ORIGINAL CIVIL.

Before Mr. Justice Candy.

COWASJI NOWROJI POCHKHA'NA'WA'LLA, PLAINTIFF, *v.* RUSTOMJI DOSSA'BHOY SETNA AND ANOTHER DEFENDANTS.* 1895. *November* 12.

Trust-deed—Invalid trusts—Recovery of property settled—When right to sue accrues—Limitation Act (XV of 1877), Sch. II, Arts. 96 and 120—Rule against perpetuities—Indian Succession Act (X of 1865), Sec. 101—Transfer of Property Act (IV of 1882), Sec. 14—Whether applies to moveable property—Suit to follow trust property—Limitation Act (XV of 1877), Sec. 10—Whether applies to suit to invalidate the trust.

The rule against perpetuities (Indian Succession Act (X of 1865), section 101, and Transfer of Property Act (IV of 1882), section 14) applies to moveable as well as immoveable property.

Under article 120, Schedule II of the Limitation Act (XV of 1877) the right to recover property settled on invalid trusts accrues directly the property is conveyed to the trustees.

Section 10 of the Limitation Act (XV of 1877) does not save a suit brought to set aside the trusts specified in a trust-deed and enforce resulting trusts not so specified.

BY a deed of trust dated the 24th January, 1888, made between the plaintiff of the one part and himself and two other persons, *viz.*, the defendant Rustomji Dossábhoy Setna and one Nusserwánji Dinsha Dubash, of the other part, it was recited that the plaintiff being desirous of providing for certain ceremonies set forth in the said deed had absolutely given and transferred to himself and the said two persons certain Government promissory notes of the nominal value of Rs. 10,000, and that it was his intent and wish to divest himself for ever of the said notes, that the property therein should be absolutely vested in himself and the said two persons, "and that the said notes shall no longer in any way belong to him or form part of his estate or ever revert thereto, any rule of law or equity to the contrary notwithstanding," and that he had immediately before the execution of the said deed transferred the said notes into the joint name of himself and the said two persons "to the intent that they and the survivors and the survivor of them and the executors or administrators of such survivor shall stand possessed thereof upon the

* Suit No. 468 of 1895.

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trusts and to the uses and with and subject to the powers and provisions hereinafter declared and expressed," and it was witnessed as follows :—

"Now this indenture witnesseth that, in consideration of the wish and desire of the said Cowasji Nowroji Pochkhánáwálla to make certain provision which he believes to be for the benefit of the souls of his deceased near relations hereinafter referred to and also for the benefit of the Pársi community, and for divers other good causes and considerations, the said Cowasji Nowroji Pochkhánáwálla doth hereby direct and declare that the said Cowasji Nowroji Pochkhánáwálla, Rustomji Dossábhoy Setna and Nusserwánji Dinsha Dubash and the survivors and survivor of them, and the executors or administrators of such survivor or other the trustees or trustee for the time being of these presents (hereinafter called the said trustees or trustee) shall deposit the said Government loan notes for safe custody in the Bank of Bombay with a power to the said Bank to draw on their behalf the half-yearly interest upon such notes, and shall pay such interest to the said Cowasji Nowroji Pochkhánáwálla during his natural life to the use and to the intent that the said Cowasji Nowroji Pochkhánáwálla shall out of the said interest expend the sum of Rs. 10 on the anniversary day of each of his father Nowroji Pállonji, his mother Mithibái and his sisters Jerbái and Cursetbái and his two brothers Mánokji and Rustomji and his wife Jerbái, who are all dead, and also of his present wife Jáiji after her death accompanied with a suit of clothing called 'Sheeáo' according to the Zoroastrian religion, and to the further use that out of the remainder of the said interest the said Cowasji Nowroji Pochkhánáwálla shall apply the sum of Rs. 180 in each and every year to the performance from day to day of 'Daroon' ceremonies, called 'Chaloo Daroon,' and to the further use that the said Cowasji Nowroji Pochkhánáwálla shall apply the remainder of the said interest to the performance every year of the 'Mookhtád' ceremonies, and on the death of the said Cowasji Nowroji Pochkánáwálla the said trustees or trustee shall stand possessed of the said interest upon trust to pay the same to the said Jáiji if she should survive her husband to the same uses and for the same purposes as are hereinbefore declared concerning the interest to accrue during the life-time of the said Cowasji Nowroji Pochkhánáwálla, with the addition that a sum of Rs. 10 out of the said interest shall be expended on the anniversary day of the said Cowasji Nowroji Pochkhánáwálla, and after the deaths of the said Cowasji Nowroji Pochkhánáwálla and of the said Jáiji the said trustees or trustee shall stand possessed of the said interest upon trust to pay the same to Hormasji Cowasji Pochkhánáwálla, the son of the said Cowasji Nowroji Pochkhánáwálla, to the same uses as are hereinbefore declared concerning the interest to accrue during the life-time of the said Cowasji Nowroji Pochkhánáwálla and his wife the said Jáiji if the said trustee or trustees shall be satisfied that the said interest shall be applied by the said Hormasji Cowasji Pochkhánáwálla as above directed; and in case the said trustees or trustee shall not in their absolute discretion be so satisfied upon trust to pay the said interest to any one of the surviving daughters of the said Mánokji and Rustomji, the two predeceased brothers of the said Cowasji Nowroji Pochkánáwálla, to the same uses, intents and purposes as are hereinbefore declared and expressed concerning the interest to accrue during the life-time of the said Cowasji Nowroji Pochkánáwálla and his wife the said Jáiji: Provided and it is hereby agreed and declared that the

