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as that would appear to be the general practice)—that a plaintiff is entitled to sue, and on proof of his debt to obtain a decree against the legal representative of his deceased debtor, without proving that assets have come into his hands. It is sufficient if there are assets of which he may become possessed. The decree should mention that it is against the defendant in that character, and it will, of course, be executed as directed by section 252 of Act XIV of 1882. The suit in question should not, therefore, in our opinion, be dismissed, but a decree passed against the defendant as the legal representative of the deceased debtor.

APPELLATE CIVIL.

FULL BENCH.

*Before Sir Charles Sargent, Knight, Chief Justice, Mr. Justice Kempbell and
 Mr. Justice West.*

February 20.

HINGANGHAT MILL COMPANY, LIMITED, MORTGAGOR, v.
 REKCHAND BHIKAMCHAND, MORTGAGEE.*

Stamp Act I of 1879, Sch. 1, Art. 44, Cls. (a) and (b)—Construction.

A mortgage deed dated the 4th August, 1883, stipulated that possession was to be given to the mortgagee after the 31st May, 1888, if the mortgage loan was not entirely repaid by that date. On the question being referred to the High Court, whether clause (a) or clause (b) of article 44, schedule I, Stamp Act I of 1879, applied to the case,

Held that clause (b) applied.

The intention of clause (a) is to cover cases of mortgage with possession, and the words "agreed to be given" are to be read as if the words "at the time of execution" immediately followed and qualified the word "given".

Clause (a) should be read as if it were worded "when possession of the property * * * is given by the mortgagor at the time of execution, or is agreed to be then given, and not * * * "is then agreed to be given."

UNDER section 46 of Act I of 1879 this case was submitted for the decision of the High Court by the Chief Commissioner, Central Provinces.

The Hinganghat Mill Company executed a mortgage deed to one Rekchand on the 4th August, 1883. The deed contained a

* Civil Reference, No. 2 of 1884.

clause that possession was to be given to the mortgagee (Rekchand) after the 31st May, 1888, if the mortgage loan was not entirely repaid by that date.

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The questions referred by the Chief Commissioner were—What is the proper interpretation of the words “*when at the time of execution* possession of the property comprised in the deed is given by the mortgagor, or agreed to be given” in clause (a), sch. I, art. 44 of Act I of 1879? Are they to be read as carrying the application of the clause to cases in which, by the terms of the deed, possession is “agreed to be given” *at a future date*?

The Commissioner observed :—“Thus by the mortgage deed, which necessitated this reference, possession is to be given to the mortgagee after the 31st May, 1888, if the mortgage loan was not entirely repaid by that date. It may be argued that as, according to the deed, possession is not given at the time of execution, clause (b) applies. It may also be argued that as possession of the property, although not given, was agreed ‘at the time of execution’ to be given (after the happening of a certain contingency), clause (a) applies. In my opinion, the former interpretation is the correct one. It seems to me that the intention of clause (a) is to cover cases of mortgage with possession, and that the ‘words agreed to be given’ are to be read as if the words ‘at the time of execution’ immediately followed and qualified the word ‘given’. The interpretation which makes them qualify the word ‘agreed’, practically converts them into surplusage; for it is a matter of course that what was agreed on by the deed was agreed on at the time of executing the deed. To put the matter briefly, I should read clause (a) as if it were phrased as follows :—‘When possession of the property is given by the mortgagor at the time of execution, or is agreed to be *then* given’, and not ‘is *then* agreed to be given’”.

There was no appearance of parties in the High Court.

Per Curiam.—The Court agrees with the view expressed by the Commissioner as to the construction of article 44, schedule I of Act I of 1879.