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15 B. 30.

Balaji Abaji Bhagvat showed cause.

Mahadev Bhaskar Chaubal, contra.

JUDGMENT.

BIRDWOOD, J.—The plaintiff sues to redeem an ornament pledged with the defendant. We think that the District Judge has rightly held that the suit, which arises in the Satara District where Act XVII of 1879 is in force, is one falling under cl. (*x*) of s. 3 of the Act and not under cl. (*z*). The word "mortgaged" in cl. (*z*) must be held to apply only to immoveable property; for the clause is applicable to redemption suits only when the plaintiff or any one of several plaintiffs is an agriculturist. There would apparently be no reason for such a provision in reference to a suit brought to redeem a chattel. Clause (*x*) of the same section is, however, clearly applicable to a suit for the redemption of a pledge. It applies to suits for [32] the recovery of money due on contracts other than those specified in cl. (*w*) and to suits for moveable property. A suit for the redemption of a pledge is described in art. 145 of the Limitation Act as a suit against a pawnee to recover moveable property pawned. The present suit is of that character. It falls, therefore, under cl. (*x*), which is applicable to cases in districts where the Act is in force in which neither party is an agriculturist (see *Tulsidas Dhunji* v. *Virbasapa* (1)); so that, though neither of the parties is an agriculturist in the present case, it falls under chap. II of the Act, and the value of the claim being below Rs. 500, and the suit having been tried by a First Class Subordinate Judge, no appeal lies from his decision. The Special Judge ought, therefore, to have heard the application made to him for revision of the First Class Subordinate Judge's decree instead of referring him to the District Court.

We must uphold the District Court's order refusing to hear the appeal; but in discharging the rule *nisi* obtained by the applicant, we direct the Special Judge, under the third paragraph of s. 54 of the Act, to hear the application made to him on the 12th November, 1888. Costs of this application to be dealt with by the Special Judge.

Rule nisi discharged.

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Before Mr. Justice Birdwood and Mr. Justice Candy.

KRISHNAJI MAHADEV MAHAJAN AND ANOTHER (*Original Defendants*), *Appellants v.* MORO MAHADEV MAHAJAN AND ANOTHER (*Original Plaintiffs*), *Respondents.** [25th June, 1890.]

Hindu law—Gains of science—Fruits of elementary education impartible—Earnings of different co-sharers thrown into the joint stock—Estoppel.

Three brothers—K., M. and N.—were members of a joint Hindu family living at Nagothna. M. and N. went to Baroda and obtained employment there as *karkuns*. They had not received anything more than a rudimentary education before they left their family house at Nagothna. K. remained at home to look after the affairs of the family. M. and N. used to remit moneys from time to time

* Second Appeal, No. 162 of 1889.

(1) 4 B. 624.

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for the support of the family at Nagothna. With money supplied by M. and N., K. redeemed the family house from mortgage and purchased lands at Nagothna, Varvatni and [33] Vagni. These lands were entered in the revenue records in K.'s name. K. managed the whole property and applied the rents to the support of the family. In 1881 K. mortgaged the property. In 1885, M. and N. brought this suit to recover possession of the house and lands, alleging that they were their self-acquired property, and that K. had no power to alienate them. They also prayed, in the alternative, for a partition of their two-thirds share of the property.

Held, that the plaintiffs having received only a rudimentary education in their family, their earnings in the exercise of their profession as *karkuns* were self-acquired and impartible, and that the property purchased or redeemed with those earnings would also be impartible, unless it appeared that they had voluntarily thrown such property into the joint stock, with the intention of abandoning all separate claims upon it. If they did so, the property would thereupon become joint property.

Held, also, that the plaintiffs having held out K. as the manager of the whole estate so as to induce outsiders dealing with him to believe that he had authority to mortgage the whole interest of the three brothers in the property, they (the plaintiffs) were estopped from contending that the mortgages effected by K. were not binding on their shares, if K. did, as a matter of fact, borrow the money for the benefit of the family.

[**F.**, 20 A. 435 (438); **Appl.**, 8 Ind. Cas. 930=4 S.L.R. 161 (170); **R.**, 22 A.W.N. 20 (21); 3 Bom. L.R. 535 (537); 13 C.P.L.R. 115 (117).]

SECOND appeal from the decision of E. Hosking, District Judge of Thana, in appeal No. 147 of 1887.

