APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Parker, Mr. Justice Shephard and Mr. Justice Handley.

NILAKANTA (PLAINTIFF), APPELLANT,

v.

KRISHNASAMI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1889. Jan. 11. March 25. 1890. Jan. 10. Feb. 24.

Transfer of Property Act—Act IV of 1882, s. 135—Assignment for value of a debt—Decree to which the assignee is entitled.

In a suit against a debtor an assignee for value of the debt is precluded by Transfer of Property Act, s. 135, from recovering more than the price paid by him for the assignment with interest thereon and the incidental expenses of the sale. *Jani Begam* v. *Jahangir Khan* (I.L.R., 9 All., 476) approved.

SECOND APPEAL against the decree of T. Ganapati Ayyar, Subordinate Judge of Kumbakonam, in appeal suit No. 761 of 1887, affirming the decree of T. A. Krishnasami Ayyar, District Munsif of Mannargudi, in original suit No. 444 of 1886.

The two defendants and Subbanna and Ramanna were the sons of one Subramanya Ayyar, deceased. One Lakshminarayani Ammal (since deceased) was Subramanya's adoptive mother. During the minority of the defendants, a family arrangement was made by which Lakshminarayani was to receive for her maintenance 100 kalams of paddy and Rs. 150 a year from the four brothers above referred to. The plaintiff stated that the defendants had allowed the sum due by them to Lakshminarayani to fall into arrears for eight years, and that she, in consideration of his having paid her Rs. 800, assigned to him in 1884, her right to receive from defendants Rs. 875 due to her for her maintenance. He brought this suit to recover that amount.

The District Munsif found that the plaintiff had paid to Lakshminarayani Rs. 100 only and he passed a decree in favor of the plaintiff for Rs. 130, being Rs. 100 with interest thereon and the cost of the stamp affixed to the instrument of assignment and the cost of registering it. On appeal, the Subordinate Judge

* Second Appeal No. 805 of 1888.

NILAKANTA v. KRISHNASAMI.

affirmed the decree of the District Munsif, and the plaintiff preferred this second appeal against his decree.

This second appeal having come on for hearing before Kernan and Parker, JJ., their Lordships made the following

Order of Reference to Full Bench.—"We think that the question in this case ought to be submitted to a Full Bench.

"The facts material are—

"Lakshminarayani was entitled to recover from the two defendants, her grandsons, and their property for maintenance Rs. 875 from January 1876 to December 1883. She made over her right to recover that sum to the plaintiff, a stranger, not one of the debtors, and not interested in the property on which it may have been charged.

"It has been found that the only consideration paid by the plaintiff for the transfer to him was Rs. 100. The plaintiff alleged that Rs. 700 were due to or advanced by him to Lakshminarayani before the transfer, but this allegation is found to be untrue.

"Decrees have been passed by both the Lower Courts in favor of plaintiff, but limiting the amount to the sum of Rs. 100 and Rs. 22-8-0, interest on it to the date of the plaint and further interest and registration fees. Each party is decreed to bear his own costs.

"It is not alleged by the defendants that any sum was tendered to the plaintiff in discharge of his claim either in Court or out of Court.

"Referring to the Transfer of Property Act, 1882, especially section 135, the question for the Full Bench is whether the plaintiff is entitled to be paid the full sum of Rs. 875 due, or only the sum decreed, Rs. 130-3-0. In this Court there are two decisions to be considered, *Rathnasami* v. *Subramanya*(1), *Singaracharlu* v. *Sivabai*(2), in the Calcutta Court, the cases of *Grish Chandra* v. *Kashisauri Debi*(3), *Khoshdeb Biswas* v. *Satar Mondol*(4), in the Allahabad Court, the case of *Jani Begam* v. *Jahangir Khan*(5)."

Rama Rau for appellant.

Bhashyam Ayyangar for respondents.

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(1) I.L.R., 11 Mad., 56. (2) *Ib.*, p. 498. (3) I.L.R., 13 Cal., 145.
(4) I.L.R., 15 Cal., 436. (5) I.L.R., 9 All., 476.

The arguments adduced on this second appeal appear sufficiently for the purposes of this report from the following judgments :—

COLLINS, C.J.—The point the High Court has to decide in this reference is—

Has an assignee of an actionable claim suing to recover such claim the right to recover the whole amount of such claim, or is he precluded by section 135 of the Transfer of Property Act from recovering more from the debtor than the amount actually paid by him (the assignee) for it, together with interest and the incidental expenses of the sale ?

