

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887.
April 6 & 14.

RANGILBHÁI KALYÁ'NDA'S AND OTHERS, (ORIGINAL DEFENDANTS),
APPELLANTS, v. VINA'YAK VISHNU, MUNIM OF GANGA'DHAR YESH-
VANTRA'V, ADOPTED SON OF GOPA'L MYRÁ'L, (ORIGINAL PLAINTIFF),
RESPONDENT.*

Fraudulent conveyance—Fraudulent preference—Stat. 13 Eliz., Cap. V—Transfer of property by insolvent in consideration of debt barred by limitation—Fraud—Conveyance in trust for payment of creditors—Hindu widow, duty of, to pay husband's creditors equally—No right of preference—Purchaser from Hindu widow must inquire as to her power to sell—Contract Act IX of 1872, Secs. 16, 17.

The English Statute 13 Elizabeth, Cap. V, has not, as such, any operation in the mofussil of India, but it embodies principles of general application on account of their essential equity.

An unequal disposition of property by a person in insolvent circumstances, and known to be so by the donee, will be set aside if impeached by creditors, except where the transferee has simply pressed a valid claim, or made a purchase in good faith.

The plaintiff, Gopál Myrá'l, obtained a decree against Manchhárám on the 30th September, 1878. Manchhárám died in April, 1879, leaving Ambábái, a childless widow, him surviving. At his death, Manchhárám was in insolvent circumstances. On the 7th June, 1879, Ambábái conveyed by a deed of sale (exhibit 98) the whole of his property, consisting of a house and a garden, to the defendants, who were his separated brothers, in consideration of two time-barred debts due to them by her deceased husband. At the same time she executed in their favour a rent-note (exhibit 99) by which she agreed to pay them a nominal rent for her occupation of the house. But no rent was ever claimed or paid. On the same day the defendants passed an agreement, in writing, (exhibit No. 114) to the widow, by which they undertook to settle the claims of the principal creditors of Manchhárám. But they never acted upon this agreement, nor did they communicate it to any of the creditors, and they admitted in their evidence that it did not form any part of the consideration for the sale-deed (exhibit 98). In 1881 the plaintiff Gopál in execution of his decree against Manchhárám attached the house conveyed by the sale-deed. The attachment was raised at the instance of the defendants, who claimed the house under the sale-deed (exhibit 98). Thereupon the plaintiff, Gopál, brought the present suit to establish his right to attach and sell the house as the property of his judgment-debtor, Manchhárám, in execution of his decree. The defendants relied upon the deed of sale executed by the widow (exhibit 98).

Held, that the alleged sale to the defendants (exhibit 98) was not a real transaction supported by good consideration, and must be set aside in so far as it interfered with the execution of the plaintiff's decree. The transferees were not purchasers for money, or even creditors diligent in pressing an enforceable

*Appeal, No. 27 of 1884.

right. They were members of the vendor's family, and the consideration they gave, consisted of old and barred claims that could not be enforced. Payment of such debts by a transfer of the insolvent's whole estate, to the disappointment of creditors whose claims were not barred, was in itself a fraud. Being made to near relatives acquainted with the facts, it could not be regarded as a real and practical transaction.

Held, also, that the character of the transaction was not altered by the agreement (exhibit 114) of the defendants to settle the claims of Manchhárám's creditors. That agreement was not communicated to the creditors, and it could be suppressed at any moment by the concurrence of the parties to it. If that agreement was independent of the conveyance (exhibit 98) of the property to the defendants, the latter had no consideration to support it, except merely the moral consideration to pay a barred debt, which could not prevail against the obligation to satisfy a decree about to be executed. If, on the other hand, the agreement (exhibit 114) was connected with the conveyance (exhibit 98), the exclusion of its terms from that document and the secrecy observed about it stamped the transaction with fraud, whether the transfer was real or only fraudulent. There was no honest trust for distribution which could defeat the plaintiff's execution.

Manchhárám might have preferred one creditor to another having an equal right, and the fact that the creditor was his brother did not make such a preference improper.