One Mahadaji and his sons, Narayan, Krishnaji and Moro, originally lived together in their ancestral house at Nagothna.

In 1845 Mahadaji went to Baroda and obtained service there as a *karkun* or clerk on Rs. 10 or 20 a month.

In 1847 Narayan and Moro followed their father to Baroda and also got employment there as *karkuns*.

Krishnaji, (defendant No. 1), remained at home to look after the family affairs.

In 1850 Mahadaji died, leaving no property except the ancestral house, which was mortgaged to one Raghunath Ved.

Both Narayan and Moro used to remit moneys from time to time for the support of the family living at Nagothna.

With the funds supplied by Narayan and Moro, Krishnaji redeemed the ancestral house, and purchased certain lands at Varvatni, Nagothna and Vagni. Krishnaji managed the whole property and applied its income towards the support of the family.

In 1881 Krishnaji mortgaged the house and the lands to defendants 6 and 7.

[34] In 1885 the present suit was filed by Moro and the sons of Narayan, deceased, to recover the entire property, alleging that it was their self-acquired property, and that Krishnaji had no power to mortgage it. They also prayed, in the alternative for a partition of their two-thirds share, and for a declaration that the remaining share was subject to a lien for money due to them.

The Subordinate Judge found that Krishnaji was manager of the family, and had purchased the property with plaintiffs' money, and that the mortgages effected by Krishnaji were a valid charge upon the property in suit. He, therefore, ordered that the property should be divided and

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a two-thirds share awarded to the plaintiffs, subject to the payment of Rs. 453-8-0 to defendant No. 6 and of Rs. 235-12-0 to defendant No. 7 on account of the mortgage-debt.

On appeal, the District Judge held as follows:—" As the funds were supplied by plaintiffs alone, without any detriment to any ancestral property, they alone were owners of the lands, though for convenience, as Krishnaji was living in Nagothna, the lands were held in his name............................

" While a family is joint, one member, generally the father, acquires property for the benefit of all the members, so long as they are undivided, but at the time of partition the only criterion whether the property is self-acquired is the source of the funds by which the property was acquired. The members know that they have no claim to property acquired by one member out of separate funds. With regard to outsiders, the matter is different. For a long number of years the plaintiffs have allowed it to appear to persons outside the family that the property was joint family property, in which Krishnaji had a share. It may also be said that they have allowed it to appear that Krishnaji was the manager of the family property. They are now estopped from disputing the *bona fide* claim of mortgagees from Krishnaji to the share which they were justified in supposing that he possessed."

The District Judge varied the decree of the Subordinate Judge. He directed that the house should be divided and two-thirds be given to the plaintiff. He awarded them possession [35] of the lands claimed, subject to defendant No. 7's mortgage lien on the lands at Varvatni and at Vagni under the mortgage-bonds executed in his favour by Krishnaji.

Against his decision Krishnaji, (defendant No. 1,) and his son appealed to the High Court.

Mahadev Chimnaji Apte, for appellants.—The plaintiffs were mere *karkuns* in the Baroda State. They had not acquired any special education, art or science. Their earnings cannot, therefore, be called gains of science. What they earned was all remitted to a common chest, and applied to the support of the whole family. Their earnings were thus blended together, and formed a common fund. Lands purchased out of this common fund cannot be regarded as the self-acquired property of the plaintiffs. The plaintiffs' conduct estops them from saying that those lands are their own separate property. Krishnaji is, therefore, entitled to a share in these lands. He was manager of the family, and the debts he contracted for the benefit of the family are binding on all co-sharers. Refers to *Lakshuman Mayaram* v. *Jamnabai* (1); *Bai Mancha* v. *Narotamdas Kashidas* (2); and West and Bühler, 724 (3rd ed.)

Manekshah Jehangirshah, for respondents.—It is, no doubt, the settled law in this Presidency that the ordinary gains of science are divisible. But the doctrine laid down in *Lakshuman Mayaram* v. *Jamnabai* (1) is considered by the Privy Council as a startling proposition of law. See *Pauliem Valoo Chetty* v. *Pauliem Sooryah Chetty* (3). So that the authority of the Bombay case is considerably shaken, if it is not actually overruled. I contend that it is only special education imparted at the family expense which makes the gains partible.

(1) 6 B. 225. (2) 6 B.H.C.R. A.C.J. 1. (3) 1 M. 252.