The words of the section are as follows :—

"Where an actionable claim is sold, he, against whom it is made, is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

"Nothing in the former part of this section applies—

"(*a*) where the sale is made to the co-heir to, or co-proprietor of, the claim sold ;

"(*b*) where it is made to a creditor in payment of what is due to him ;

"(*c*) where it is made to the possessor of a property subject to the actionable claim ;

"(*d*) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment."

The reference was made on account of the High Courts of Allahabad and Calcutta differing in opinion upon the construction of the section.

In *Grish Chandra* v. *Kashisauri Debi*(1), Mitter and Grant, JJ., decided that as section 135 does not say that a transferee is not entitled to recover from the debtor the full amount of the debt due from the latter, and as it was not alleged that the debtor had paid or tendered the amount mentioned in the section, the transferee was entitled to the whole amount of the claim, and that as the Lower Courts had decreed the plaintiff's claim sub-section (*d*) applied.

(1) I.L.R., 13 Cal., 145.

NILAKANTA v. KRISHNASAMI.

In *Khoshdeb Biswas* v. *Satar Mondol*(1), Petheram, C.J., and Tottenham, J., agreed with the decision in *Grish Chandra* v. *Kanshisauri Debi*(2), but expressed an opinion that if the defendant paid into Court immediately the suit was commenced the money paid by the plaintiff together with interest and expenses, that would be a payment within the meaning of the Act and would discharge the defendant from further liability. In *Jani Begam* v. *Jahangir Khan*(3), Straight and Tyrrel, JJ., held that the purchaser of an actionable claim was only entitled to recover the actual sum he paid for it together with the interest and incidental expenses. The Transfer of Property Act was evidently the work of more than one hand, and some of the sections in it are very difficult to construe and somewhat obscure to ordinary minds; but it appears to me that if the obvious intention of the legislature is taken into consideration, the meaning of the section appears fairly clear. I take it that the Legislature intended to prevent speculative trafficking in actionable claims, and provided that if an actionable claim was sold the buyer should only get from the debtor the sum he had paid for it. I think, therefore, that a defendant-debtor has a right to put the purchaser of the actionable claim sued on to the proof of his claim, and also to contend that at all events he cannot recover more than the sum he purchased it for, together with interest and expenses. The debtor is to be wholly discharged by paying to the buyer the price given for such claim and incidental expenses of the sale with interest. If the legislature meant that the debtor should only be wholly discharged if he paid the sum before action brought or paid it into Court immediately the action was brought, I suppose it would have said so. How is the debtor to ascertain what price the purchaser did pay and what are the expenses of such sale until the plaintiff has proved the facts of his case and given the debtor an opportunity of ascertaining what the facts are? Petheram, C.J., in *Khoshdeb Biswas* v. *Satar Mondol*(1) is of opinion that if the debtor immediately on the suit being brought paid the purchaser the amount he paid for it together with expenses and interest, that would be a good payment and the debtor in that case would be wholly discharged. I think this is too limited a view to take of the section. The debtor, in my opinion, is wholly discharged by payment of the sum actually paid

(1) I.L.R., 15 Cal., 436. (2) I.L.R., 13 Cal., 145. (3) I.L.R., 9 All., 476.

together with interest and expenses even if he has contested the claim, and the Court deciding the validity of the claim can give a decree for the amount only which has been actually paid together with interest and expenses, in other words, the debtor's liability is limited to the sum the purchaser gave for the actionable claim together with expenses and interest. If the debtor is wholly discharged in law by payment of a certain sum, it seems to follow that the creditor is only entitled to recover that sum. With regard to clause (*d*) in the section, I am of opinion that it applies only to a state of facts existing at the time of the purchase of the actionable claim.

With very great respect to the learned Judges of the Calcutta High Court, I am constrained to differ from them and to adopt the conclusion arrived at by the Judges of the Allahabad High Court. The plaintiff in this case is, therefore, only entitled to recover the smaller amount.

PARKER, J.—The question referred to the Full Bench is whether the plaintiff, as assignee of an actionable claim, is precluded by section 135 of the Transfer of Property Act from recovering from the debtor more than the price paid by him with interest thereon.

The object of the section which was enacted in 1882 was apparently to prevent trafficking and speculation in litigation, it having been held that the English laws of champerty and maintenance were not in force in India. See the Privy Council decisions in *Chedambara Chetty* v. *Renja Krishna Muthu Vira Puchanja Naiker*(1) and *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*(2). It was held that in India the *bonâ fide* acquisition of an interest in the subject of litigation was not illegal, but that unfair and extortionate transactions got up for mere purposes of spoil or litigation, or for disturbing the peace of families, should be held invalid. A fair agreement to supply funds to carry on a suit was held not *per se* opposed to public policy.

