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the conditions of the Muhammadan law of pre-emption. On appeal by the plaintiff the lower appellate Court also held that the claim on the agreement was unmaintainable as the vendor had not signed the administration-paper, and held also that the claim on the agreement excluded the claim based on Muhammadan law.

The plaintiff appealed to the High Court contending that the claim on the administration-paper did not exclude that based on the Muhammadan law; and that the mere fact that the vendor had not signed the administration-paper did not affect the claim thereon, the administration-paper being only a record that the custom of pre-emption prevailed.

Munshi *Hanuman Prasad*, for the appellant.

Babu *Oprokash Chandar*, for the respondents.

The Court made the following

ORDER OF REMAND.—The second plea is over-ruled because it was admitted that the existence of the right of pre-emption was entered in the record as a matter of agreement and not of custom, and on these averments the suit has been tried and the issues fully investigated; but the validity of the first plea must be admitted. The claim based on the *wajibularz* did not exclude a claim under Muhammadan law. The lower appellate Court must determine whether the appellant had under the Muhammadan law the right of pre-emption, and secondly, if he had the right, whether he duly performed the conditions which, under the Muhammadan law, are essential to the validity of the right, namely, the immediate expression of his intention to purchase and immediate demand.

*Cause remanded.*

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January 24.

## FULL BENCH.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spackie, and Mr. Justice Oldfield.*

MAKUNDI LAL (PLAINTIFF) v. KAUNSILA (DEFENDANT).\*

*Sale in Execution of Decree—Right of Auction-purchaser to recover purchase-money on the sale being set aside—Fraud on the part of Decree-holder—Fraud on the part of Auction-purchaser—Minor—Costs.*

A decree-holder fraudulently caused the sale in execution of his decree of certain immovable property belonging to a minor. The minor brought a suit for a declara-

\* Appeal No. 4 of 1876 under cl. 10, Letters Patent.

tion that such sale was invalid and obtained possession of the property from the auction-purchaser. The auction-purchaser sued the decree-holder to recover his purchase-money and the costs incurred by him in defending the suit brought by the minor. *Held, per* PEARSON, TURNER, SPANKIE, and OLDFIELD, JJ., it being found that the auction-purchaser was not a party to or cognizant of the fraud on the part of the decree-holder, that neither the mere fact that the auction-purchaser knew that he was purchasing the property of a minor, nor the mere fact that he did not ascertain whether or not the sale was justified by the terms of the decree, disentitled him to recover the purchase-money from the decree-holder.

*Held* also that, being innocent of fraud and having purchased in the *bonâ fide* belief that the property of the minor was saleable, he was entitled to recover the purchase-money. *Kelly v. Gobind Das* (1) distinguished.

*Held* also that he could not recover the costs incurred by him in defending the suit brought by the minor, being a suit he ought not to have defended.

*Per* STUART, C.J.—That the auction-purchaser, being guilty of fraud, was not entitled to recover the purchase-money, and, assuming that he was innocent of fraud, that, having purchased with the knowledge that the property was the property of a minor and without ascertaining that the sale was justified by the terms of the decree, he could not recover the purchase-money.

THIS was an appeal to the Full Court under s. 10 of the Letters Patent.

Tikaitin, defendant in the present suit, gave one Hira Singh a bond for the payment of money in which, as guardian of her minor son, she mortgaged certain immoveable property belonging to the minor. Hira Singh sued Tikaitin in her own right and as guardian of her son upon this bond, and obtained only a money-decree against Tikaitin personally, in execution of which he was allowed by the Court which made the decree to bring to sale the property of the minor. The property was purchased by Makundi Lal, the plaintiff in the present suit. The minor having subsequently, in a suit against Makundi Lal, obtained a declaration that the sale was invalid, and recovered possession of the property from him, Makundi Lal brought the present suit to recover from Hira Singh and Tikaitin his purchase-money, the costs incurred by him in defending the suit brought by the minor, and interest. Hira Singh pleaded that the plaintiff had no cause of action. The Court of first instance dismissed the suit, holding with reference to the case of *Kelly v. Gobind Das* (1) that the suit was barred by the rule *caveat emptor*. The lower appellate Court, relying on *Neelkunj Sahce v.*

(1) H. C. R., N.-W. P., 1874, p. 168.