But, although Manchhárám might have preferred one creditor to another, his widow could not do so. She took her husband's estate as an aggregate, assets and debts together. She was in some degree a trustee, and at any rate under a legal obligation to pay her deceased husband's debts, and to pay them as far as she could equally. She was not at liberty to deal capriciously with the estate which she could alienate at all only for special purposes indicated by the law. She ought not, in performing the duty cast upon her, to prefer one valid claim to another, as her husband might have done. This advantage a creditor might have obtained from her husband by his diligence, but on her no pressure could be exercised, except through the estate which she was bound, pressure or no pressure, to distribute among the creditors.

A purchaser from a Hindu widow must see that she exercises her power of sale strictly, or at least satisfy himself that a sufficient cause for alienation exists. If the defendants told the widow that the claims, in consideration of which she made the conveyance to them, were barred by limitation, then clearly she had joined with them in a scheme for depriving the judgment-creditors of their due. If they did not tell her, they deceived her by their silence when, as near relatives getting an advantage, they were bound, in dealing with an ignorant woman, to put her in possession of all the material facts—Contract Act IX of 1872, secs. 16 and 17.

APPEAL from the decree of Khán Bahádur B. E. Modi, First Class Subordinate Judge of Surat, in Suit No. 59 of 1882.

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The plaintiff, Gopál Myrál, sued to establish his right to attach and sell a certain house as belonging to his judgment-debtor, Manchhárám, in execution of a decree (Suit No. 444 of 1871) passed against him by the High Court on the 30th September, 1878.

Manchhárám died on the 22nd April, 1879. He left a childless widow by name Ambábái. At his death he was in insolvent circumstances, and several decrees were outstanding against him. His creditors were pressing for payment, and those who had not already obtained decrees threatened to sue him.

The defendants in the present case were the brothers of Manchhárám, and were also his creditors. He had separated from them in the year 1858, and on that occasion had passed to them a bond (exhibit No. 116) for Rs. 23,000, dated 20th October 1858. This bond provided for payment of the debt due to them by instalments, and contained a clause that, in the event of any instalment being unpaid, the whole amount remaining due should at once become payable. No instalment under this bond had been paid since 1864-65, and it had, therefore, become barred by limitation at Manchhárám's death. Manchhárám had also executed in favour of his brothers a *samadaskat* (exhibit No. 117), dated the 21st October, 1865), purporting to be an acknowledgment, in writing, that he owed to them a sum of Rs. 10,000. The claim under this document had also become barred at Manchhárám's death.

The property left by Manchhárám consisted of a house worth about Rs. 10,000, and a garden which was mortgaged for Rs. 5,000.

About a month and a half after his death, his widow, Ambábái by a registered deed of sale, dated 7th June, 1879, (exhibit 98), conveyed the whole of his property to his brothers, the defendants. The consideration set forth in the deed of sale was Rs. 20,000, made up as follows, *viz.*, out of the Rs. 23,000 due under the bond of 1858 (exhibit 116), and the Rs. 10,000 under the *samadaskat* of 1865 (exhibit No. 117), the defendants remitted Rs. 19,000, and they purchased the property for Rs. 14,000, plus Rs. 6,000 to be paid to the creditor, to whom the garden was mortgaged.

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Along with the sale-deed, Ambábái executed a rent-note (exhibit 99) in favour of the defendants, agreeing to pay a nominal rent for her occupation of a part of the house sold to them. But no rent was ever claimed or paid. And a suit to recover the arrears from her was brought only after the present proceedings had been instituted.

On the same day, *i. e.*, the 7th June, 1879, a private arrangement contained in a writing (exhibit 114) was entered into between the widow Ambábái and defendants Nos. 1 and 2, by which they undertook to settle the claims of the principal creditors of Manchhárám, including the present plaintiff. This arrangement was not communicated to any of the creditors. Nor was it acted upon. The defendants admitted that it did not form any part of the consideration for the sale-deed (exhibit 98).

