ground upon which their Lordships can say that this award ought not to be held to be a binding award.

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Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the Judicial Commissioner. Consequently the decision that the award is binding which was come to by the lower Appellate Court will stand, and the respondent will pay the costs of this appeal.

Decree reversed.

Solicitors for the appellant: Messrs. *Ashurst, Morris, Crisp, and Co.*

APPELLATE CIVIL.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

LALLA BHAGUN PERSHAD AND OTHERS (JUDGMENT-DEBTORS) *v.* HOLLOWAY (DECREE-HOLDER.)*

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Act XIV of 1882, *ss.* 232, *proviso* (*b*), *and* 244 (*cl.* 5.)—*Civil Procedure Code—Transferee of a money decree to one of several co-judgment-debtors—Execution.*

Certain property was mortgaged by *A* to *B*. Subsequently, this property was purchased by *C* at a sale held in execution of a decree obtained by a third person against *A*; *B* then brought a suit on his mortgage-bond against *A* and *C*, and obtained a decree for the sale of the mortgaged properties, and also a personal decree against *A*; *B* assigned his rights under this decree to *C*, who applied for execution under s. 232 of the Code. *A* objected to execution issuing, relying on proviso (*b*) to s. 232.

Held, that proviso (*b*) to s. 232 applies only to decrees for money personally due by two or more persons; and that the decree obtained by *B* against *A* and *C* not being a personal decree against *C*, (he having been made a defendant only by reason that he had purchased the mortgaged property subject to the mortgage debt), *C*, as assignee of *B*, was entitled to take out execution.

A CERTAIN mouzah, Ruderpore Mehda, was mortgaged by Lalla Bhagun Pershad and others (hereafter called the mortgagors), to one Mani Singh. Subsequently to the mortgage this mouzah

* Appeal from Appellate Order No. 364 of 1884, against the order of W. Verner, Esq., Judge of Bhagulpore, dated the 10th of July 1884, reversing the order of Baboo Dwarka Nath Mitter, Second Subordinate Judge of that district, dated the 14th April 1884.

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was purchased by one Frederick Holloway at a sale held in execution of a decree obtained by a third person against the mortgagors. Mani Singh then brought a suit on his mortgage-bond against the mortgagors and Holloway as being the purchaser of the property, and in that suit obtained a decree for the sale of the mortgaged property, and, in default of the property being sufficient, a personal decree against the mortgagors. Before execution of this decree was taken out, Mani Singh assigned his rights under it to Holloway, who applied under s. 232 of the Code of Civil Procedure for execution against the mortgagors.

The judgment-debtors objected to the application, relying on proviso (*b*) of s. 232 of the Code of Civil Procedure.

The Subordinate Judge held that Holloway being one of the judgment-debtors (although not personally liable under the decree) could not as assignee of the decree execute it against his co-judgment-debtors.

Holloway appealed to the District Judge who himself raised the question whether an appeal would lie; this point he, however, decided in favor of the appellant, holding that Holloway being admittedly the transferee of the decree, the Court had no power to refuse execution under the first clause of s. 232, the case being regarded as one falling within the meaning of cl. *c* of s. 244, proviso (*b*) of s. 232, being simply the *ratio decidendi* of the matter in dispute. On the other question he held that, although the decree was a money decree against the mortgagors, it was not a money decree against Holloway, he not being jointly liable with the mortgagors; the effect of the decree against Holloway being that it was a declaration that the property mortgaged was liable for the debt of the mortgagors, it being alleged that Holloway had purchased the property subject to that debt. He therefore set aside the order of the Subordinate Judge.

The judgment-debtors (the mortgagors) appealed to the High Court.

Baboo *Durgadas Dutt* for the appellant contended that no appeal lay from the decision of the Subordinate Judge to the District Judge; and that Holloway had no right to take out execution of the decree, as the case was one falling under proviso (*b*) of s. 232 of the Code.

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Mr. *C. Gregory* for the respondent.

Judgment of the Court (TOTTENHAM and GHOSE, JJ.) was as follows :—

This is an appeal from an appellate order in the matter of the execution of a decree. The applicant for execution had been made a defendant in the original suit by reason of his having purchased the property mortgaged under the bond on which the suit was brought, not because he was himself in any way personally liable for the debt. The petitioner, after the decree had been passed, purchased it and applied to the Court under s. 232 for execution against the principal defendant. The Subordinate Judge refused the application with reference to proviso (*b*) to s. 232, which is to this effect: "Where a decree for money against several per-"sons has been transferred to one of them, it shall not be execut-"ed against the others." The first Court was of opinion that this was a decree for money passed against the petitioner in common with other persons, and having been transferred by sale to the petitioner it could no longer be executed against the others. The lower Appellate Court reversed the order of the first Court, and against this order of reversal the present appeal is preferred.

Two points have been taken before us: First, that the lower Appellate Court's order was without jurisdiction, because no appeal lay to the District Judge from the order of the first Court; and, secondly, if an appeal did lie, the lower Appellate Court decided that appeal wrongly in point of law.

We think that the lower Appellate Court had jurisdiction to try the appeal. It seems that the petitioner, the assignee of the decree, had been legally placed on the record as decree-holder; and we think that the District Judge was right in the opinion he expressed that the matter in dispute between the petitioner and the other judgment-debtors was really one falling within the meaning of clause (*c*), s. 244, and that the proviso (*b*) to s. 232 was simply the *ratio decidendi* of the matter in dispute between the parties. We hold, therefore, that an appeal did lie to the District Judge; and on that ground the present appeal cannot be maintained.

Then as regards the construction of the law contained in proviso (*b*) to s. 232, we are of opinion that the lower Appellate Court

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was right. As we read that proviso, we think that it refers to a decree for money personally due by two or more persons. It does not apply to such a case as the present, in which nothing was due from the assignee of the decree personally, he having been made a defendant only by reason that he had become the owner of the property mortgaged under the bond and subject to the mortgage. This view is in accordance with the decision of a Division Bench of this Court (not reported, but which has been laid before us) in miscellaneous appeal No. 266 of 1881, dated the 9th March 1883. Independently of that judgment, however we feel no doubt as to the proper construction to be put upon this section.

We accordingly affirm the order of the lower Appellate Court and dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Trevelyan.

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KOER HASMAT RAI AND ANOTHER (PLAINTIFFS) *v.* SUNDER DAS AND OTHERS (DEFENDANTS).*

Hindu Law—Mitakshara—Suit by sons to set aside alienation by father—Necessity—Debt due by father—Purchase-money treated as debt due by father—Refund of whole of purchase-money when necessary before sons are entitled to have sale by father set aside—Objection that whole of ancestral property is not subject-matter of suit for partition is not a technical one.

Under the Mitakshara law the son is bound to pay out of the ancestral property in his hands the debts contracted by his father, unless he can show that the debts were contracted for an immoral purpose.

When, therefore, *A* and *B*, sons of *C*, a family governed by the Mitakshara law, sued *C*, and *D*, who had purchased some of the joint-family property from *C* during the minority of *A* and *B*, for a sum of Rs. 10,000, to recover possession of their shares in such property upon partition, and when in such suit, *A* and *B* failed to prove that the purchase-money Rs. 10,000 had been obtained by *C* for immoral purposes,

Held, that they were not entitled to succeed without refunding the whole of the sum of Rs. 10,000 to *D*, inasmuch as, if the sale was set aside, *D* would be entitled to recover the purchase-money from *C*, and it would thus

* Appeal from Original Decree No. 77 of 1883, against the decree of Baboo Ram Pershad, Rai Bahadur, Subordinate Judge of Shahabad, dated the 30th of December 1882.