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In the present case the plaintiffs did not receive more than a mere elementary education in their family. Their earnings are, therefore, their own separate self-acquired property, and whatever was acquired out of their earnings belongs to them as their sole exclusive property. The other members of the family have no right to it. Krishnaji was acting as a trustee for the plaintiffs; and though the property purchased by him with [36] plaintiffs' money stands in his name, he cannot claim any share in it. The mortgages effected by him are not binding on plaintiffs.

JUDGMENT.

BIRDWOOD, J.—The principal question argued on this appeal has reference to certain lands at Nagothna and Vagni, which were purchased by the defendant Krishna with money supplied by his brothers and co-parceners, the plaintiffs Moro and Narayan, and also to certain lands at Varvatni which were redeemed from mortgage with money similarly supplied. The question is whether these lands are the self-acquired property of the plaintiffs, or whether they form part of the family estate and are partible. The further question arises in this appeal whether certain moneys advanced by the defendant Bhikaji to Krishna are a charge on the whole of the property mortgaged to Bhikaji or only on one-third of that property.

The suit is one for the possession of the lands in dispute and of a house at Nagothna (which is admittedly ancestral property, and as to which there is no question in appeal), or, in the alternative, for a partition of the plaintiffs' two-thirds share of this property.

The plaintiffs and Krishna lived in the family house as children, with their father Mahadev, who went to Baroda in 1845. He was followed by the plaintiffs, who obtained employment there as *karkuns*, while Krishna remained in the family house with his mother and managed the property. He acquired the lands in suit with the remittances made by the plaintiffs from their earnings at Baroda. The deed of sale of the lands at Vagni is in the names of the three brothers. The rents of the several lands, which all stand in Krishna's name in the Government books, were applied to the support of the family at Nagothna, and the District Judge remarks that the plaintiffs "no doubt acquired the lands for the benefit of the whole family." Both the Courts below were of opinion that the lands were the self-acquired property of the brothers Moro and Narayan; but while the Subordinate Judge remarks that the plaintiffs "seem to have given" Krishna a share in this property, the District Judge found that the plaintiffs alone were the owners, as they had supplied the funds for the several purchases "without detriment to the ancestral estate," and that it was only "for convenience, as Krishnaji was living [37] at Nagothna," that the lands were held in his name. He remarks, further, that no gift to himself from the plaintiffs was alleged by Krishna.

The Courts below have rightly regarded the earnings of the brothers Moro and Narayan, in the exercise of their profession as *karkuns*, as self-acquired property. In the well-known case of *Bai Mancha* v. *Narotamdas* (1), it was laid down as the result of the decision of the Madras High Court in *Chalakonda Alasani* v. *Chalakonda Ratnachalam* (2), where the question was very fully considered, that "gains of science, imparted at the family expense and acquired while receiving a family maintenance,

(1) 6 B.H.C.R. A.C.J. 1 (6). (2) 2 M.H.C.R. 56 (76).

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are not impartible property." The Bombay High Court (Couch, C. J., and Newton, J.), concurred in the judgment of the Madras High Court that, according to the Hindu law, "the gains of learning and science, at all events the ordinary gains, which have been taught at the expense of the family funds, are not impartible. To render them so, the science or learning must have been imparted by persons not members of the learner's family." The question in this case was whether the earnings of a *vakil* were partible. In *Lakshman Mayaram* v. *Jamnabai* (1), Melvill, J., said with reference to this case: "It is to be observed, however, that the *vakil* united the business of money-lender with that of pleader, and that there was joint property of which he had the use; so that perhaps this case can hardly be regarded as of any great authority on the point."

