

ORIGINAL CIVIL.

Before Mr. Justice Farran.

1887.
June 18, 20,
23.

ABDULLA PA'RU, (PLAINTIFF), v. GANNIBÁI AND OTHERS,
(DEFENDANTS,)*

Evidence—Deed—Proof of deed denied by the party by whom it was executed, where attesting witnesses were dead—Evidence Act I of 1872, Sec. 32, Cl. (2).

A deed of conveyance was tendered in evidence which purported to bear the mark of G. as vendor, and which was duly attested by four witnesses. G., however, denied that she had ever executed the deed, and said that the mark was not her's. All the attesting witnesses were dead. A witness was called who knew the handwriting of one of the attesting witnesses, and who swore that the signature of that witness to the attestation clause of the deed was genuine.

Held, on the authority of *Whitlocke v. Musgrove*(1), that the deed was admissible in evidence, its execution by G. being sufficiently proved.

THE plaintiff sued the defendants to recover possession of certain *fajandári* land on which two houses had formerly stood, but one of which had recently been pulled down by the Municipality of Bombay. He derived his title to one of the houses from one Dhanji Cristnáji, to whom (he alleged) the first defendant, Gannibái, had sold it on the 17th March, 1860. At the hearing of the case the plaintiff produced an English deed of conveyance (exhibit O) of that date, purporting to bear the mark of the first defendant, and duly attested by four witnesses, all of whom were dead. The first defendant, Gannibái, denied that she had ever executed this deed, and said that the mark was not her's. In order, therefore, to prove the deed, counsel for the plaintiff called a witness who knew the handwriting of one of the attesting witnesses (Dájibá Pándurang), and who swore that the signature of that witness to the attestation clause of the deed was genuine.

Vicáji and *Dhairyaván* for the plaintiff.

Mánkar and *Sanjáná* for the first two defendants.

In giving judgment upon the case, Farran, J., with reference to the admission of the deed in evidence, said: "The plaintiff relies upon exhibit O as the foundation of his case in respect of

* Suit No. 346 of 1886.

(1) 2 Cr. & M., 511.

this house 154. It purports to be a conveyance from Gannibái to Dhanji Cristnáji, and it bears date the 17th March, 1860. I have no doubt that it is a genuine document in the sense that it was, in fact, executed by Gannibái, though she denies that she put her mark to it. It is proved to be attested by Dájibá Pándurang Joshi, a deed-writer who is dead, and is manifestly all in his handwriting, including the words descriptive of the marks—woman. The question is, whether that is sufficient proof of its execution to allow of its being put in evidence. I admitted it on the authority of the law laid down in *Whitelcoker v. Musgrove*⁽¹⁾, and I think rightly so. Section 67 of the Evidence Act I of 1872 enacts that ‘if a document is alleged to be signed * * * by any person, the signature * * * must be proved to be his handwriting.’ This proof may, of course, be by any of the recognised modes of proof, and amongst others by statements admissible under section 32. The statement of the deed-writer, that the mark was Gannibái’s, is, I think, admissible under section 32, clause (2): see Taylor on Evidence, sec. 1658. No inference can, I think, under the circumstances of the case, be drawn against the plaintiff from his failing to call, or to strictly prove the death of, the other attesting witnesses. The deed appears to have been presented in the municipal office in 1863, and now comes from the proper custody. Disbelieving the evidence of the defendant Gannibái I hold that it was executed by her.”

Attorneys for the plaintiff:—Messrs. *Bálkrishna and Dikshit.*•

Attorney for the first two defendants:—Mr. *Bland.*

(1) Cr. & M., 511.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

IN RE SHAIK ABDUL AZIZ.

Registration—Act III of 1877, Secs. 35 and 77—Denial of execution, what is—Practice—Specific Relief Act I of 1877, Sec. 45.

A. by an indenture of mortgage dated 15th March, 1887, mortgaged certain property to S. to secure the repayment of Rs. 18,500 within two months. The deed was duly lodged for registration; but A. (the mortgagor) neglected to appear

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ABDULLA
PÁRU
v.
GANNIBÁI.

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