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interest, was really necessary. He lent Rs. 800, and he produces a mortgage for Rs. 500 paid off by Sadoba as a proof of the good faith with which he entered into the transaction. This earlier mortgage, with interest, amounted to more than Rs. 700. It was executed by Sadoba and Rághoba with the addition of Lakshman, brother of Rájárám and Bábáji; but as Lakshman was a minor his concurrence could not add to the validity of the contract. It had to rest on the part taken in it by the elder representatives of the family, and when virtually ratified by Rájárám by his joining in the new mortgage might well be supposed by an outsider to have been executed with due regard to the family interests. The protection that the Courts afford to the interest of minors must not become an indulgence that may be perverted into an instrument of fraud, nor must those who have reaped the benefit of the transactions of managers and adult members during their early years be allowed to turn round at a later time and repudiate them without just and sufficient cause. We think the District Judge has in this case erred as to the presumptions that arise where the active members of a family unite in a transaction not obviously fraudulent, unreasonable, or unusual; and reversing the decree of the District Court we restore that of the Subordinate Judge, with costs throughout on the respondent.

Decree reversed.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and
 Mr. Justice Nánábhái Haridás.*

July 22.

NA'GO KA'NA'TURIA (ORIGINAL DEFENDANT), APPELLANT, v. BA'BA'JI
 KA'TA'RI (ORIGINAL PLAINTIFF), RESPONDENT.*

Registration—Consideration—Assignment—Mortgage—Stamp.

A. executed to B. an assignment of a mortgage. It was stamped with a stamp of Rs. 168; and recited that B. had instituted a suit against C. to recover Rs. 3,000, interest and costs, and that an agreement had been come to between B. and C., that, on C. getting A. to execute the assignment of the mortgage and on his paying Rs. 500, the suit should be dismissed and settled. It further recited that Rs. 5,000 was due to A. on the mortgage, and that A. had, at C.'s request, agreed

* Appeal, No. 22 of 1884.

to assign it to B. By the operative part, A., in consideration of Rs. 5 paid to A. by B. and "in consideration of the premises," assigned the mortgage to B.

Held that the consideration for the deed of assignment was not merely Rs. 5 paid to A., but the assignee's agreement to withdraw the suit if A. assigned the mortgage to him upon the instrument; that the money value of the latter part of the consideration was the amount covered by the stamp put by the parties themselves; and as it exceeded Rs. 100, the deed of assignment was inadmissible in evidence for want of registration (section 17 of Act VIII of 1871).

THIS was an appeal from the decision of H. J. Parsons, Judge of Thána, reversing the decree of the Subordinate Judge of Bhivandi.

On the 6th of October, 1871, the defendant sold certain lands and a house, of which he was the owner, to Vináyak and Váman. On the 25th of May, 1872, Vináyak in consideration of Rs. 5,000 mortgaged the property to Anne Pennell. On the 22nd October, 1872, Anne Pennell conveyed her rights in the property to Bhikáji Pestonji. In March, 1876, Bhikáji Pestonji conveyed his rights to Gangárám, who on the 18th April, 1877, mortgaged his interest to Agá Mahomed, who again sold his right to the plaintiff on the 26th July, 1878.

Towards the close of 1878 Agá Mahomed sued Gangárám in the High Court, in its ordinary original jurisdiction side, for foreclosure, and in 1879 Gangárám sued Agá Mahomed and the plaintiff for redemption in the same Court. These suits were compromised, and a consent decree passed by which it was agreed that if Gangárám paid Agá Mahomed Rs. 20,000 within a certain time the property should be given to Gangárám; if he failed to do so, the property should be given to the plaintiff. Gangárám having failed, the plaintiff asked to be put into possession, and was obstructed by the defendant. Hence the present suit for a declaration of the plaintiff's right to the property, and for possession.

The lower Courts held the sale by the defendant to Vináyak and the mortgage by the latter to Anne Pennell proved and valid. The Court of first instance refused to receive in evidence Anne Pennell's conveyance to Bhikáji Pestonji for want of registration. That conveyance was in the shape of an assignment on the back of her own mortgage, and was stamped with a stamp of Rs. 168, and runs as follows: "Whereas the said Bhikáji Pes-

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tanji filed a suit against Pestonji Dinsha to recover the sum of Rs. 3,000, interest and costs, and whereas it has been agreed by and between the said parties to the suit that on the defendant Pestonji Dinsha getting the said Anne Pennell duly to execute such assignment as is hereinafter contained of the within written mortgage and on her paying to the said Bhikáji Pestonji the sum of Rs. 500 immediately before the execution of these presents; that the same suit should be dismissed as settled; and whereas the said Anne Pennell at the request of the said Pestonji Dinsha has agreed to execute such assignment as is hereinafter contained, now this indenture witnesseth that in pursuance of the said agreement and *in consideration of Rs. 5* this day paid to the said Anne Pennell by the said Bhikáji Pestonji and *in consideration of the premises*, she the said Anne Pennell doth convey, &c."