said trustees or trustee shall be at absolute liberty to entrust the carrying out of the above ceremonies, intents and purposes to any one of the said surviving daughters of the said Mánokji and Rustomji in preference to the said Hormasji Cowasji Pochkhánáwálla, provided and it is hereby agreed and declared that if the abovenamed relations of the said Cowasji Nowroji Pochkhánáwálla should decline to accept the performance and carrying out of the above trusts the said trustees or trustee shall stand possessed of the said interest upon trust to pay the same to a 'Mobed' or Pársi priest of their or his own selection to the uses and for the purposes as aforesaid so long as he shall act faithfully, or in case a proper priest shall not be found in that behalf and at any time during the continuance of these presents the said trustees or trustee shall transfer the said Government promissory notes to the names of and shall hand the same to the trustees for the time being of the Pársi Panchâyat to the intent that out of the interest of the said notes the aforesaid uses and purposes shall be carried out under their direction."

The deed provided for the appointment of new trustees.

The said Nusserwânji Dinsha Dubash died on the 3rd December, 1888, and no other trustee was appointed in his place.

The plaintiff now sued to recover the said trust property, having been advised that the trusts for which he had given it were invalid. The defendants to the suit were the surviving co-trustee and the plaintiff himself as surviving trustees of the above trust-deed. This suit was filed on the 3rd October, 1895.

The plaint stated that the said Government promissory notes were sold by the plaintiff in 1895 and the proceeds were invested by him in the purchase of two shares in the Bombay and Burmah Trading Corporation, Limited, which were at the date of the suit of the value of Rs. 11,000. The said shares although purchased by the plaintiff had always remained in the possession and custody of the defendant Rustomji Dossábhai Setna.

The concluding paragraph and the prayer of the plaint were as follows:—

"4. The plaintiff and the first defendant are advised that all the trusts by the said deed created are by law invalid, and that the plaintiff is entitled to the said shares in his own right.

"The plaintiff, therefore, prays:—

"(*a*) That it may be declared that the trusts created or purported to be created by the deed in the first paragraph hereof referred to are void and that the said deed is inoperative and of no effect.

"(*b*) That it may be declared that the plaintiff is entitled to receive the two shares in the Bombay and Burmah Trading Corporation, Limited, in the third

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paragraph hereof referred to, and to hold the same in his own right freed from the said trusts.

"(c) That the first defendant may be authorised to deliver the said shares to the plaintiff.

"(d) That the plaintiff may have such further and other relief as the nature of the case may require."

The defendant filed a written statement stating that he had been advised that it was questionable whether the plaintiff's right to have the trust property handed back to him was not barred by limitation, and submitting to the judgment of the Court whether the trustees could and ought to retain the same and apply it in accordance with the trusts declared in the deed.

Lowndes for plaintiff:—No property can be tied up in this way—Succession Act (X of 1865), section 101. As to limitation, section 10 of the Limitation Act (XV of 1877) applies.

Scott for the defendant. He referred to Tudor on Charitable Trusts, (3rd Ed.), p. 372; *Churcher* v. *Martin*[1]. As to limitation, he citeo Lewin on Trusts, (9th Ed.), p. 155; *Kherodemoney* v. *Doorgamoney*[2].