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*Asmun Matho* (1), set aside the lower Court's decree and remanded the suit under s. 351 of Act VIII of 1859. Hira Singh having died while the suit was pending in the lower Courts, Kamsila, the mother and guardian of his minor son, his representative, appealed to the High Court contending that the case was governed by the decision in *Kelly v. Gobind Das* (2) and the rule *caveat emptor* applied. The Court (STUART, C. J., and OLDFIELD, J.), having examined the plaintiff as to the circumstances of the sale, differed as to the plaintiff's right to recover the purchase-money.

STUART, C.J.—I am of opinion that the judgment of the Judge is wrong and must be reversed, and that the decree of the Munsif should be restored. The facts are these: On the 20th September, 1867, plaintiff purchased at auction two pies four gandas share in mauza Ballipur Tatta, pargana Chail, in execution of a decree of Hira Singh, father of Beni Prasad the present defendant, against Tikaitin. This decree had been obtained in a suit on a bond which had been executed by Tikaitin, and in which she hypothecated the property of Ganga Din, who was at the time a minor. She herself had no means or property of her own, and in fact lived on offerings received by her in charity, and the money borrowed, Rs. 100, was to meet her own personal wants, and not on account of any necessity relating to the interest or benefit of her minor son. Ganga Din had been made a defendant in the suit by Hira Singh but the fact of his minority had been brought before or had come to the knowledge of the Court, for the decree given was against Tikaitin herself exclusively. The attempt therefore to execute the decree against the property of the minor could not but fail; and in a suit instituted by the minor after he became of age against the auction-purchaser he obtained a decree dated the 29th November, 1873, for possession of his property, and which of course had the effect of invalidating and setting aside the auction-sale itself.

Under these circumstances, the auction-purchaser now brings the present suit to recover back from the defendant Beni Prasad, the son and heir of Hira Singh, the original decree-holder, and Tikaitin, the amount of the sale-price and the costs which he had to pay in the litigation with Ganga Din, together with interest on

(1) H. C. R., N.-W. P., 1871, p. 67. (2) H. C. R., N.-W. P., 1874, p. 168.

both. Tikaitin makes no defence, and the other defendant, Beni Prasad, simply denies that there is any cause of action against him, and that he is not liable to the claim. The Munsif was of opinion that the doctrine of *caveat emptor* applied, and in support of this view of the law referred to the ruling of this Court in the case of *Kelly v. Gobind Das* (1); he therefore dismissed the claim with costs and interest. On appeal to the Judge the decision of the Munsif was reversed, he relying on another earlier ruling of this Court in the case of *Neelkunth Sahee v. Asmun Matho* (2).

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In special appeal it is now contended that the plaintiff had purchased with notice of Ganga Din's minority, and that on the authority of the above ruling in *Kelly v. Gobind Das* (1) the doctrine of *caveat emptor* clearly applies. The bad faith of the decree-holder in attempting to sell the minor's rights under a decree which applied only to his mother, I do not for one moment defend. In such a case as this, however, the decree-holder's conduct, however bad, is immaterial, unless the auction-purchaser is considered to have shown the opposite qualities, and to have acted honestly and in good faith, *i. e.*, that he became the purchaser of the minor's property in the honest belief that it could legally be sold in execution of the decree. The only ground for holding that he entertained such an honest belief was what is stated to have been an official announcement or proceeding read at the time of the sale that the minor's rights would be included. It is stated to have been reported to the Civil Court that the name of Ganga Din's mother was not upon the revenue record, but only his (the minor's), and that, thereupon, the Court made an order to put up the rights of both mother and son to sale. How the Court could have done this, in the face of its own decree, it is difficult, if not impossible, to understand, but of itself it appears to afford no sufficient excuse for the plaintiff's deliberately going on with his purchase; and it cuts both ways, for if it is good for the auction-purchaser it was equally good for the decree-holder, and the latter had as much right and reason to rely upon it as the former; and assuming that they both thus acted in good faith, *i. e.*, in honest reliance on the Court's announcement or order, what is the necessary consequence? Namely, that

(1) H. C. R., N.-W.-P., 1874, p. 168. (2) H. C. R., N.-W. P., 1871, p. 67.