Bai Mancha's case (2) and the case of *Chalakonda Alasani* v. *Chalakonda Ratnachalam* (3) were referred to in *Pauliem Valoo Chetty* v. *Pauliem Sooryah Chetty* (4), where their Lordships of the Privy Council characterized the proposition "that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring by his own skill and industry any separate property," as a "somewhat startling proposition of law" which would require "very strong and clear authority" to support it; and added :—" It may hereafter possibly become necessary for [38] this Board to consider whether or not the more limited and guarded expression of the law upon this subject of the Courts of Bengal is not more correct than what appears to be the doctrine of the Courts of Madras (4)." The Bengal case here referred to is *Dhunookdharee Lall* v. *Gunput Lall* (5), where Mitter, J., said: "The defendant having shown that in acquiring the property in suit, he did not use any property which belonged to the joint family, the presumption of joint ownership is at once rebutted, and it is for the plaintiff to show that the property was acquired in the manner alleged by him. His case in the Court below was that the defendant received his education from the joint estate, and that he is consequently entitled to participate in every property that has been acquired by the defendant by the aid of such education. But this contention is nowhere sanctioned by the Hindu law, and I see nothing in justice to recommend it." This *dictum* of Mitter, J., was described as "not strictly accurate" in *Lakshman* v. *Jamnabai* (1), in which it was said: "The texts which have been cited to us do, in our opinion, establish it as a rule of Hindu law that the ordinary gains of science are divisible, when such science has been imparted at the family expense, and acquired while receiving a family maintenance, but that it is otherwise when the science has been imparted at the expense of persons who are not members of the student's family (1)." But, after referring to the remarks of the Privy Council in *Pauliem's case* (4) and to s. 256 of Mr. Mayne's Treatise on Hindu Law and Usage, Melvill, J., added: "We think that we shall be doing no violence to the Hindu texts, but shall be only adapting them to the condition of modern Hindu society, if we hold that, when they speak of the gains of science which has been imparted at the family expense, they intend the special branch of science which is the immediate source of the gains, and not the elementary education which is the necessary stepping stone to the acquisition

(1) 6 B. 225 (241, 242). (2) 6 B.H.C.R. A.C.J. 1.
(3) 2 M.H.C.R. 56. (4) 1 M. 252 (261, 262).
(5) 10 W. R. C. R. 122.

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of all science (1)." And accordingly the Court, finding that the deceased Dayaram, who was a Munsif and Subordinate Judge, had received at the [39] expense of the family estate nothing more than a rudimentary education and that he acquired his knowledge of law and judicial practice without any aid from the estate, held that the property purchased with his savings from his salary as a judicial officer was self-acquired property and impartible. This case shows, as remarked by the learned authors of the Digest of the Hindu Law, "that acquired property does not rank as joint where there is not really an obligation of the acquirer to the family going beyond mere ordinary sustenance and rudimentary education" (West and Buhler's Hindu Law, 3rd ed., p. 729). Now in the present case it is not contended that, before they left the family house at Nagothna, the brothers Moro and Narayan received more than a rudimentary education. Any special skill or knowledge required for the practice of their calling at Baroda must be presumed to have been acquired there. It is not suggested that, when they first went to Baroda, they received any pecuniary aid from their father, who was also a *karkun* there. The earnings of Moro and Narayan at Baroda must, therefore, on the authority of *Lakshman's case* (1), be held to be impartible; and the property purchased cr redeemed with those earnings would, therefore, be also impartible, unless it appeared that Moro and Narayan had voluntarily thrown such property into the joint stock with the intention of abandoning all separate claims upon it. If they did so, the property would thereupon become joint propety (see Mayne's Hindu Law, s. 254). The District Judge erred in reversing the Subordinate Judge's finding as to the ownership of the property, on the ground that no gift to himself was alleged by Krishna. It was Krishna's contention that the property purchased by him with the moneys remitted by his brothers was joint property ; and the facts found by the District Judge in connection with the purchase and the enjoyment of the property are not inconsistent with the contention. If he was commissioned to purchase property with the money remitted to him for the benefit of the family, as from the judgment of the District Judge it is clear that he was,—if, moreover, a purchase-deed was made out in the names of the three brothers, as was the case as regards the Vagni lands,—and if the rents [40] were applied to the support of the family at Nagothna as was the case—then there were clearly some grounds for Krishna's contention that Moro and Narayan were not alone the owners of the property. They do not seem, at any time prior to this suit, to have asserted an exclusive right in themselves. The District Judge suggests that the lands were held in Krishna's name merely as a convenient arrangement, because he was living at Nagothna. He would not, probably, have suggested this explanation unless he had felt himself bound to decide the issue as to the ownership of the property only on a consideration of the question as to the source from which the funds for the purchase were derived. He says: "While a family is joint, one member, generally the father, acquires property for the benefit of all the members, so long as they are undivided, but at the time of partition the only criterion whether the property is self-acquired is the source of the funds by which the property was acquired." As this is not a complete statement of the law, the District Judge's finding on the issue as to the ownership of the lands in dispute must be set aside ; and we must refer the following issue to him, *viz.*, whether, as a fact, the plaintiffs

(1) 6 B. 225 (242, 243).