In 1881 the house sold to the defendants was attached in execution of the decree which the plaintiff had, as above stated, obtained against Manchhárám on the 30th September, 1878. The attachment was raised at the instance of the defendants, who claimed the house under the sale-deed (exhibit 98). Thereupon the present suit was filed for a declaration that the house in question was liable to attachment and sale in execution of the plaintiff's decree.

The defendants pleaded that they were owners of the house by right of purchase under the deed of sale (exhibit 98), and were in actual possession of a part of it, and had let the remainder to Ambábái under a written lease; that Ambábái had authority to sell the house for and on account of her husband's debt; and that the sale by her was *boná fide* and for adequate consideration.

The Subordinate Judge found that the sale was without consideration, being made in fraud of creditors, and was, therefore, void as against the plaintiff, the judgment-creditor. He, therefore, passed a decree in the plaintiff's favour, declaring the property liable to attachment and sale in execution of his decree against the deceased Manchhárám.

Against this decree the defendants appealed to the High Court. P. M. Mehtá (with him *Mánekhsháh Jahangírsháh*) for the appel-

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lants:—The sale by Ambábái (exhibit 98) was not a colourable or fraudulent transaction. It was a real transaction supported by a good and valuable consideration. There were debts due to the appellants by the deceased Manchhárám. These were, no doubt, time-barred at the date of the sale; but a time-barred debt is a good consideration for a valid contract. Besides, the appellants undertook by exhibit 114 to pay off the creditors of the deceased. And they have paid off all but two. This is a substantial consideration for the sale. The sale ought, therefore, to be upheld, although the object perhaps was to defeat the execution of the plaintiff's decree—*Tillakchand Hindumal v. Jitamal Sudárám*⁽¹⁾. But the appellants had no such object in view. They expressly undertook to settle the claims of the creditors, including the plaintiff, and they have fulfilled their promise.

Lang (with him *Nagindás Tulsidás*) for the respondent:—Manchhárám died in insolvent circumstances. At his death several decrees were outstanding against him. The creditors were pressing for payment. His widow was not competent to alienate the whole of his property to the appellants. Her alienation was a fraud upon the creditors. The appellants had no legal claim against the estate of Manchhárám. Their debts were all time-barred. Such debts were not a good consideration for sale. The undertaking to settle the claims of the creditors was not communicated to any of the creditors. The appellants have not acted upon that undertaking. The principal creditors still remain unpaid. The appellants admit in their evidence that this undertaking forms no part of the consideration for the sale-deed. There is, therefore, no consideration whatsoever for the sale.

P. M. Mehtá in reply:—The widow is competent, under the Hindu law, to alienate her husband's estate for the purpose of paying his debts, even though they be time-barred—*Bhála Náhána v. Parbhu Hari*⁽²⁾. The engagement to settle the claims of the creditors is part of the consideration for the sale. The defendants may have foolishly repudiated it in their evidence, but it is none the less binding on them. It forms a valid consideration.

(1) 10 Bom. H. C. Rep., 206.

(2) I. L. R., 2 Bom., 67.

WEST, J. :—Had the Transfer of Property Act, IV of 1882, been introduced into the Presidency of Bombay, we should have been spared the necessity of seeking elsewhere for the principles by which to decide the case now before us. Section 53 of that Act contains a rule which would be directly applicable, and which presents in a compendious form the result which we have to reach through a somewhat laborious examination of the authorities.