CANDY, J.:—This is at first sight a simple case, but it involves the consideration of an important question.

By an indenture, dated 24th January, 1888, Cowasji Nowroji Pochkhánáwálla gave and transferred to himself and to Rustomji Dosábhoy Setna and to another (since deceased) two Government promissory notes of the nominal value of Rs. 10,000 in order that the property in the said notes should be absolutely vested in the said transferees and should no longer in any way belong to the transferor or form part of his estate or ever revert thereto, any rule of law or equity to the contrary notwithstanding, but that the notes should be held in trust by the transferees, who should pay the interest thereof to the transferor during his natural life, to be spent by him in the following way, *viz.*, Rs. 10, on anniversary days of his deceased relatives, and of his present wife when deceased "accompanied with a suit of clothing called Sheeáo, according to the Zoroastrian religion," and Rs. 180 every year for the "Cháloo Daroon" ceremonies, and the remainder

(1) 42 Ch. D., 312.

(2) I. L. R., 4 Cal., 455 at p. 465.

for the annual "Mookhtád" ceremonies, and after the transferor's death the trustees were to pay the interest to his widow for the same uses and for the same purposes, and on her death to pay the interest to other persons named for the same uses and purposes, due arrangement being made for the continuation of the trust in perpetuity.

The transferor, Cowasji Nowroji Pochkhánáwálla, brought this suit on 3rd October, 1895, against his surviving trustee R. D. Setna, reciting the indenture above described and stating that the Government notes had been sold by him (the plaintiff) and the proceeds invested in two shares of the Bombay and Burmah Trading Corporation, Limited, now of the nominal value of about Rs. 11,000, the shares being in the name of the plaintiff, but remaining in the custody of the defendant.

The plaintiff states in his plaint that he and his co-trustee (defendant) are advised that all the trusts created by the said deed are by law invalid, and that the plaintiff is entitled to the said shares in his own right. He, therefore, prays that it may be declared that the trusts created by the deed are void, and that the deed is inoperative and of no effect, and that it may be declared that the plaintiff is entitled to receive the shares and to hold the same in his own right freed from the trusts: and the plaintiff prays for the possession of the said shares.

The defendant submits himself to the judgment of the Court, but his counsel suggested first that the trusts are valid, the property being cash and not landed property; secondly, that in any event plaintiff's present claim is barred by limitation.

The first question can be easily disposed of. There is no authority for holding that the property which cannot be tied up for a period exceeding the limit allowed by the rule against perpetuities, is real property, and that the rule cannot be applied to a fund which is not of the nature of a real property. Thus to take the oft quoted case of *Hoare* v. *Osborne*[1], the property in question was 3 per cent. consolidated annuities. Sir R. T. Kindersley, V. C., began his judgment thus:—"The cases which have been cited clearly determine that a gift of a sum of money is void,

(1) L. R., 1 Eq., 585.

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not being a charity." So, too, the illustrations to section 101 of the Succession Act all relate to " a fund "; section 14 of the Transfer of Property Act (IV of 1882) relates simply to " property," which may be moveable or immoveable. There is no rule of law more absolute than that all property, whatever be its nature, must be alienable within a life in being and 21 years after (see per Malins, V. C., in *Cooper* v. *Laroche*[1]). There can be no doubt that the objects of this settlement admittedly not being "charity" so as to avoid the rule against perpetuities, the settlement is void.

But it is suggested that the plaintiff's present suit to recover the *corpus* of the fund is barred by limitation, and the point having been brought to the notice of the Court, I cannot avoid considering it.

In discussing the question of limitation, the learned counsel took it for granted that, if limitation applied at all, then the article of the Limitation Act (XV of 1877) applicable to this case would be article 120. The time from which the period of limitation under that article begins to run is " when the right to sue accrues." It was contended that here the plaintiff's right to sue accrued when he demanded the money. But this is clearly not so. When the Legislature intends demand and refusal to be the starting point of limitation, this is clearly indicated in the last column of the second schedule of the Act. In the present case the plaintiff's right to the *corpus* of the fund accrued directly he had transferred it to the trustees. There was at once a resulting trust in his favour. If article 120 of the Limitation Act applies, then the suit became barred six years after the date of the deed.

