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only by the excess amount wrongly taken by the respondent from the District Court but also by the amount of interest which it carried with it.

It was urged before us that this being the case of an award under the Land Acquisition Act and not a decree, the right of restitution claimed by Government cannot rest on the section of the Code of Civil Procedure which allows a refund of moneys received by a judgment-creditor under a decree subsequently reversed or amended. But assuming that the Code does not apply, the decisions above cited show that the right rests on the inherent power of the Court to enforce the refund.

The order of the District Judge disallowing interest is set aside and Rs. 57-5-4 is awarded to Government as interest on the amount of Rs. 538-0-3.

The respondent must pay the costs both of this appeal and of the *darkhast* in the Court below.

Order set aside.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

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GURUNATH BALAJI MUTALIK DESHPANDE (ORIGINAL PLAINTIFF), APPELLANT, *v.* YAMANAVA KOM NALARAV DIVAN (ORIGINAL DEFENDANT), RESPONDENT.*

Sale with an option of re-purchase—Suit by vendor's grandson against the vendee's daughter-in-law—Covenant to re-purchase purely personal.

A deed of sale with an option of re-purchase contained the following clause :—"I have given the land into your possession ; if perhaps at any time I require back the land I will pay you the aforesaid Rs. 600 and any money you may have spent on bringing the land into good condition and purchase back the land."

In a suit brought 35 years after execution of the deed by the grandson of the vendor against the daughter-in-law of the vendee to exercise the option of re-purchase,

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Held, that the covenant to re-purchase was purely personal and the suit was not maintainable.

SECOND appeal from the decision of T. D. Fry, District Judge of Dharwar, confirming the decree of G. N. Kelkar, First Class Subordinate Judge.

The land in suit originally belonged to the plaintiff's grandfather Krishnaji, who sold it to Sheshgir Rao Divan on the 14th March 1873. The sale-deed provided as follows:—

I have purchased this land at a Court-sale for Rs. 555. I have obtained the necessary sale-certificate. For this (*ashás*) I have sold this land to you for Rs. 600 received in cash. I have no right to, nor power, nor authority, nor ownership over (no right, title and interest, *Hakka*, *Sattá*, *Swámitwa*) this land. I have given the land into your possession; if perhaps (at any time--*Yekád velá*) I require back the land, I will pay to you the aforesaid Rs. 600, and any money you may have spent on bringing the land into good condition and purchase back the land. If I am so inclined to take back the land I will do so at the end of the year and not in middle of the year when you may have sown the land.

In the year 1907 the plaintiff brought the present suit against the daughter-in-law of the vendee Sheshgir Rao to redeem and recover possession of the land alleging that the said transaction was mortgage but a sale-deed was taken from the vendor Krishnaji by fraud, misrepresentation and coercion, and against his will and consent, and that the stipulation to reconvey the land on payment of Rs. 600 showed that the transaction was mortgage and not sale. The plaint further alleged that the mortgage debt was fully satisfied and discharged out of the profits of the land.

The defendant contended that the transaction was a sale and not a mortgage, that the covenant to re-sell was only personal to the parties to the transaction and did not pass like other property to the heirs by inheritance and that there was no fraud, force, misrepresentation, coercion or absence of free consent in respect of the sale-deed.

The Subordinate Judge found that the transaction in suit was not a mortgage and that the sale-deed was not taken from the vendor Krishnaji by fraud, force or misrepresentation or against his free will and consent. He, therefore, dismissed the suit

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relying on section 22 of the Specific Relief Act (I of 1877) and the decision in *Mokund Lall* v. *Chotay Lall*[1].

On appeal by the plaintiff, the District Judge confirmed the decree.

The plaintiff preferred a second appeal.

K. H. Kelkar for the appellant (plaintiff).

G. S. Mulgavkar for the respondent (defendant).

SCOTT, C. J.:—We agree with both the lower Courts in holding that the document, Exhibit 9, which is the subject of consideration, is not a mortgage, for, no debt existed between the parties to it. It is a sale with an option of re-purchase, and the question now is whether thirty-five years after its execution the grandson of the original vendor can exercise the option of purchase against the daughter-in-law of the original vendee.

As translated by the Subordinate Judge the material portion of the document is "I have given the land into your possession: if perhaps at any time I require back the land I will pay to you the aforesaid Rs. 600, and any money you may have spent on bringing the land into good condition and purchase back the land." The learned Subordinate Judge held that the covenant to re-purchase was purely personal, and we do not think that the language of the document need be strained in any way to arrive at this conclusion. The alternative would be that the covenant is enforceable according to the intention of the parties for all time, a conclusion which would not be favoured by any Court.

The case is very similar to that of *Stocker* v. *Dean*[2] which was followed by the High Court of Calcutta in *Sreemutty Tripoora Soonduree* v. *Juggur Nath Dutt*[3].

The plaintiff, therefore, has in our opinion no right to enforce the covenant and his suit was rightly dismissed with costs.

We affirm the decree of the lower Court and dismiss the appeal with costs.

Decree affirmed.

G. B. R.

(1) (1884) 10 Cal. 1061 at p. 1068. (2) (1852) 16 Beav. 161.
(3) (1875) 24 W. R. 321.