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The principal facts in the present case are the following:—In April, 1879, one Manchhárám died, leaving a widow, Ambábái, but no children. He was in insolvent circumstances, several decrees were outstanding against him, and amongst them one in favour of the plaintiff in the present case. He owed debts also on which suits had not been brought, and amongst these were claims of the present defendánts, who are Manchhárám's brothers. In 1858 he had separated from them, and on that occasion passed in their favour the bond No. 116. This was payable by instalments, and, on default in paying any instalment, the whole remaining sum became due forthwith. The last instalment was paid in *Samvat* 1921 (A.D. 1864-65), so that at the time of Manchhárám's death recovery on the bond had become barred by limitation. It is in evidence that Manchhárám fell into difficulties in *Samvat* 1921, and this circumstance may account for a *samadaskat* (exhibit 117) signed by him in favour of his brothers in *Samvat* 1922. After the *samadaskat* had been signed, nothing further seems to have been done by way of payment or acknowledgment with respect to the bond (exhibit 116). It has been said that the Rs. 10,000 were a deposit, and should be treated as a trust, but there is nothing in the document (exhibit 117), to indicate this. There is no declaration of trust by Manchhárám, only an acknowledgment of debt subject to the ordinary law of limitation. Thus when Manchhárám died, the claim of his brothers on each of the documents 116 and 117 alike was barred by limitation.

Manchhárám left some immoveable property consisting of a house valued at Rs. 10,000 or Rs. 12,000, and a garden mortgaged for Rs. 5,000. There were also some articles of moveable pro-

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perty. His widow Ambábái appears to have had some jewellery, most, if not all, of which would probably rank as *stridhan* in the more special sense.

Ambábái's friends were desirous of serving her, as far as they could, in the embarrassing situation in which she was left by her husband's death. The witness Bhagvándás says that he agreed with her to take over her immoveable property, and settle the claim of Gopál Myrál, the present plaintiff. He even purchased a stamp of Rs. 120 for the transfer. But the brothers of Manchhárám, the present defendants, having come forward at this juncture, and asked that a transfer should be made to them, a fresh stamp of Rs. 200 value was procured, and on this Ambábái executed a transfer (exhibit 98) of the immoveable property she had inherited from her late husband to Rangilbhái and the other defendants. The consideration set forth in exhibit 98 is the old debts due by Manchhárám to his brothers, who also undertook to pay the mortgaged debt. This last agreement was less an engagement by way of consideration than a recognition that the property was subject to a burden detracting from its value. The transaction was, on its face, a conveyance of the whole property *minus* the amount of the mortgage in consideration of the two claims admitted by it as due.

Ambábái executed a rent-note (exhibit 99) in favour of the defendants, but nothing was claimed under this, nor it is evident was intended to be claimed. The nominal rent remained in arrear, and a suit to enforce payment of it was brought only after the present proceedings were instituted.

The document No. 114 bears the same date as the conveyance and the rent-note, *i.e.*, the 7th June, 1879. By it, the brothers of Rangilbhái, but not Rangilbhái himself, undertake to settle the claims of Manchhárám's creditors or his principal creditors, including Gopál Myrál, the present plaintiff. This would naturally be regarded as part of the same transaction as the transfer by exhibit 98, and the undertaking itself (exhibit 114) sets forth this transfer as the inducement to it. The defendants, however, when called as witnesses for the plaintiff, denied that the engagement in exhibit 114 had anything to do with the

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transfer (exhibit 98). Bálubháí (exhibit 77) declares that the date of exhibit 114 is erroneously entered as the 7th June, 1879; as, in fact, it was not executed until five or six days later, and that the real consideration for it was a delivery to him of valuables which he never received. Rangilbhái (83) and Dáyábhái give a somewhat similar account. Their object is very plainly to escape the liability they have accepted by the document (exhibit 114); but, in order to give substance to the conveyance (exhibit 98), their counsel has been driven to contend that their story is a false one, and that the document (exhibit 114) really formed a part—a new and valuable part—of the consideration moving from the defendants for the conveyance (exhibit 98).

Bálubháí and Dáyábhái, who had executed the document No. 114, soon afterwards transferred their interests under exhibit 98 to Rangilbhái, who had not executed exhibit 114. The object apparently was to sever the liability under exhibit 114, as far as possible, from the ownership under exhibit 98 on which it might otherwise be made a charge.

When Gopál Myráí in execution of his decree attached the property in question, the defendants set up a claim to it as owners, and got the attachment raised. Hence the present suit, in which Gopál Myráí seeks to establish the continuing liability of the property on the grounds (1) that Ambábái had been imposed on by the defendants in the transaction recorded in exhibit 98, and, (2) that the conveyance had been made by Ambábái without authority and without consideration.