It may be remarked that no mention is made in the plaint as to any mistake, and the suit cannot be regarded as one for relief on the ground of mistake. The plaintiff simply says that he is advised that the trusts which he purported to create are wholly void. No doubt article 96 of Act XV of 1877 applies to both mistakes in fact and in law; and as Lord Chelmsford said in *Earl Beauchamp* v. *Winn*[2]," there are many cases found in which equity, upon a mere mistake of the law, without the ad-

(1) 17 Ch. D., 368, at p. 372. (2) L. R. 6 H. L., 223, at p. 234.

mixture of other circumstances, has given relief to a party who has dealt with his property under the influence of such mistake." But that principle would hardly apply to the present case, in which the conveyance creating the illegal trusts was executed in January, 1888—apparently drawn by a solicitor of this Court—while in February, 1887, there had been a decision of this Court (*Limji Nowroji Banáji* v. *Bápuji Ruttonji*[1]) that the objects of such a trust were not valid charities. This is very different from the case above quoted in which Lord Chelmsford went on to say: "Therefore, although when a certain construction has been put by a Court of law upon a certain deed, it must be taken that the legal construction was clear. Yet the ignorance, before the decision, of what was the true construction, cannot, in my opinion, be pressed to the extent of depriving a person of relief on the ground that he was bound himself to have known beforehand how the grant must be construed." The case, therefore, must be considered on the assumption that article 120 applies, and that the right to sue accrued when the plaintiff had the right to demand back from the defendant the *corpus* of the fund in 1888.

But it was contended that no limitation would apply as provided by section 10 of the Limitation Act (XV of 1877), which says that "no suit against a person in whom property has become vested in trust for any specific purpose.....for the purpose of following in his or their hands such property, shall be barred by any length of time." Here no doubt the property has become vested in defendant in trust for the specific purpose of paying over the interest thereof for certain religious uses and purposes. But defendant has never committed any breach of that trust. Plaintiff seeks to follow the property for purposes directly contrary to the trusts under which it was vested in defendant. It is evident that such a case is not within the terms of section 10. In *Kherodemoney Dossee* v. *Doorgamoney*[2], Garth, C. J., said (p. 465): "I could have wished, in an equitable point of view, that the scope of that section had been considerably extended. But we are of course tied down to the words of the section, and are bound to see what their true meaning is.

(1) I. L. R., 11 Bom., 441. (2) I. L. R., 4 Cal., 455.

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"I think, after much consideration, that what they mean is this: that where a trust has been created expressly for some specific purpose or object, and property has become vested in a trustee upon such trust (.....), the person or persons who for the time being may be beneficially interested in that trust may bring a suit against such trustee to enforce that trust at any distance of time without being barred by the law of limitation.

"That being the construction which I put upon section 10, I consider that this case does not come within its scope. The specific purpose for which the defendant became a trustee * * * * was to carry out and protect the disposition of the property in favour of the testator's sister's sons." (That disposition was held to be illegal under Hindu law, and, therefore, there was a resulting trust in favour of testator's widow, who was his sole heir.) "But the plaintiff's object is the very opposite of this. She is suing for the purpose of invalidating the disposition, in furtherance of which the trust was created. Her object is to defeat that trust, not to enforce it."

Markby, J., came to the same conclusion. He said (p. 470): "The trust which it is now sought to enforce had not been specified by the testator, and I, therefore, think that section 10 does not apply to this case, and that the ordinary rules of limitation must apply."

The remarks of the Privy Council at p. 96 of *Balwant Rao* v. *Puran Mal*[1] show that the expression used by the Legislature "for the purpose of following in his hands such property" means for the purpose of recovering the property for the trusts in question, *i. e.* for the purpose for which the property was specifically vested in the trustee. Whether in the case of a resulting trust, the trust is "express" or not, the purpose for which the property is sought to be recovered is certainly not "specific," within the meaning of section 10, where the purpose is directly contrary to the terms of the settlement which purported to create the trust. And this is the important distinction which distinguishes a case such as *Lister* v. *Pickford*[2] from the present case. In *Lister* v. *Pickford*[2] the trustees in 1850 entered into possession *bonâ fide*,

(1) L. R., 11 Ind. Ap., 90. (2) 34 Beav., 576.

believing that they did so on behalf of Miss Lister. As a fact, according to the true construction of the will creating the trust, the real *cestui que trust* was M. H. Lister. The Master of the Rolls said: "A trustee who is in possession of land is so on behalf of his *cestui que trust*, and his making a mistake as to the persons who are really his *cestui que trustent* cannot affect the question."