The Subordinate Judge was of opinion that the consideration for this deed was more than Rs. 100, as not only did Anne Pennell receive Rs. 5 from Bhikáji, but the latter relieved Pestonji Dinsha of the liability of paying Rs. 3,000, interest and costs, and the whole of this together was the consideration for the sale by Anne Pennell of her mortgage rights. The District Judge came to a different conclusion. He was of opinion that the test of value was the consideration stated in the instrument as given to the grantor, which in this case was Rs. 5, and that that alone, and not the benefit derived by a third person from the transaction, could be taken to be the amount for purposes of registration. The District Judge, therefore, held that this deed required no registration under section 17 of the Registration Act (No. 8 of 1871), and reversing the decree of the Subordinate Judge remanded the case for him to investigate the merits of the case.

The plaintiff appealed to the High Court.

R. Skipsey for the appellant—The case turns upon the question whether the assignment by Anne Pennell to Bhikáji Pestonji conveys an interest of a greater value than Rs. 100, and requires registration. In this deed the consideration is not merely Rs. 5, but "the premises"; in other words, the relinquishment by Bhikáji Pestonji of his claim against Pestonji Dinsha, at whose request the assignment was made. The consideration which passed from

the grantee to the grantor was over Rs. 100. The circumstance of the nominal assignment in the case distinguishes it from *Vásudev Moreshwar Ganpule v. Rámá Bábáji Dange*⁽¹⁾; *Satra Kumáji v. Vishráam Hasgavda*⁽²⁾; *Nána bin Lakshman v. Anant Bábáji*⁽³⁾; and *Rohinee Dabia v. Shib Chander Chaterjee*⁽⁴⁾, on which the Judge relied. In these cases the *bonâ-fide* value appears on the face of the deeds; in the present case it does not. The stamp affixed to the assignment is Rs. 168, covering Rs. 3,300, which shows that the value fixed by the parties was not Rs. 5, but a great deal more.

Shivshankar Govindram for the respondent.—The cases cited show that the amount fixed by the parties must be taken to be the consideration for purposes of registration, and that is Rs. 5. Anne Pennell, the grantor, did not receive more. What any other party received is immaterial for purposes of registration. The amount of stamp is no criterion in the matter of registration.

SARGENT, C. J.—The question in this case is, whether the assignment of mortgage of 22nd October, 1872, (exhibit 64) required to be registered. This instrument is between Anne Pennell of the first part and Bhikáji Pestonji of the other part, and is endorsed on a mortgage of 25th May, 1872, executed by one Vináyak to Anne Pennell to secure a loan of Rs. 5,000. After reciting that Bhikáji had instituted a suit against Pestonji Dinsha to recover Rs. 3,000, interest and costs, and that an agreement had been come to between Bhikáji and Pestonji Dinsha; that on Pestonji getting Anne Pennell to execute the assignment of the mortgage of 25th May, 1872, to Bhikáji, and on his paying Rs. 500 in cash, the suit should be dismissed and settled; and, further, that Rs. 5,000 was due to Anne Pennell on the said mortgage, and that she had, at the request of Pestonji, agreed to assign it to Bhikáji by the operative part. Anne Pennell in consideration of Rs. 5 paid to her by Bhikáji, and “in consideration of the premises” assigns the mortgage to Bhikáji.

The District Judge held on the authority of *Vásudev Moreshwar Ganpule v. Rama Bábáji Dange*⁽¹⁾, *Satra Kumáji v. Vishráam*

(1) 11 Bom. H. C. Rep., 149.

(2) I. L. R., 2 Bom., 357.

(2) I. L. R., 2 Bom., 97.

(4) 15 Calc. W. R., 559.

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Hasgarda⁽¹⁾ and *Náná bin Lakshman v. Anant Bábáji*⁽²⁾ that the assignment did not require to be registered, and admitted it in evidence. In *Rohinee Debia v. Shib Chander Chatterjee*⁽³⁾, which was followed in the Bombay cases, it was held that the necessity for registration "is determined by the stated consideration." In *Nana bin Lakshman v. Anant Bábáji*, Westropp, C. J., says: "When it is necessary to determine whether an instrument purports to create, &c., any right, title, or interest of the value of Rs. 100 or upwards to or in immoveable property, the test of value which we adopt is the consideration stated in the instrument, whether it be one of sale or mortgage to be given to the grantor." The Acting District Judge held, but we think wrongly, "that as the deed recited that Rs. 5 had been paid to Anne Pennell as consideration for the assignment, that that alone must be taken to be the amount for the purposes of registration, and that the Court could not include the benefit that a third person derived from the transaction." The consideration, however, mentioned in the deed is not merely the Rs. 5 paid to Anne Pennell, but "the premises" which refer to the assignee's agreement with Pestonji Dinsha to withdraw the suit if Anne Pennell assigned the mortgage to him and to Pestonji Dinsha's request to her to do so, and which from the nature of the case must have been deemed by the assignor herself to be the all-important part of the consideration which moved to her.

The question arises, therefore, as to what is the money-value of this part of the consideration, and we think that the value which the parties put on it (and which is the test according to the above decisions) must be taken to have been the sum covered by the stamp which would be Rs. 3,300.

We are of opinion, therefore, that the District Judge was wrong in admitting the instrument in question, and must reverse the decree of the Court below, and send the case back for fresh decision on the evidence, omitting from it the above instrument. Costs throughout to abide the result.

Decree reversed and case remanded.

(1) I. L. R., 2 Bom., 97.

(2) I. L. R., 2 Bom., 353.

(15 C. W. R., 559.