The Subordinate Judge thought, on the evidence, that the whole transaction was a sham, that there was no real consideration and no intention really to transfer the property. He pronounced judgment, therefore, in favour of the plaintiff. The issues are not accurately drawn, but they and the judgment fairly embrace the essential points of the case, and no complaint is made in the grounds of appeal of their insufficiency in this respect.

The point most dwelt on by Mr. Mehtá for the appellants (defendants) was that the sale under exhibit 98 was a real trans-

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action supported by a valuable consideration, and one, therefore, which could not be undone to the injury of a purchaser in the interest of a judgment-creditor. The undertaking in exhibit 114 was relied on as specially important, and as really securing for the creditors the best terms possible under the circumstances. But, even if we are to set aside the declarations made by the defendants as witnesses, it is still clear that the document No. 114 was not communicated to the creditors, or to any of them—see *Harland v. Binks*⁽¹⁾; *Siggers v. Evans*⁽²⁾. It remained a private arrangement between Ambábái and the defendants, which they could publish or not as they pleased. The object was to guard Ambábái, but at the same time force the creditors to accept anything that the defendants chose to give, by making it appear that there were no means available for the satisfaction of their claims. This would not be called a fair arrangement with respect to the creditors; they were likely to be induced by it to give up claims on which they would otherwise reasonably insist. As between Ambábái and the defendants the whole transaction might be valid—see *Robinson v. M'Donnell*⁽³⁾, but as affecting the creditors it was covinous as tending to defeat their just claims.

It would equally have had this character had the transaction been one between the defendants and Manchhárám himself instead of between them and his widow. Manchhárám might, no doubt, prefer one creditor to another having an equal right—*Wood v. Dixie*⁽⁴⁾ *Suba Bibi v. Balgobind Dás*⁽⁵⁾. The fact of one creditor being his brother would not make such a preference impossible. But here we have, apart from the document (exhibit 114), no other consideration for the conveyance (exhibit 98) than two time-barred debts. Under the bankruptcy laws such a transfer would certainly be annulled as an unjust preference⁽⁶⁾; but, even apart from special provisions of that kind, it involves fraud on the general body of creditors either through its being a simply fictitious transfer, as the Subordinate Judge has found, or else one, which, even though real, was wanting

(1) 15 Q. B., 713.

(5) I. L. R., 8 All., 178.

(2) 5 El. and Bl., 367.

(6) See Notes to Twyne's case, 1 Smith's Leading Cases, 1.

(3) 2 B. and A., 134.

(4) 7 Q. B., 892.

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in good faith as having been designed expressly to defeat established claims. The English Statute, 13th Eliz., Ch. V, has not, as such, any operation in the mofussil of India, but it embodies, as the Judicial Committee have recognized—*Abdul Hye v. Mir Mohammed Mozaffar Hossein* (1)—principles of general application on account of their essential equity. Lord Mansfield declared they were a part of the English common law, and that the Statutes of Elizabeth were superfluous—*Cadogan v. Kennett* (2). Under the Roman law, the *Pauliana actio* afforded a means of recovering for creditors property which had been aliened, in order to place it beyond their reach, whether by a lucrative or an onerous title (3). The only difference between the two cases was that in the latter the transferee, who was to be deprived, must have been aware of the fraud (4). From this part of the Roman law most of the nations of modern Europe have derived a stringent system of rules for annulling transactions, whatever guise they may assume, entered into for the purpose of depriving creditors of a just distribution of their debtor's assets (5). These have relation, no doubt, generally to bankruptcy, and it has been said in England that the purpose of the Bankrupt Acts was quite different from that of the Statute 13th Eliz., Ch. V (6). Directly, no doubt, it was different, as the Bankrupt Acts aimed at an immediate appropriation of the insolvent trader's effects to the defrayal *pro rata* of his debts, while the Statute of 13th Eliz. proposed simply to set aside any alienation by a person of any class in fraud of his creditors. But the recent changes in the law of bankruptcy have placed all classes nearly on the same level in matters concerned with insolvency (7). A transfer fraudulent under the Statute of Elizabeth is an act of bankruptcy; so, too, is a transfer to a single creditor of virtually the whole of the debtor's property in consideration of a pre-existing debt—*In re Wood* (8)—or a transfer even of a part if made in contemplation

(1) I. L. R., 10 Calc., 616.

