This can never have been the intention of the Legislature. We have been referred to the judgment in the case of *Venkata Narasimha Naidu* v. *Lavu Lakshmayya*(1) in which the respondent was the same person as the respondent, in one of the cases now before us, and the appellant the same as the present appellant. Those appeals arose out of suits to enforce acceptance of asara pattas in respect of dry lands. It was held that there was a contract to pay rent in money at the rates fixed in fasli 1292. This judgment has no bearing on the question now under consideration as it does not deal with the rent payable on wet lands. The result is that we hold that the pattas tendered by the plaintiff were proper pattas and that the defendants must accept them. The defendants will pay the plaintiff's costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Sankaran-Nair.

YOGAMBAL BOYEE AMMANI AMMAL (DEFENDANT), APPELLANT,

v.

NAINA PILLAI MARKAYAR (PLAINTIFF), RESPONDENT.*

1909. July 6, 7, 22.

Contract Act IX of 1872, *ss.* 69, 70—*S.* 70 *of the Contract Act does not apply where, the party sought to be made liable, though benefited, had no option but to enjoy the benefit.*

In order to enable a party to recover money paid by him from another under section 70 of the Indian Contract Act, it is necessary that the party sought to be made liable must not only have benefited by the payment but must also have had the opportunity of accepting or rejecting such benefit. Where no such option is left to him and the circumstances do not show that he intended to take such benefit, he cannot be said to have "enjoyed such benefit" within the meaning of the section.

When the person paying is interested in making the payment, he cannot be presumed, in the absence of evidence to show that he intended to act for the other party also, to have acted for such other party.

Section 70 of the Contract Act reproduces the English Law as laid down in *Lampleigh* v. *Brathwait*, (1 Sm.L.C., 163).

(1) S.A. Nos. 83 to 86 of 1903 (unreported).

* Second Appeal No. 1163 of 1906.

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Abdul Wahid Khan v. *Shaluka Bibi*, [(1894) I.L.R., 21 Calc., 496 at p. 504], followed.

Damodara Mudaliar v. *Secretary of State for India*, [(1895) I.L.R., 18 Mad., 88], considered.

A person paying money into Court under section 310A of the Civil Procedure Code of 1882 to set aside a sale in execution cannot recover such money from the defendant who has obtained possession of the property, when he has made the payment to protect his own interest and the circumstances do not show that he would not have made the application if the defendant had not consented.

SECOND APPEAL against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 66 of 1906, presented against the decree of C. S. Mahadeva Aiyar, District Munsif of Shiyali, in Original Suit No. 80 of 1905.

The facts for the purpose of this report are sufficiently stated in the judgment.

S. Subrahmani Ayyar for appellant.

T. Rangachariar and *A. K. Madhava Rao* for respondent.

JUDGMENT (SANKARAN NAIR, J.).—The plaintiff deposited a certain amount under section 310A, Civil Procedure Code (Act XIV of 1882) to set aside a sale in execution of a money decree against the defendant. The amount was paid to the decree-holder, the sale was set aside and the defendant is alleged to have got back the lands sold, the decree debt due by her having been extinguished by the plaintiff's payment. At the time payment was made by the plaintiff, he was in possession of the property claiming it as reversioner and also as assignee of one Lakshmana Iyer, to whom, the defendant who, according to the plaintiff, had only a life interest in the property, had assigned it on lease or mortgage; but his right to possession was disputed by the defendant on the grounds that he was not a reversioner and his right as lessee or mortgagee had been extinguished about the 12th March long before the date of payment. In a suit which was pending at the time of payment, but decided afterwards, the defendant's contention was upheld. The plaintiff now sues to recover the amount.

It was not seriously pressed upon us that section 69 of the Indian Contract Act applied. The defendant was not bound to pay the debt for which her property had been already sold and she had not disputed the validity of the sale. Does section 70 apply? To found a right of demand the defendant must have enjoyed the benefit of the plaintiff's payment; the payment itself must

have been lawful, and the plaintiff must have done it for the defendant not intending to do so grautuitously.

