

1878

MERCER  
v.  
NARPAT RAI

attachment, for it is clear to us that the decree-holder is not, as against officers to whom the Mutiny Act is applicable, entitled to both remedies at once. The object of the Act is to prevent public servants whose services may be urgently required from being incapacitated to discharge such services. The appeal is decreed and the order of the Judge discharged with costs.

*Appeal allowed.*

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June 28.

## CIVIL JURISDICTION.

*Before Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Pearson.*

KANHAIYA LAL (PLAINTIFF) v. DOMINGO AND ANOTHER (DEFENDANTS). \*

*Promissory Note—Assignment of Chose in Action—Form of Suit by Assignee—Act IX of 1872 (Contract Act), s. 62.*

*Held*, where a promissory note made payable simply to the payee without the addition of the words order or bearer, and therefore not negotiable, was assigned to a third person, that the assignee could sue upon such note, a chose in action being by the law of India assignable, and that the assignee could sue in the Courts of India in his own name.

THIS was a reference to the High Court, under s. 617 of Act X of 1877, by Mr. G. E. Knox, Judge of the Court of Small Causes at Allahabad.

The question referred by the Judge was the following: "Can a person, who has acquired by purchase for valuable consideration all the rights of a promisee in a promissory note, without notice given to the promisor, sue the promisor for the balance due upon such promissory note"? The facts of the case out of which this question arose were stated by the Judge to be as follows:

"On the 7th April, 1876, W. Domingo, one of the defendants in the present case, executed a promissory note in favour of Lala Gur Prasad, the second defendant, payable on demand. On the 7th April, 1878, Gur Prasad had sold all his right and interest in the promissory note to the plaintiff, Kanhaiya Lal, without giving notice of the sale to W. Domingo. These facts are admitted, and it is also conceded that since the sale W. Domingo has not in any way assented to the transfer, and only became aware of it on being asked

\* Reference, No. 8 of 1878, from G. E. Knox, Esq., Judge of the Court of Small Causes at Allahabad, dated the 1st June, 1876.

for the balance due. The plaintiff now sues both W. Domingo and Gur Prasad; and W. Domingo raises this plea (among others) that there was no privity of contract between him and Kanhaiya Lal.

"I am aware that the Calcutta High Court has held that the true holder of a negociable document (and they held a promissory note to fall under that head) may at all times, if so minded, endorse the note to another with the express object of suing on it (1); and that by English equity law promissory notes may be assigned by separate deed (2). Still the ruling in the Calcutta High Court was given prior to the passing of Act IX of 1872, and I feel doubtful whether s. 62 of that Act does not affect the power of a creditor to assign a debt without his debtor's consent.

"Mr. Cunningham, in his Commentaries on the Indian Contract Act, appears to suggest that the words of s. 62 govern the present case. But, with all due deference to that learned commentator, it does not seem necessarily to follow that, if the parties to a contract agree to substitute a new contract for it, in that case the original contract need not be performed. It is also true that, if one of the parties to a contract enter into a subsidiary contract with a third party, then the original contract need no longer be performed. Still both this section and the illustration (c) point rather to the inference that in this case Gur Prasad and Kanhaiya Lal ought to sue as co-plaintiffs and not in the present form.

"It is easy to concede that the power of transfer might be abused, as the defendant in his other pleas alleges. He further urges the principle contained in s. 232 of Act X of 1877. This section has suggested the present defence. It is of course inapplicable to this case, but the plea raised by him would still, I believe, hold good in English common law.

"These doubts compel my making the present reference. In spite of them, I do not hold that s. 62, Act IX of 1872, lays down the law in this present case, and, in the absence of any special provision, the Court is bound to follow the general rules of equity. I am of opinion that a suit by the plaintiff will lie, but that it would have been more regular for him to have sued with Gur Prasad as

(1) *Ram Lal Mookerjee v. Haran Chandra Dhar*, 3 B. L. K. O. C. 130.

(2) *Richardson v. Richardson*, L. R. 3 Eq. 686.

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co-plaintiff, excepting always the case of Gur Prasad being unwilling."

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The Court delivered the following

JUDGMENT.—The promissory note is not made payable to any other person than the payee. It is not made payable to "order," nor to "bearer." It is therefore not a "negotiable instrument." Nevertheless by the law of India a chose in action is assignable. Courts of Equity allow an assignee of a chose in action to sue in his own name, and, inasmuch as our Courts are Courts of Equity as well as of Law, in our judgment an assignee of a chose in action is entitled to sue in his own name. It is, however, requisite for the Courts to bear in mind that whatever defences might be set up against the assignor may also be set up against the assignee, or at least such defences as might have been set up to the time when notice of the assignment was given to the defendant. The Judge of the Small Cause Court may be informed accordingly.

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July 3.

## APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Olfield.*

RUDE NARAIN SINGH (PLAINTIFF) v RUP KUAR AND ANOTHER  
(DEFENDANTS).\*

*Hindu Law—Gift of Separate Property to Hindu Widow—Stridhan—Widow's  
Power of Alienation—Reversioner—Mitakshara—Res judicata.*

C, a Hindu subject to the Mitakshara law, died leaving a widow R, but no issue. In his lifetime he had transferred to R by gift mauza R, a portion of his real estate. After his death J and P, his brothers, sued R for the possession of C's real estate on the ground that it was ancestral property. Their suit was dismissed, it being held by the Sudder Court that C's real estate was separate property, to which his widow would be entitled to succeed by inheritance. The Sudder Court determined that R had acquired mauza R by gift from C, and that R took under the gift a life-interest in the property only. J and P having died, R made a gift of mauza R to her agent as a reward for his faithful services. N, the son of J, sued, as the heir of his uncle C, to set aside this gift to the agent as illegal.

Held that the decision in the former suit did not make the question as to the interest R took under the gift from her husband *res judicata*, inasmuch as N did not claim through his father when suing as heir to his uncle.

\* First Appeal, No. 6 of 1878, from a decree of Maulvi Sultan Hasan Khan, Subordinate Judge of Gorakhpur, dated the 30th November, 1877.