(2) Cowp., 434.

(3) See Sav. Syst., Sec. 145, ss.

(4) Vinnius Ad. Inst., Lib. IV, Tit. VI, C. 52, S. 48, &c.

S. 6.

(5) See Burge's Comms., Vol. 3, 605 ss.

(6) See Twyne's case, Smith's Leading Cases, Vol. 1, p. 1, Notes.

(7) See Statutes 46 and 47 Vic.

(8) L. R., 7 Ch. Ap., 302.

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of bankruptcy. These are really but extensions of the principle embodied in the Statute of Elizabeth, which, carried out to its logical consequences, would guard the properties of insolvents against improvident dissipation by means of conspiracy with particular creditors; but, apart from that, they rest on principles as equitable and of as general application as any on which the Statute itself can be placed. Thus, in Scotland, even before the Statute Law had provided specific rules for cases of fraudulent disposition, such transactions were set aside on general principles in favour of the injured creditors⁽¹⁾. For example, "a disposition *omnium bonorum* to a creditor . . . though really within the value of his debt, was 'reduced' in order to bring in all the creditors *pari passu*"⁽²⁾; an arrangement giving favoured creditors a preference was set aside⁽³⁾. The near relationship of the person profiting by the disposition of the whole or a greater part of the debtor's estate affords, it is said, proof of collusion⁽⁴⁾. It, at least, suggests collusion, and is an important circumstance in determining the real character of an impeached transaction.

It appears, then, that, even apart from the special provisions of the bankrupt laws or of the Statute of Elizabeth, the jurisprudence of civilized nations regards unequal dispositions of property by a man in insolvent circumstances, and known to be so by the donee, with disfavour, and will set them aside⁽⁵⁾, except where the transferee has simply pressed a valid claim or made a purchase in good faith—see *Ex parte Games*; *In re Bamford*⁽⁶⁾. Under the Hindu law, as under the English law, fraud vitiates every transaction⁽⁷⁾. The principle has been less elaborately developed in precise rules than in the European Codes; but when Hindu law supplies a *datum* of recognized principle, the Courts may well follow English equity in the details derived from an identical principle—*In re Kalyándás Narrándás*⁽⁸⁾. The distribution of a bankrupt trader's effects used to be made, and still is made, where

(1) See Burge's Comms., Vol. 3, p. 618.

(2) Burge's Comms., Vol. 3, p. 618.

(3) *Ibid.*, 619.

(4) *Ibid.*, 618.

(5) See Bowyer's Civil Law, p. 288.

(6) L. R., 12 Ch. Div., 314.

(7) See West & Bühler's Hindu Law, p. 704.

(8) I. L. R., 5 Bom., 154.

native usages prevail, by a *panchayat* of the creditors⁽¹⁾, or of the trade-guild to which the bankrupt belongs, *pro rata* amongst the just claimants. The jurisdiction of the British Civil Courts to deal with the assets of a bankrupt estate was established by the case of *Dádábháí Roostumji v. Nánábháí Manchéri* ⁽²⁾, in which the dispositions made by the debtor's manager were revised and re-adjusted. It is essential to the effectiveness of such a jurisdiction that it should not be subject to defeat by unfair arrangements made between an insolvent and a favoured creditor by which the latter is to profit at the expense of his competitors, or for preserving to the debtor the estate which ought to be applied in satisfying his debts; and as the trader's fraud is, under the Hindu system, punishable by fine ⁽³⁾, so the other party to the fraudulent transaction cannot be allowed to profit by it to the detriment of the creditors generally.