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the decree-holder has at once a good answer and can safely say *caveat emptor* to the plaintiff. After the first hearing of the case we ordered that Makundi Lal, the auction-purchaser, should attend and give his evidence before us as to his knowledge of the facts relating to the sale. He appeared and stated that he was a mahajan and had been such for upwards of twenty years; that he was in the habit of going to the Collector's Court, and it happened that he was there on the day of this sale and bid. He did not at first know that it was the property of the minor that was to be sold, but a proceeding was read out to the effect that the rights and interest of Tikaitin and Ganga Din, the minor, were to be sold in execution of a decree held by Hira Singh. He then knew that it was the property of the minor that was to be sold, and he understood that the money was to be applied on account of expenses incurred in the maintenance of the minor. He does not say anything about the decree, or that he had seen it, or that he knew its terms, but he makes the singular statement that he believed the decree-holder was present at the sale, that is, in the same place with himself, *but he had no conversation with him, he was not acquainted with him.* Notwithstanding, he adds, that from what he had been told about the sale-proceeding and the proceeding from the Collector, he was satisfied that the property of the minor could be sold and he offered Rs. 230. He added that it is not his habit to make inquiries except as regards the value of the property to be sold, and "I take into consideration whether the auction involves any dispute or does not, when the judgment-debtor is a minor. In such a case I do not bid at all. In the present case I thought from what took place that there would be no dispute, and I bid." This is surely a very extraordinary and far from satisfactory explanation by a mahajan of twenty years' experience. There appears to me to be bad faith on the face of his deposition, and that the real meaning and significance of the portion of it I have just quoted was, that he determined to take the risk of the minor's subsequently disputing the sale. My belief is that both parties, the decree-holder and auction-purchaser, were in bad faith, and that in trying to overreach each other they have simply contributed to the well-known contention which results in honest men coming by their own. The plaintiff, auction-purchaser, tells us distinctly that he made the purchase

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with the full knowledge that the property belonged to the minor, and that the fact that it was the minor's property was publicly and distinctly announced at the sale. Yet although the decree-holder was present, he makes the ridiculous excuse that he had no conversation with him, and that he was not acquainted with him, nor did he take any pains to ascertain the terms of the decree. And this from an acute and cautious mahajan of twenty years' experience ! The very words of the decree are these : " Having duly considered the arguments of both the parties, it is ordered that a decree be given in the plaintiff's favour for the amount claimed, with costs and interest, against the female defendant. She is to pay the amount of the decree in a year. Pleaders to get their fees." All this the auction-purchaser was bound to know, and if he was content with the sort of general inquiries he appears to have made he must take the consequences. He had every opportunity and the means for ascertaining the real state of the case, and I cannot listen to him for one moment when he states that, although the decree-holder was present with him at the sale, nothing passed between them. Under all the circumstances and having regard to his own evidence, the auction-purchaser must be taken to have had not only full notice of the minority of the person whose property he was seeking to purchase, but as having lent himself to a proceeding not only illegal and invalid in itself but grossly in fraud of the minor's rights. It was argued before us that the doctrine of *caveat emptor* does not apply to a public sale ; but for this opinion there does not appear to be any authority, although in a case like the present it is unnecessary to consider the question. Such a view of the law probably arises out of a misapprehension of the rules of the common law of England as to sales in market *overt*, but which can have no possible application to the sale in execution of a decree in India of the rights and interests of a minor. And in such a case as this where, under cover of a sale of such rights and interests, the minor's property was attached and taken, it would be subversive of all justice if an auction-purchaser was not made to feel the risk he ran and that, to say the least, he was fully, if not within the principle at least, liable to the penal consequences of the rule of law in question. The peril he undertook was in truth greater than that of a venturesome buyer shutting his eyes to

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his possible danger, for he clearly knew of Ganga Din's minority and all the circumstances when he appeared at the sale, and he therefore not only acted in bad faith, but involved himself in a risk as purchaser which was different from that against, only because it was much greater than that against, which the doctrine of *caveat emptor* is directed. I should add that I cannot accept the ruling of this Court in the case of *Neelkunth Sahee v. Asmun Matho* (1); but I fully adhere to my own ruling in the case of *Kelly v. Gobind Das* (2) in which the judgment was very carefully considered by Mr. Justice Spankie and myself. There was another case referred to by the respondent, that of *Doolhin Hur Nath v. Baijoo Oojha* (3), where the auction-purchaser succeeded in recovering his money. The case, however, is not well reported. There was a speciality in respect to the property sold being *jagir*, and, therefore, not subject to sale; and it was stated, although it does not appear from the report to have been proved, that the auction-purchaser was aware of the property being *jagir*. If he was aware of the objection, he acted in bad faith, and I must dissent from the ruling. On the other hand, if he was not aware of the nature of the property and of its exemption from sale in execution, then he was simply deceived and misled by the decree-holder, and the judgment of this Court was clearly right. But in neither view of the case would the rule of *caveat emptor* have applied. That doctrine relates to defects, latent defects, which the seller, at the inception of the contract, does not or is not bound to know or to inquire into, the purchaser taking the risk of the *status quo*. The doctrine, in truth, if it does not contemplate absolute good faith on both sides, at least puts the burden of inquiry and investigation on the seller, but it has not the same application where there is anything in the nature of bad faith or fraud. The precise terms of the decree cannot be got over, and no announcement by the Court which issued it or by any officer could avail to the contrary; and if the plaintiff might contend that at any rate he was misled, it was a misleading which could give him no cause of action against the present defendant, for it was a misleading which he could only share with him, seeing that the defendant was as much entitled to rely on the Court's order (to put up the minor's rights to sale) as the plaintiff. Yet such an order was the plaintiff's only ground