On the strength of the decision in *Syamalarayudu* v. *Subbarayudu*(1) the District Judge has held that the plaintiff's payment was lawful. I think he is right. Though it has been held that the plaintiff had no interest in the property, he believed in good faith he had an interest; the defendant was a party to the application which was successful and she cannot now be heard to say that the application was unlawful.

The next question is whether the plaintiff made the payment for the defendant expecting reimbursement and whether the defendant enjoyed the benefit of it.

In *Ram Tuhul Singh* v. *Biseswar Lall Sahoo*(2) these were the facts. The plaintiffs therein on the 18th February 1868 purchased for Rs. 8,000 in execution of a money decree, at a judicial sale after attachment, the interest of the defendants in a sum of Rs. 35,000 deposited with the Collector as their share of the surplus proceeds of an estate sold for arrears of revenue. The plaintiffs paid the sum of Rs. 8,000 into Court and it was distributed among the attaching and other execution creditors. The revenue sale was subsequently set aside, the estate restored to the defendants and the purchase money including the Rs. 35,000 restored to the purchasers at the revenue sale. Thereupon the plaintiffs sued to recover the sum of Rs. 8,000 paid to the defendant's creditors. The Judicial Committee held they were not entitled to recover. They observed, "It is not in every case in which a man has benefited by the money of another, that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair or proper according to the highest morality. To support such a suit, there must be an obligation express or implied to repay. It is well settled that there is no such obligation in the case of a voluntary payment by *A* of *B's* debt. Still less will the action lie when the money has been paid as here, against the will of the party for whose use it is supposed to have been paid (*Stokes* v. *Lewis*(3)). Nor can the case of *A* be better because he made the payment not *ex mero motu*, but in the course of a transaction which in one event would have turned

(1) (1898) I.L.R., 21 Mad., 143. (2) (1875) L.R., 2 I.A., 131, at p. 145
(3) I.T.R. 20.

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out highly profitable to himself, and extremely detrimental to the person whose debts the money went to pay."

In *Abdul Wahid Khan* v. *Shaluka Bibi*(1) there was a decree against the plaintiff and the defendant as the representatives of one Muradi Bibi, the original defendant in the case. The defendant alone appealed and got the decree reversed. The plaintiff successfully claimed a moiety of the property of the deceased and the question was whether the defendant was entitled to recover his proportion of the costs from the plaintiff on the ground that the plaintiff had got the benefit of the reversal of the decree of the Judicial Commissioner. Their Lordships held, "The proceedings were taken by the defendant for his own benefit and without any authority express or implied from the plaintiffs; and the fact that the result was also a benefit to the plaintiffs does not create any implied contract or give the defendant any equity to be paid a share of the costs by the plaintiffs." The case was governed by the Indian Contract Act and the decision is binding on us.

These decisions rest on well-known principles of law. If *A* does anything for *B* under circumstances which must have shown to *B* that *A* expected payment for his work and *B* chooses to adopt it and accept the benefit then *B* is clearly liable to pay for the benefit enjoyed. In the language of the Contract Act, the doing of the work is the offer, the adoption or ratification of the act is the acceptance (*Paynter* v. *Williams*(2), *Hart* v. *Mill*(3), *Pawle* v. *Gunn*(4), *Barber* v. *Brown*(5)). A man cannot be said to adopt the act unless it is done for him. See Bowen, L.J., *Falcke* v. *Scottish Imperial Insurance Co.*(6).

It follows from what has been already stated that where *A* is himself interested in the doing of the work there is nothing to show to *B* that the work is done for him or that *A* expects any payment from him. The Courts will not therefore presume that *A* did the work for *B*. Similarly where *B* has no choice in the matter but he has perforce to take the benefit, it cannot be said that *B* adopts the act or accepts any benefit. Therefore the Courts will not hold *B* liable. Thus when a person who was not

(1) (1894) I.L.R., 21 Calc., 496 at p. 504.
(2) 1 C. & M., 810.
(3) 15 M. & W., 87.
(4) 4 Beng. (N.C.), 488.
(5) 1 C.B. (N.S.), 121, 151.
(6) (1886) 34 Ch.D., 234, 250.

the sole beneficiary of a life policy paid the premium and saved the policy from lapsing, it was held he was not entitled to repayment from the other beneficiaries *in re Leslie Leslie* v. *French*(1); so also one tenant in common of a house was held not entitled to repayment of money spent on repair from the other tenant in common, *Leigh* v. *Dickeson*(2). This is the law as stated in Smith's 'Leading Cases'—notes to *Lampleigh* v. *Brathwait*(3)—page 160.