Section 135 of the Transfer of Property Act appears to have been framed to give effect to these principles. In the first (or principal) clause it is enacted that when an actionable claim is sold the debtor shall be wholly discharged *by paying* to the assignee the price paid by him and incidental expenses of the sale with

(1) 13 B.L.R., 509. (2) L.R., 4 I.A., 23.

NILAKANTA v. KRISHNASAMI.

interest thereon. It is observable, as pointed out by Mitter, J., in *Grish Chandra* v. *Kashisauri Debi*(1) that the legislature did not say the transferee should *not be entitled* to recover the full amount of his debt, but enacted on what terms of payment the debtor should be wholly discharged. This ruling was followed by the Chief Justice and myself in *Subbammal* v. *Venkatarama*(2); but the conflicting decision of the Allahabad Court in *Jani Begam Jahangir Khan*(3) was not then before us, having been delivered only a few days previously.

In the view taken by the latter Court it was held that the assignee could in no case recover more than the sale price with interest thereon and incidental expenses of sale except where the original creditor had, before making the transfer, obtained a judgment upon the actionable claim or had prosecuted the claim up to the stage at which the Court was ready to pronounce judgment. In this view it is the state of things existing at the time of transfer and not at the time of payment that is to be regarded. My difficulty in accepting it has been that it seems to me incongruous and inaccurate to speak of a claim already decreed as an actionable claim, and I was, therefore, disposed to think that the legislature intended the debtor to be wholly discharged by payment of the sale price provided that payment was made either before decree or before the claim was ripe for judgment. The difficulties of taking this view are no doubt that in ordinary language a creditor cannot be said to be entitled under any circumstances to recover a larger sum than that which if paid will wholly discharge the debtor, and it is hard to see why a debtor should be worse off because he puts an assignee to the proof of his claim.

Section 135, however, relates to the *sale* of actionable claims and clauses (*a*), (*b*) and (*c*) relate to the state of things at the date of the transaction. The preceding section (134) relating to a warranty by the transferor is *expressly* limited to the state of things at the date of the transaction, and this being so the inference is strong that the legislature intended clause (*d*) of section 135 to have a similar application. The section is very obscurely worded and appears to have been imported from the Code of Lower Canada:—See Stokes' Anglo-Indian Codes, Volume I, page 814. Upon the whole, therefore, notwithstand-

(1) I.L.R., 13 Cal., 145. (2) I.L.R., 10 Mad., 289. (3) I.L.R., 9 All., 476.

ing the awkwardness of the language in the first sentence in clause (*d*), I am not prepared to dissent from the opinion of my learned colleagues that the plaintiff is not entitled to recover more than he actually paid, viz., Rs. 100 and interest upon that sum.

SHEPHARD, J.—The question referred to the Full Bench stated in the abstract is this—Is the assignee of a debt suing to recover it precluded by section 135 of the Transfer of Property Act from recovering from the debtor more than the price paid by him for it with interest thereon and the incidental expenses of the sale? The High Court at Allahabad has answered this question in favor of the debtor, *Jani Begam* v. *Jahangir Khan*(1). The High Court of Bengal has answered it in the assignee's favor, *Grish Chandra* v. *Kashisauri Debi*(2) and *Khoshdeb Biswas* v. *Satar Mondol*(3). Apart from the Act there is no doubt that the debtor is in no way concerned with the price paid by the assignee to the original creditor; his liability is not affected by the transfer of the benefit of the obligation. The Act introduces a rule which, inasmuch as it prejudices the assignee and advantages the debtor, must presumably be founded on the notion that assignments of debts for less than their full nominal value should be discouraged, probably with the view of preventing trafficking in litigation. By means of section 135 there can be no doubt that a debtor can by a payment before suit of the sum paid by the assignee with interest thereon and the expenses of the sale obtain a complete discharge of his liability and thus transfer from the assignee to himself the benefit of the good bargain which the assignee has made. It has to be seen whether the language used in the section is applicable to the case where a suit is brought and the claim is contested. Whether the section should be read in this way or whether it should receive the narrower construction put upon it by the High Court of Bengal, it is equally clear that the language used is somewhat obscure. In the judgment of Mitter, J., in *Grish Chandra* v. *Kashisauri Debi*(2), it is suggested that if the defendant's contention were sound, the section should have declared that a transferee should not be entitled to recover from the debtor the full amount of the debt due from the latter. It may, with equal force, be suggested that if the section was only to operate in case of payment made before the suit or before

(1) I.L.R., 9 All., 476. (2) I.L.R., 13 Cal., 145. (3) I.L.R., 15 Cal., 436.