Next it is said: in the present case the plaintiff, the settlor, is one of the trustees, and from the date of the settlement he has been receiving the interest of the fund; how can his co-trustee set up a plea of limitation? The answer to this question may be gathered from the case of *Churcher* v. *Martin*[1]. In that case real estate was by deed expressed to be conveyed to trustees upon charitable trusts. The deed was not enrolled, and the grantor died within a year after the execution of the deed. It was held that the deed was not voidable only, but was absolutely void under 9 Geo. II, c. 36, sec. 3. The trustees, however, on the death of the grantor in November, 1868, had entered into possession and applied the rents and profits according to the trusts of the deed. Emmanuel Churcher was one of the trustees, and he was also general devisee and legatee of the grantor. He died in 1887, and the executors under his will sued the trustees for a declaration that the charitable trusts were void, and they claimed a conveyance and assignment of the property. The trustees pleaded that the property had been continuously held by them, or some of them, for more than twelve years for the purposes of the trusts of the deed of 1868 (which was held void) and pleaded the statutes of limitation.

Counsel for plaintiffs urged (p. 315): "There is no authority for saying that a trustee who has employed land in charity for twelve years has established a charity. The trust here is express—Lewin on Trusts (8th Ed., p. 878"); (this apparently is a mistake for p. 877); "and they can have no title except as trustees. The trustees are the legal owners and have been in possession, and the Court does not inquire in that case under what title they come in and will hold them trustees. Or in another point of view, they have been mere licensees, and have employed the rents with the

(1) 42 Ch. D., 312.

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assent of the owner, Emmanuel Churcher, one of them. That cannot give adverse title."

On this Kekewich, J., said (p. 318) :—

"It has been proved that shortly after the execution of the deed of the 22nd of January, 1868, the trustees of that deed entered into possession of the property which it purported to convey, and that as regards so much thereof as is claimed by the plaintiffs in this action the trustees for the time being (not all the same persons throughout) had been in uninterrupted possession for upwards of twelve years before writ issued. It has further been proved that they have thus been in possession on behalf of the charity which the deed purports to constitute, and they say that such charity has been thus established. Into this I need not enquire, because the trustees and the Attorney General combine in their defence to the action, and no question arises between them; but the application of the money coming to the trustees' hands is nevertheless of importance as regards Emmanuel Churcher, who was himself one of them. Apart from that accident, why should not this uninterrupted possession confer a prescriptive title as against the plaintiffs, who, without tracing the devolution about which there was no contest, may be treated as being the devisees of him who would now be entitled to the property comprised in the deed of the 22nd of January, 1868, had that deed never been executed. The plaintiffs' answer is that the possession of the trustees is the possession of the *cestui que trust*, and *Lister* v. *Pickford*(1) was cited. The general proposition is true enough; and might be supported by other authorities, but what is the application in the present case (I will assume that those in possession were trustees in the proper and full sense of the term)? How can the possession of the trustees enure to the benefit of him whose title was intended to be defeated by the deed which created the trust? How can the grantor (for Emmanuel Churcher may be considered the grantor) be their *cestui que trust?* Because, it is urged, there is an express trust in his favour, an express trust necessarily resulting from the failure of those declared. It would suffice to reply that such a resulting trust is implied by law, and that whatever else it may be, it is not an express trust; but as *Salter* v. *Cavanagh*(2) was referred to, I may point out that the trust there spoken of as express was one inferred from the deed, and discoverable on the face of it, and not as here a trust against the deed and due only to the fact that the deed is void. This seems to have been appreciated by the learned author of the text-book which was mentioned."

This last remark evidently refers to a passage on p. 877 of the 8th edition of Lewin on Trusts, in the note (*c*) (see 9th Ed., p. 999, note D) to which *Salter* v. *Cavanagh*(2) is quoted. The passage runs: —"It is not necessary to use the word *trust* in order to create an express trust within the meaning of the statute (*Commissioners of Charitable Donations* v. *Wybrants*(3)), but any language that would in equity raise or imply a trust will be deemed an express trust. If, therefore, land be devised to a person upon trust to receive the rents and thereout to pay certain annuities, the sur-

(1) 34 Beav., 576. (2) 1 D. and Wal., 668. (3) 2 Jon. and Lat., 197.

plus rents result to the heir-at-law upon the face of the instrument, and this being an express trust, the heir-at-law, in a case falling within the section, will not be barred by any length of possession by the trustee[1]."