The case of *Nobin Krishna Bose* v. *Mon Mohun Bose*(4) takes the same view. The defendant in the case adopted the payment and availed himself of it.

It appears to me that section 70 in these respects lays down the same rule. The section applies where the claimant "does anything for another person, ... not intending to do so gratuitously," and that the other person enjoys the benefit thereof. In considering this section the learned Judges observed in *Damodara Mudaliar* v. *Secretary of State for India*(5), "There can be little doubt that the statement of the law is derived from the notes to *Lampleigh* v. *Brathwait*(3) and perhaps indirectly from the Roman Law (see Stokes' 'Introduction to Contract Act'). The learned authors of Smith's 'Leading Cases,' when enumerating the instances in which the request necessary to constitute a cause of action in the case of an executed consideration may be implied —give as the second instance "where the defendant has *adopted* and *enjoyed the benefit* of the consideration"—*Lampleigh* v. *Brathwait*(3). I entirely agree. You cannot *adopt* and *enjoy* the benefit as stated herein where you have no option. It stands to reason; and the decided cases show that when a person is interested in the act he cannot be presumed to be doing it for another or expecting payment. Therefore it cannot be said that he does anything for another person. Similarly the section requires that the other person must enjoy the benefit thereof. No doubt, in one sense, when a person has the benefit of an act of another person even against his will, in fact, forced upon him, he may be said to have 'enjoyed' the benefit thereof. But having regard to the fact that the section cannot be construed to impose obligations

(1) (1883) 23 Ch.D., 552.
(2) (1885) 15 Q.B.D., 60, 65.
(3) 1 Sm.L.C., 160.
(4) (1881) I.L.R., 7 Calc., 573 at p. 576.
(5) (1895) I.L.R., 18 Mad., 88 at p. 91.

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upon a person for services which though lawful he did not want to be rendered to him, and to the fact that the section only enacts the law as stated in the notes to *Lampleigh* v. *Brathwait*(1) and the cases referred to therein which require that the person to be charged must have adopted it and availed himself of it, I am of opinion that a person can be said to '*enjoy*' a benefit under this section, only by accepting a benefit when he has the option of declining or accepting. This is also consistent with principle. To hold otherwise would be to go against the decision of the Judicial Committee already noticed. It is pointed out in *Damodara Mudaliar* v. *Secretary of State for India*(2) that according to Lord Bowen, even this statement of the law in Smith's 'Leading Cases' is too wide in favor of the plaintiff. In the case before us, the application and the payment were made by the plaintiff under section 310A to protect his own interests; and there is nothing to show that the plaintiff would not have made the application even if the defendant had refused his consent. In fact in the plaintiff's petition to set aside the sale the defendant was charged with collusion with the decree-holder. There is no evidence to show that the payment was made for the defendant and in the circumstances no such presumption can be drawn. The presumption is the other way. Nor can it be said that the defendant has 'enjoyed' the benefit of the payment by the plaintiff paying off his debt as he had no option in the matter. His debt was discharged without his consent being obtained and he has not adopted it.

Mr. Rangachariar strongly relied upon the decision in *Damodara Mudaliar* v. *Secretary of State for India*(2). It was contended that it was decided therein that if two persons are interested in doing anything and one of them does it, he can recover the proportionate share of his expenses incurred in doing it from the other who has benefited by it under section 70 of the Contract Act. If such is the decision it is opposed to the decision of the Judicial Committee in *Abdul Wahid Khan* v. *Shaluka Bibi*(3). But the case does not lay down any such broad proposition. I have already pointed out that the learned Judges in that case rightly held that section 70 introduces the English Law as stated in the