NILAKANTA v. KRISHNASAMI.

contest, words to that effect would have been introduced. We have to give some reasonable meaning to the section having regard to the language used and the apparent intention of the legislature. And if the language of the section will bear either of two interpretations, that ought to be preferred which appears most reasonable.

When a man is said to be discharged from liability by payment of a certain sum, it is ordinarily meant that the liability is limited to that sum and that no greater sum can be recovered by suit. The sum by payment of which a debtor is discharged is ordinarily the sum for which his creditor can obtain judgment. If similar language is found in a contract between parties, I apprehend there is no doubt that it will be taken to limit the obligation of the debtor, and in consequence the creditor's right of action, to the amount stated. In my judgment, therefore, the section is susceptible of the interpretation for which the defendants' vakil contends. According to the construction put upon the section by the High Court of Bengal the amount which, if paid before suit, or if paid into Court immediately after suit brought, would satisfy the plaintiff's claim is not necessarily the amount for which decree must be given. The advantage which the section gives to the debtor and the disadvantage which it brings to the assignee of the debt cease the moment the debtor contests the assignee's claim. With all deference to the learned Chief Justice and the Judges of the High Court of Bengal, I cannot think that this is a reasonable interpretation of the section; for how can it possibly be said that the claim of the assignee is less meritorious because the debtor finds it expedient to satisfy it without dispute? The fact that the debtor admits the claim would rather go to show that the transaction between the assignor and the assignee was not of a speculative character. Moreover, if the section is to be restricted to cases of payment before suit or into Court, there are few cases in which it could operate at all; for the debtor would not ordinarily know what price the assignee had paid or what interest was chargeable or what expenses he had incurred, and he would have no means of ascertaining except those means which would be available to him in the course of a suit. Mitter, J., also refers to clause (*d*) of the section and observes that if the debtor had offered to pay the amount mentioned in the section after the decree of the Lower Court, he would not

have been discharged. This observation, which anyhow would not have been pertinent in the present case where no decree for the full amount claimed has ever been given, assumes that the clause refers to a judgment obtained by the assignee after the assignment. In my opinion the words used in clause (*d*), as also those used in the preceding clauses indicate a state of things existing at the date of the assignment. If that is the meaning of the clause, the use of the past tense is explained and the whole clause is intelligible. The word "judgment" may be intended to include judgments of foreign Courts, while the word "decree" is avoided, because a debt which has become the subject of a decree is no longer an actionable claim. In either of the two cases supposed, the uncertainty of the claim has been removed to a certain degree, the speculative character of the transaction has disappeared, and therefore there is no reason why the assignee should not realize the whole amount of his claim. It may be said that instances will be rare in which the clause thus construed can become applicable, but that is what might naturally be expected of cases saved by a proviso and excepted from a general rule. On the other hand, if the clause was intended to refer to the suit brought by the assignee himself, the language used is not what might have been expected and the cases covered by the proviso would be those most frequent in occurrence. It would, I apprehend, be a strange and unusual mode of drafting to except from the general rule by one of several provisoes the class of cases in which otherwise the rule could most frequently become applicable. Moreover the operation of the section will become very uncertain. Let me put the case of the heir of an alleged debtor sued by the assignee of the creditor: the defendant being in ignorance as to the circumstances of the claim, puts the plaintiff to proof of the debt and says that if it be proved he is ready to pay into Court the amount claimable under section 135. On the issue as to the fact of the debt evidence might first be given so as to put it beyond all doubt; and after that witnesses as to the assignment might be called, from whom alone the defendant could learn the particulars needed for fixing the amount to be paid into Court. It would only be at the end of the case and when the claim "had been made clear by evidence and was ready for judgment" that the defendant would have learnt what sum he should pay into Court. And then the former part of the section not applying, a decree must be passed against

NILAKANTA v. KRISHNASAMI.

him for the full amount and costs. Such a case is not an unlikely one, and it shows that an assignee without any unfair astuteness might prevent the defendant from taking advantage of the section. Surely too if the clause was to be read in the way supposed, there would have been some reference to the matter of costs, for if payment is made in the course of the suit, it cannot be intended that the defendant is to be thereby wholly discharged from liability unless he also pays the costs. Having regard as well to the language used as to the consequences which would follow from any other interpretation, I think the clause must be read as referring to a suit brought before the date of the assignment.

In my opinion the section will bear the larger construction put upon it, and that construction is more reasonable and corresponds more fully with the apparent intention of the legislature than the narrower interpretation which has been adopted in Calcutta. I must say, therefore, that the question stated above should be answered in the affirmative, and the plaintiff should have a decree for the lesser sum mentioned in the order of reference.