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It appears, then, that had the transfer now in question been made by the deceased Manchhárám himself, it could not have been upheld as against his judgment-creditors. The transferees^s were not purchasers for money or even ordinary creditors diligent in pressing an enforceable right. They were members of the vendor's family, and the consideration they gave was old and barred claims that could not be enforced—*Butcher v. Stead*⁽⁴⁾; *Ex parte Blackburn*; *In re Cheesebrough*⁽⁵⁾; *Ex parte Topham*; *In re Walker*⁽⁶⁾. The payment of such debts would in itself be highly creditable to a debtor, but payment of them by the transfer of an insolvent's whole estate—*Ex parte Halliday*; *In re Liebert*⁽⁷⁾—to the disappointment of creditors, whose claims were not barred, was in itself a fraud. Being made to near relatives acquainted with the facts—*Cornish v. Clark*⁽⁸⁾—and under such circumstances as are proved in this case, it could not be regarded as a real and practical transaction. The consideration, regarded from a business point of view, was wholly inadequate, and inadequacy is an indication, though not

(1) Steele L. C., 336 ss.

(5) L. R., 12 Eq., 358.

(2) 1 Borr., 107.

(6) L. R., 8 Ch. Ap., 614.

(3) Steele L. C., loc. cit.

(7) L. R., 8 Ch. Ap., 283.

(4) L. R., 7 E. and I. App., 839.

(8) L. R., 14 Eq., 184.

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conclusive, of fraud—*Doe Lessee of Parry v. James*⁽¹⁾. Supposing the consideration moving from the defendants could be deemed “good,” and as between them and Manchharam no doubt it would be so, there was a want of *bona fides*, a failure of correspondence of the real to the ostensible purpose, such that this case would serve equally with *Twyne’s case*, if not better, for an illustration of the mischief aimed at by the Statute of Elizabeth.

The character of the transaction, as against creditors, was not altered by the passing of the document No. 114. It was only by accident that the creditors could benefit by that agreement. It was not communicated to them, and it could be suppressed at any moment by the concurrence of the parties to it—*Garrard v. Lauderdale*⁽²⁾; *Johns v. James*⁽³⁾. Its insufficiency to give the transfer the character of an assignment for the benefit of creditors is plainly shown by the defendant’s repudiation of it as connected with exhibit 98. If, as they assert, it is quite independent of that document, the latter has no substantial consideration to support it, only the moral obligation to pay a barred debt which no one would in a real transaction allow to prevail against the obligation to satisfy a decree about to be executed. If, however, it was connected with exhibit 98, the exclusion of its terms from that document and the secrecy observed about it go to stamp the transaction with fraud, whether the transfer was real or only pretended. The object plainly was to induce the creditors to take less than they could fairly claim by a pretended failure of assets. There was thus no honest trust for distribution which could defeat the plaintiff’s execution—*Pickstock v. Lyster*⁽⁴⁾; *Ingliss v. Grant*⁽⁵⁾—nor any consideration moving from the defendants at the request of the plaintiff, by which, as against the latter, the conveyance, (exhibit 98), could be sustained: a transfer to a member of the transferor’s family may be sustained on an inadequate consideration—*In re Johnson*; *Golden v. Gillam*⁽⁶⁾, but here there was an insolvency, there were outstanding decrees known to the defendants. The parties must

(1) 16 East, 212.

(4) 3 M. & S., 371.

(2) 2 Russ. and My., 451.

(5) 5 T. R., 530.

(3) L. R., 8 Ch. Div., 744.

(6) L. R., 20 Ch. Div., 397.

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have looked to the defeating or delaying of the creditors as the natural result; it was the obvious purpose of their transaction—see *Thomson v. Webster*⁽¹⁾; *Cornish v. Clark*⁽²⁾; *Spencer v. Slater*⁽³⁾.

