought not to have been executed.

I am of opinion that the first and second defendants are not entitled to any allowance for repairs.”

In *Sugden's Vendors and Purchasers* (14th ed., p. 747, par. 30), it is said: “If, however, a man has acted fraudulently, and is conscious of a defect in his title, and with that conviction in his mind expends a sum of money in improvements, he is not entitled to avail himself of the expenditure”; and, again, (p. 254, par. 43) “a purchaser, after he knows of

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the defect of the title, cannot claim an allowance for subsequent repairs"; and, treating of the terms upon which a conveyance is set aside in equity, Mr. Dart [461] says: (1) "Where a purchaser for value is evicted in equity, under a prior title, he will be credited with all moneys expended by him in necessary repairs or permanent improvements (except improvements made after he has discovered the defect of title); and will be debited with the rents which he has received." And, further on: (2) "A person, claiming under a fraudulent deed voidable at law cannot, however, claim for improvements or repairs, but the rule may be different when relief against the deed can be afforded only in equity, and the deed, though invalid, is not actually fraudulent." This implies that if the deed be fraudulent, a claim for repairs will not be allowed in equity.

Against these text-books there is the case of *Trevelyan v. Charter* (3) where Lord Cottenham, then Master of the Rolls, set aside a conveyance from a client to his attorney on the ground of fraud on the part of the attorney, and allowed the attorney an account for substantial improvements and repairs (the decree in the suit is to be found in Seton on Decrees, 3rd ed., p. 646), but the point does not seem to have been argued, and the deed was set aside many years afterwards against the attorney's representatives. The decree was afterwards affirmed in the House of Lords (4) but the question of repairs and improvements was not adverted to. This decision was not likely to have been overlooked by Lord St. Leonards and Mr. Dart, and, together with the other decisions on the question and the passage above cited from Sugden's Vendors and Purchasers, was referred to by counsel in argument in the case of *Stepney v. Biddulph* (5) before Lord Hatherley (then V.C. Wood), where the conveyance was set aside as being *ultra vires* of a railway company; but the Vice-Chancellor, having expressly found that no fraudulent design was proved, added: "It is clear, however, that the defendants must have the benefit of their improvements. Their object in making them was not to prevent the owner from being able to get back his estate, but *bona fide* to improve the lands; and it appears that there was an actual improvement.....the proceedings were by one who had obtained possession, though in an improper manner."

[462] The form of the decree in *Trevelyan v. Charter* (3) was set out in the third edition of Seton on Decrees (at p. 646); but that form of decree has been removed from the subsequent editions, and the form of decree in the fourth edition (at p. 1353) in a suit to set aside a deed, contains no allowances for repairs or improvements.

The rule is thus stated by Lord Cranworth in *Ramsden v. Dyson* (6): "If a stranger builds on my land, knowing it to be mine there is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert my legal rights."

I apprehend the same rule applies in the case of any expenses for repairs and lasting improvements. It was applied as regards lasting improvements in the case of *The Master of Clare Hall v. Harding* (7), where the defendant had made a claim to the premises, and plaintiff was held not entitled to recover from the defendant moneys expended by the plaintiff in lasting improvements with the knowledge of such claim.

(1) Dart's Vendors and Purchasers (5th ed.) 911. (2) P. 912.
(3) 4 L.J. Ch. 209. (4) 11 Cl. & Fin. 714. (5) 13 W.R. Eng. 576.
(6) L.R. 1 H.L. 141. (7) 6 Hare 273.

I think, therefore, it must be considered as settled that where a conveyance is set aside, as here, for fraud, the purchaser is not entitled to any allowance for repairs or lasting improvements.

The first and second defendants must be taken to have known that their conveyance was fraudulent; that, although it might stand as a valid security for the amount to which Chandrabhagabai might legally charge the property, that was the extent of its validity; that it would not entitle them to retain possession as against the true owners; and that their retention of such possession was wrongful. It follows that, although it might be that the repairs were required for the very upholding of the premises, yet inasmuch as the first and second defendants must be taken to have known that their possession was wrongful, the principle of law I have adverted to applies, and they must be held not to be entitled to the return of any moneys expended on such repairs or improvements.

The questions as to any and what account should go for rents and outgoing subsequent to the date of the conveyance, and as [463] to what sum should be allowed to the first and second defendants for expenses incurred in and about Chandrabhagabai's funeral ceremonies, will stand over for consideration until a future date. At present I make the following order only:—

Order.—That the sale by Chandrabhagabai to the first and second defendants be set aside, and that the conveyance do stand as a security for the sum of Rs.3, 500 plus the sum allowed for funeral expenses (to be afterwards ascertained) with interest thereon, at 9 per cent., from date of the decree until payment, payable to the first and second defendants; the said premises to be reconveyed by the first and second defendants to the plaintiff and the remaining defendants on the payment of the above sum with interest as aforesaid; the first and second defendants to pay to the plaintiff his taxed costs of suit, save and except the costs of the first and second issues; plaintiff to pay to the first and second defendants their costs of the first and second issues, to be deducted from the costs payable by the first and second defendants to the plaintiff.

7th October.—The parties appeared this day; and an agreement having been come to in the meantime with respect to the remaining provisions of the decree, a decree in the form agreed upon was passed accordingly.

Solicitors for plaintiff.—Messrs. *Nanu and Harnusjee.*

Solicitor for first and second defendants.—*Mr. Khanderao Moroji.*

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Before Sir Charles Sargent, Kt., Justice.

PESTONJI BEZONJI v. ABDOOL RAHMAN BIN SHAIK BUDOO.*

[21st and 28th June, 1881.]

Civil Procedure Code—Act X of 1877, s. 43—Entitled to more than one remedy—Leave to omit to sue—First hearing—Mortgage—Suit on personal covenant—Limitation Act (XV of 1877), sch. II, art. 132—Money charged upon immoveable property.

The plaintiff held a mortgage of certain immoveable property given to him by the defendant to secure the repayment of a loan of money with interest. The plaintiff stated the fact of the mortgage, but prayed only for a money decree. The

* Suit No. 187 of 1881.