(1) 1 Sm.L.C., 160. (2) (1895) I.L.R., 18 Mad., 88 at p. 91.
(3) (1894) I.L.R., 21 Calc., 496 at p. 504.

notes to *Lampleigh* v. *Brathwait*(1), and that a defendant cannot be said to 'adopt and enjoy the benefit' as stated therein when he has no option of declining or accepting it. If, therefore, in that case the Zamindar had no option but to take the benefit if he wanted to use the water of the tank as before, he would not have been liable. He must have been held liable therefore on the facts of the case, that repairs were necessary for the preservation of the tank and there would have been *no water* in the tank for irrigation but for such repairs, and when therefore the Zamindar elected to use the water available only on account of such repair, he must be taken to have adopted the plaintiff's act and enjoyed the benefit thereof. It was also found that he was a consenting party.

With reference to the first part of the section it was rightly pointed out that the fact that the defendant was benefited by a work does not necessarily show that it was done for him; and that while a plaintiff's interests in the matter may show that he was acting on his own account only, he may also intend to act for the defendant. This also is true. *Primâ facie* if the plaintiff is interested in the doing of a thing he would not be entitled to ask the Court to presume that he did it for the defendant. But by proof of special circumstances or otherwise he might show that he would not have done it if he had no reasonable grounds to expect payment from the defendant. The High Court therefore in that case called for a finding on that question. If the tank had belonged to the Zamindar only, then there would be a very strong presumption that the repair was made for him. Even as a co-owner if he had objected to the repairs he would not have been held liable. The judgment in *Damodara Mudaliar* v. *Secretary of State for India*(2) concedes it. If the tank had belonged solely to the Government, then the Zamindar would not have been liable, even if he had been benefited thereby. The Zamindar in that case could not have repaired the tank himself. This was laid down in the case of *Secretary of State for India* v. *The Jeer of Nanguneri Mutt*(3) by Benson and Bhashyam Ayyangar, JJ., where the decision in *Damodara Mudaliar* v. *Secretary of State for India*(2) was considered. In that case, a tank which

(1) 1 Sm.L.C., 160. (2) (1895) I.L.R., 18 Mad., 88 at p.-91.
(3) C.R.P. No. 273 of 1902 (unreported).

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was the sole property of Government was the source of irrigation not only for Government ryotwari lands but also for the wet inam lands of the defendant therein. The Government claim for contribution from the defendant for the repair of the tank was disallowed and the Judges held that neither section 69 nor section 70 applied.

I do not think therefore that the decision in *Damodara Mudaliar* v. *Secretary of State for India*(1) supports the plaintiff's contention. Moreover it does not refer to the ruling of the Judical Committee in *Abdul Wahid Khan* v. *Shaluka Bibi*(2). The decree of the lower Appellate Court must be reversed and the suit dismissed with costs throughout.

MUNRO, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

1909. July 27. September 3.

ASHA BIBI (SECOND DEFENDANT), APPELLANT,

v.

KADIR IBRAHIM ROWTHER (PLAINTIFF), RESPONDENT.*

Muhammadan Law—Hanafi Law—Divorce—Talak need not be addressed directly to the wife to constitute a valid divorce.

According to the Hanafi Law, it is not necessary that the Talak or words of repudiation should be addressed directly to the wife to constitute a valid divorce.

The expressions mentioned in the 'Hedaya' as constituting express divorce are not exhaustive, but merely illustrative of the different forms in which the Talak may be pronounced.

The incidents of marriage and divorce under the Muhammadan Law fully discussed.

Furzund Hossein v. *Janu Bibee*, [(1879) I.L.R., 4 Calc., 588], referred to and doubted.

SECOND APPEAL against the decree of E. L. Thornton, Esq., District Judge of Trichinopoly, in Appeal Suit No. 154 of 1907, presented against the decree of K. S. Kothandarama Aiyar, District Munsif of Srirangam, in Original Suit No. 199 of 1906.

The facts for the purpose of this case are sufficiently set out in the judgment.

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(1) (1895) I.L.R., 18 Mad., 88 at p. 91. (2) (1894) I.L.R. 21 Calc., 496 at p. 504.

* Second Appeal No. 896 of 1908