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voluntarily threw the land in suit into the common stock with the intention of abondoning all separate claims upon it?

The question remains whether the advances made by Bhikaji to Krishna on the security of certain of the lands in suit are binding on the whole of the mortgaged lands, or only, as decreed by the District Judge, on one-third of the lands, that being the ostensible share of Krishna.

As regards the Varvatni lands, there is no question. The whole of these lands are held to be subject to Bhikaji's lien, amounting to Rs. 66; that sum having been paid on account of assessment on the whole land. In addition to that lien, the District Judge charged a mortgage-debt of Rs. 156; with interest, on one-third of the Vagni land, mortgaged by Ex. 147, and also a similar debt of Rs. 33, with interest, on one-third of the Varvatni land, mortgaged by the same bond.

As the plaintiffs clearly held out Krishna as the manager of the whole estate, and as Bhikaji must have understood that he [41] was lending money on the security of the whole interest of the three brothers in the mortgaged lands, the plaintiffs are estopped from contending that their own shares are not bound, if Krishna did, as a matter of fact, borrow the money on account of the family. A part of the money borrowed from Bhikaji was paid by Krishnaji to one Bapuji Ramchand. If that sum, amounting to Rs. 175, was borrowed from Bapuji on account of the family, the debt would be binding on the plaintiffs and on the whole of the lands mortgaged as security for its repayment. We send down, therefore, the following issue also for trial, *viz.*, whether the debt of Rs. 175 incurred by Krishnaji to Bapuji Ramchand was incurred on account of the family or on his own account only?

The parties should be allowed to adduce evidence on this issue; and the Judge should be requested to certify his finding on both the issues now referred to him within three months.

CANDY, J.—On the authority of the leading case on the subject in this Presidency, *Lakshman* v. *Jamnabai* (1), it may be taken that the fruits of the elementary education which Narayan and Moro presumably received at the village school of Nagothna, and which was the necessary stepping stone to their profession as *karkuns*, were not "gains of science" imparted at the family expense. So far, therefore, the District Judge committed no error of law in his finding that the moneys, with which the properties in dispute were purchased, were self-acquired funds. But he has followed the ruling of the Privy Council in *Dhurm Das Pandey* v. *Mussumat Shama Soondri Debiah*(2), as if their Lordships had said that the only criterion in these cases in India is to consider from what source the purchase-money is paid. As pointed out by Mitter, J., in *Dhunookdharee Lall* v. *Gunput Lall* (3), their Lordships never said that it is the only criterion. The further important question arises in such cases whether the property which was originally self-acquired, had become joint property by being voluntarily thrown by the owner into the joint stock, with the intention of abandoning all separate claims upon it. As was said in *Gopalasami* v. *Chinnasami*(4), a man may treat his own self-acquisition as co-parcenary. And in [42] *Bhagirthibai* v. *Sadashivrav* (5), it was clearly established that unusual as it may be that three brothers engaged as pleaders in different places should form an undivided family as regards their professional

(1) 6 B. 225. (2) 3 M.I.A. 229. (3) 10 W.R.C.R. 122.
(4) 7 M. 458. (5) P. J. for 1881, p. 155.

emoluments, this had taken place in the case in question. The conduct of the parties subsequent to the acquisition of the property thus becomes an important element in considering the point at issue. As was remarked in the Bombay case quoted above *Lakshman* v. *Jamnabai* (1) "after all, the best proof that the property in dispute was the acquisition of Dayaram is furnished by the conduct of the members of the family." Then, after remarking that Dayaram never rendered to his brothers an account of his savings or his investments, and in sending them money showed by the correspondence that he did it as a favour, the learned Judge (Melvill, J.) pointed out that the only inference from the conduct of the parties was that the property acquired by Dayaram with his own earnings was regarded as the acquisition of Dayaram. Here we have the converse of the above case; and though there are expressions in the judgment of the District Judge which when taken alone seem to show that, in his opinion, the subject-matter of dispute was regarded by the members of the family as joint family property, there is no distinct finding on the fact.