That was exactly the case of *Salter* v. *Cavanagh*[2]. It was a resulting trust upon the face of the instrument.

Then as to the argument that the trustees may have been mere licensees, Kekewich, J., said (p. 319):—

"There is still one argument to be noticed, and one deserving more consideration: 'From the date of the deed until his death in 1887 Emmanuel Churcher was one of the trustees,—one of the persons jointly in possession—and it is said that he cannot be taken to have assisted others in acquiring a title against himself. The law, it is urged, adjudges the possession to be that of him who has the right; and the proper inference is that Emmanuel Churcher's co-trustees were in possession with his license and not adversely to him.' If Emmanuel Churcher had been the sole trustee the aspect of the case would have been very different, but here he was one of several; receiving rents and performing acts of ownership without the slightest reservation or indication of beneficial claim, and unless I am bound to regard the physical identity of the beneficial owner with one of the trustees as prevailing to the disregard of the facts and substance of the story, I must treat Emmanuel Churcher the beneficial owner as excluded from possession for twelve years and upwards, notwithstanding that Emmanuel Churcher the trustee took an active part in the management of the estate. Am I so bound? Trustees are not a corporate body; there is no aggregate existence independent of the individual members; but, on the other hand, they are joint owners of the trust property, and they cannot act otherwise than jointly, even though frequently and for many purposes one member of the body represents the others. It seems to me consistent with principle to hold that the joint possession excludes that of any one of the joint possessors on his own behalf, and no authority was cited or has occurred to me inconsistent with that view. My conclusion, therefore, is that the accident of Emmanuel Churcher's beneficial interest did not operate to defeat the title of the trustees which he intended to preserve."

If this reasoning is sound (the decision was quoted in the subsequent case of *Pattrick* v. *Simpson*[3] as good law), then it is impossible not to apply it to the present case. Plaintiff has, by the terms of the deed, been one of the trustees of the trust specified in the deed. Also he has been the conduit pipe for the disposal of the interest arising from the trust funds to the religious purposes which are the objects of the trust. How can that possession enure to the benefit of the plaintiff who now says that the trust was *ab initio* void, and that he has always been and is absolutely

(1) *Salter* v. *Cavanagh* (1 D. and Wal., 668), &c. (2) 1 D. and Wal., 668.

(3) 24 Q. B. D., 128.

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entitled to the whole *corpus* of the fund? No doubt the result is startling, but the Court has to administer the law as it is, and not according to a result, which possibly may be due to the too narrow terms of a section of a statute. The learned counsel for the plaintiff submitted whether it would not be inconsistent to establish as a perpetual charity that which is really no charity at all. Here the deed is void, not on account of any absence of certain formalities under any statute such as the Mortmain Act, but it is in itself void as creating a perpetual trust which the law does not recognise. The answer to this question is that the deed is neither more nor less void than was the deed in the case of *Churcher* v. *Martin*, in which it was held that the deed was void altogether. Kekewich, J., refused to consider the question whether the effect of his decision would be to establish the charity. I must follow the same course.

Holding the claim to be barred by limitation, I must dismiss the suit. Under the particular circumstances of the case, the costs of both sides as between attorney and client may come out of the estate.

Suit dismissed.

Attorneys for the plaintiff:—Messrs. *Pestanji, Rustim and Kola.*

Attorneys for the defendant:—Messrs. *Edgelow and Gulábchand.*

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Before the Honourable Chief Justice Farran and Mr. Justice B. Tyabji.

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December 6.

HA'JI ESSA SULLEMA'N, PLAINTIFF, *v.* DAYA'BHAI PARMA'NANDA'S AND OTHERS, DEFENDANTS.*

Vendor and purchaser—Concealment of claim against property—Whether such concealment entitles purchaser to rescind—Transfer of Proverty Act (IV of 1882), Sec. 55—Meaning of words "material defects."

The expression "material defect" in section 55 of the Transfer of Property Act (IV of 1882) includes a defect in the title to an estate.

CASE stated for the opinion of the High Court under section 69 of the Small Cause Court Act (XV of 1882) by R. M. Patel, Second Judge:—

* Small Cause Court Reference, No. 11648 of 1895.