Now, if the transaction, though entered into by Manchharam himself, would have had to be set aside in so far as it interfered with the execution of the plaintiff's decree, much more is that so when his widow is the transferor. She took the estate as an aggregate, assets and debts together. Her first duty was to pay her deceased husband's debts, and to pay them, as far as she could, equally according to the obligation with which the succession had devolved on her⁽⁴⁾. She may be regarded as in some degree a trustee, or, at any rate, under a legal obligation for this purpose, and not at liberty to deal capriciously with the estate which she may alienate at all only for special purposes indicated by the law. She ought not, in performing the duty cast upon her, to prefer one valid claim to another, as her husband might have done, because from him the favoured creditor could have obtained as much by his diligence. On the widow no pressure could be exercised, except through the estate, and that she was bound, pressure or no pressure, to distribute amongst the creditors. There could not here have been a legal necessity such as is prescribed as an indispensable condition by the Judicial Committee—*Raj Lukhee Dabea v. Gokool Chunder Chowdhry*⁽⁵⁾; *Koer Goolab Sing v. Rao Kurun Sing*⁽⁶⁾; a purchaser from a widow must see that she exercises her power of sale strictly—*Doe dem. Rajchunder Paramanick v. Bulloram Biswas*⁽⁷⁾—or at least satisfy himself by reasonable enquiry that a sufficient cause for alienation exists⁽⁸⁾. Assuming, then, in favour of the defendants that this sale to them, by the widow, of property to which they would succeed on her death was a real transaction, yet plainly it was one, the dominant motive—see *Ex parte Hill*; *In re Bird*⁽⁹⁾—of which was to give the defendants a preference regarded by the

(1) 4 Drewry R. at p. 632.

(5) 13 Moo. I. A., 209.

(2) L. R., 14 Eq., 184.

(6) 14 Moo. I. A., 176.

(3) L. R., 4 Q. B. Div., 13.

(7) 1 Fult., 133.

(4) West & Bühler's Hindu Law,

(8) West & Bühler's Hindu Law,

pp. 102, 394.

p. 101.

9) L. R., 23 Ch. Div., 695.

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law of the parties as fraudulent, and by which, therefore, it would not allow the intended beneficiaries to profit at the expense of third parties. If the defendants told Ambabai that their claims were barred by limitation, it is plain that they all joined in a scheme for depriving the judgment-creditors of their due. If they did not tell her, they deceived her by their silence, when, as near relatives getting an advantage, they were bound, in dealing with an ignorant woman, to put her in possession of all the material facts⁽¹⁾. This, however, is a position which they do not take up, and could not be allowed to take up, so as to profit by their own avowed fraud.

For the reasons we have given we confirm the decree of the Court below, and declare the property in question subject to attachment by the plaintiff in execution of his decree against Manchharām. Costs to be paid by the appellants. The Code of Civil Procedure provides equitably for other creditors of the deceased Manchharām who have been diligent in pressing their claims.

Decree confirmed.

(1) See Act IX of 1872, Secs. 16, 17. Com. Dig. Tit. Chancery, (2 T. 11).

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

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MORO ABA'JI, DECEASED, BY HIS SON AND HEIR, ATMA'RA'M MORESHVAR THAKUR, (ORIGINAL DEFENDANT), APPELLANT, v. NA'RA'YAN DHONDBHAT PITRE AND ANOTHER, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Relations of indmdars with khots—Khot—His status in the Ratnagiri District—Ownership not an essential incident of khotship—Onus—Thal.

The plaintiffs were the *indmdars* of a certain village in the Ratnagiri District, which was granted to their ancestors by the Peshwá under a *sanad* dated 3rd September, 1778. The defendants were the *vatandár* or permanent *khots* of the same village. In a previous suit between the parties relating to the forest attached to the village, it was held, upon the construction of the Peshwá's *sanad*, that "so far as the Peshwá's Government could pass the soil of the village and its revenues by its grant, it did pass them to the plaintiffs' ancestors," and that, therefore, the plaintiffs were the owners of the forest. In the present suit, which

* Cross Special Appeals, Nos. 257 and 307 of 1875.