It may be remarked that the present case is not one in which it is alleged that the common stock has been augmented or improved by the separate industry of one or more of the co-parceners, and "where the property descended is incapable of being considered as the germ whose improvement has constituted the wealth ultimately possessed, this wealth must evidently be deemed acquired—an ancestral cottage never converted or capable of conversion to an available amount into money, in which the maker of the wealth had the trifling benefit of residing with the rest of the family when he commenced turning his industry to profit" (per Grant, J., in *Gooroochurn Doss* v. *Goluckmoney Dossee* (2). It is not impossible for property to be thrown into a common stock, though the original ancestral inheritance may be merely a house, which (as in the present case) has been burdened with a mortgage. [43] As remarked by Mr. Mayne (s. 265), when treating of the burthen of proof, and the presumption as to union, "the difference of opinion seems to arise as to the degree to which the presumption is to be pushed, *where the family is joint, but where no nucleus of joint property is either admitted or proved &c.*" In short, for self-acquisition to be thrown into the common stock, it is not necessary that there should be a nucleus of commercial property. In the case just quoted, Grant, J., spoke of a "contribution by separate industry to the genaral stock or to the maintenance of the family," which should "not convert what is substantially the improvement and augmentation of the inheritance into a new acquirement by separate industry."

In the present case it was for the District Judge on a consideration of all the circumstances to find, as a fact, whether the plaintiffs had voluntarily thrown the lands in suit into the common stock with the intention of abandoning all separate claims thereon.

With regard to the moneys advanced or paid on behalf of Krishna on the security of the properties in dispute, the District Judge found, as a fact, that Sadashiv's mortgage-bond was not proved, and that, therefore, Sadashiv had not even a lien on a one-third share of the property mortgaged as the ostensible property of the mortgagor (Krishna). Sadashiv has not appealed, nor filed cross-objections. Therefore, as intimated at the hearing, Sadashiv's debt cannot be considered in this second appeal.

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(1) 6 B. 225 (238, 239). (2) Fulton, 164 (182).

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With regard to Bhikaji's debt, the only dispute in second appeal relates to certain payments (amounting to Rs. 175), made by Bhikaji on behalf of Krishna to one Bapuji Soman. The District Judge has found, as a fact, that it is not proved why Krishnaji borrowed the money from Bapuji Soman. But in so finding he seems to have mixed up the question whether Bhikaji was bound to ascertain the state of the family or the nature of Bapuji's debt. Under these circumstances, I concur—though with some hesitation—in the order of remand as regards the second issue, and in permitting the parties to adduce fresh evidence, though they had full opportunity of producing evidence in the Court of first instance.

Decree reversed and case remanded.

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15 B. 44.

[44] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

VENKATESH PRABHU (*Original Plaintiff*), *Appellant v.* BABA SUBRAYA AND OTHERS (*Original Defendants*), *Respondents.**
[30th June, 1890.]

Bond—Contract—Document—Material alteration—Addition of a witness's signature subsequent to execution of the bond—Practice.

The fact that the signature of an attesting witness has been affixed to a bond after execution is not a material alteration, and does not make the bond void.

[**Appl.**, 40 P.L.R, 1901; **Appr.**, 38 C. 75=12 C.L.J. 277=14 C.W.N. 1076=11 Cr.L.J, 505=7 Ind. Cas. 629.]

SECOND appeal from a decision of G. McCorkell, District Judge of Kanara.

Suit to recover Rs. 2,000 on a bond.

The defendants admitted execution of the bond, but denied that they had received consideration, save to the extent of Rs. 500. The lower Courts held the bond to be void, on the ground that the signature of an attesting witness had been affixed after execution, and they rejected the plaintiff's claim.

The plaintiff preferred a second appeal to the High Court.

Branson (*Narayan Ganesh Chandavarkar*, with him), for the appellant:—The subsequent addition of a witness's signature does not render the document void. It is not a material alteration—*Mohesh Chunder* v. *Kamini Kumari Dabia* (1). The District Judge ought to have decreed payment of Rs. 500 which the defendants admitted.

Shamrav Vithal, for the respondents:—The addition of the witness after execution of the bond rendered it void—*Sitaram* v. *Daji* (2). The plaintiff, therefore, cannot recover anything on the bond.

JUDGMENT.

SARGENT, C. J.—The defendant admits that Rs. 500 were actually paid; and, however reprehensible the plaintiff's conduct may be in suing

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*Second Appeal No. 327 of 1889.

(1) 12 C. 313. (2) 7 B. 418.