HANDLEY, J.—The intention of the legislature in enacting section 135 of the Transfer of Property Act, viz., to discourage speculative purchases of actionable claims, is sufficiently obvious from the exceptions, which are all cases where that mischief would not exist, and this object is distinctly recognized by the learned Judges who decided the case of *Rathnasami* v. *Subramanya*(1). At page 63 of the judgment in that case occurs this passage :—"The intention indicated by section 135 is to prevent traffic in actionable claims by making the difference between the amount of the claim and the actual price paid irrecoverable by action, and thereby removing the motive for unconscionable dealing in such cases."

Whether legislation with that object was desirable, or whether if so the provisions of this section are the best that could be devised to carry out that object, may be open to question. It is not easy to see why the debtor should be benefited because his creditor has made a disadvantageous bargain with a third party. But with that the Courts have nothing to do. They have only

(1) I.L.R., 11 Mad., 56.

to carry out the intention of the legislature so far as it is sufficiently expressed in the words of the enactment. And though the wording of this section is unusual I confess that but for the decisions in *Grish Chandra* v. *Kashisauri Debi*(1) and *Khoshdeb Biswas* v. *Satar Mondol*(2), I should have entertained no doubt whatever that the words meant that the buyer cannot recover nor can the debtor be compelled to pay more than the price for which the claim was sold with interest and incidental expenses. To say that a person is wholly discharged by doing a certain thing seems to me to be the same thing as to say that that he is under no obligation to do and therefore cannot be compelled to do more than that thing. And the words of the section presuppose a claim made whether by suit or otherwise:—"He against whom it (the claim) is made is wholly discharged." The construction put upon the section by the High Court of Calcutta would render it almost wholly inoperative, for in the majority of cases the debtor cannot know the exact sum which he should pay or tender under the section, and unless he does pay or tender the exact sum according to that construction, the section affords him no protection. And if the words are to be thus strictly construed I cannot see how tender is let in, for the discharge is only to be by payment. And why should payment into Court immediately on the suit being brought be a good payment under the section, as suggested in the judgment in *Khoshdeb Biswas* v. *Satar Mondol*(2) any more than a payment at any other stage of the suit, before (in the words of clause (*d*) of the section) "the claim has been made clear by evidence and is ready for judgment." As to the construction to be put upon that clause, in my opinion it must refer to the state of things existing at the time of the transfer and not at the time of payment. All the other clauses (*a*), (*b*) and (*c*) refer to circumstances attending the sale and there are reasons for excepting a transfer made under the circumstances mentioned in clause (*d*) which accord with the object and intention of the section. When a judgment has been delivered affirming the claim or the claim has been made clear by evidence, there is no longer an element of speculation in the sale of the claim. Seller and buyer alike know what is the value of the thing to be sold and the mischief aimed at by the section is non-existent. On the other hand there seems

(1) I.L.R., 13 Cal., 145. (2) I.L.R., 15 Cal., 436.

NILAKANTA v. KRISHNASAMI.

no good reason why the debtor should lose the benefit of the section because he disputes some part of the debt or puts the transferee to proof of the assignment. And the unreasonableness of the other construction of the clause becomes greater in the case of actionable claims other than money claims, to which the section seems to extend, for in such cases the person against whom the claim is made need have no notice of the transfer, and the suit may be the first intimation he has of it. In my opinion the construction put upon the section by the Allahabad Court in the case of *Jani Begam* v. *Jahangir Khan*(1) is the correct one, though I do not agree with all the reasoning of that judgment. I would answer the question referred that the plaintiff is entitled to be paid only the sum decreed which I understand to be the price actually paid by him with interest and incidental expenses.

[The second appeal having come on for final hearing before a bench of two Judges, the Court delivered judgment as follows :—

JUDGMENT.—On the decision of the Full Bench, the second appeal fails and must be dismissed with costs.]

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1889. April 9, 10.

SESHAN AND ANOTHER (PETITIONERS), APPELLANTS IN A.A.O. No. 100 OF 1886,

v.

RAJAGOPALA (COUNTER-PETITIONER), RESPONDENT.*

RAJAGOPALA (PETITIONER), APPELLANT IN A.A.O. No. 103 OF 1886,

v.

RAMANADA AND OTHERS (COUNTER-PETITIONERS), RESPONDENTS.*

Civil Procedure Code, ss. 231, 258—*Limitation Act—Act XV of* 1877, *ss.* 7, 8, *sched. II, art.* 179—*Minority—Execution of decree.*

A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father, and joined as defendants certain persons who were in possession

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(1) I.L.R., 9 All., 476. * Appeal against Orders Nos. 100 and 103 of 1886.