(1) H. C. R., N.-W. P., 1871, p. 67. (2) H. C. R., N.-W. P., 1874, p. 168

(3) H. C. R., N.-W. P., 1867, p. 50.

for the claim he makes in this suit against the defendant. On the other hand any difficulty he experienced, and he must, under the circumstances, have felt some, should have put him on his inquiry as to the ownership of, and title to, the property. But he chose to go on, and what he might have easily ascertained, if he did not already know, has come to pass to his loss. In short, the sum and substance of the case is this: the decree-holder attempted to sell the property, and the auction-purchaser took the risk on the chance of the sale not being successfully disputed by the minor and lost his money on the venture. I would decree the appeal, reverse the judgment of the Judge, restore the decree of the Munsif, and dismiss the suit with costs in all the Courts.

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OLDFIELD, J.—Hira Singh, father of Beni Prasad, defendant, sued on the 17th January, 1866, Tikaitin, the mother and guardian of Ganga Din, for the recovery of a sum of money lent on a bond executed in his favour by Tikaitin and her son Ganga Din, and obtained a decree against Tikaitin, dated the 27th January, 1866; the decree was a mere money-decree and a personal decree against her and not in her representative capacity. In execution of this decree, however, the decree-holder caused the rights and interests of both the lady and of Ganga Din, then a minor, to be sold. It appears that it was reported to the Civil Court that the lady's name was not borne on the revenue records, but only the minor's name was on the records, and the Court made an order to put up the rights and interests of both persons to sale, and the said rights and interests representing a two pie four ganda share in Ballipur were sold and purchased by the plaintiff on the 20th September, 1867. Subsequently Ganga Din, on attaining his majority, brought a suit against the decree-holder and the plaintiff, the auction-purchaser, and Tikaitin, to invalidate and cancel the bond and the decree of the 27th January, 1866, obtained on it, and to establish his right in the property sold. The decree-holder did not defend the suit and Tikaitin pleaded that the loan under the bond was a personal loan to herself, and the Court made a decree on the 29th November, 1873, in favour of Ganga Din, and held that the money had not been lent for the use or to meet the necessities of the minor so as to render him or his property liable under Hindu law.



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The plaintiff, the auction-purchaser, now sues to recover from the defendant, the son and heir of the original decree-holder, and from Tikaitin, the amount of sale-price and costs with interest incurred in the suit brought by Ganga Din against him. The Judge has reversed the decision of the Munsiff, who held that plaintiff had no cause of action against defendant, and has remanded the case for trial on the merits. The defendant (heir of the decree-holder) now appeals against this judgment. The facts disclosed appear to me to show an amount of bad faith on the part of the decree-holder such as should entitle the plaintiff to recover from him. The decree he obtained was a mere money-decree against Tikaitin personally, notwithstanding which fact he obtained through the Court in execution of his decree the sale of the rights and interests of the minor whom the decree did not affect. The decree-holder was best acquainted with the nature of the decree he had obtained, and cannot be exonerated from the imputation of having deliberately permitted rights and interests of a person not touched by the decree to be sold and bought by the plaintiff. Indeed he by his pleader appears to have pressed on the Court to order the sale of the minor's interests on the ground that the money had been lent for the maintenance of the minor, a fact disallowed in the suit brought by the minor, where it was held that the money was not lent for the minor's benefit. The decree-holder's bad faith is not confined to the sale-proceedings but attaches to his conduct throughout. The bond which hypothecated the minor's property, and on which the decree-holder obtained his decree, has been held to have represented a loan to Tikaitin for her own use and not for the benefit of the minor, and notwithstanding that Ganga Din was a minor when the bond was executed, yet the decree-holder did not scruple to take a bond in which he the said minor is represented as one of the contracting parties contracting in his own person. I can on the other hand discover no grounds for attributing bad faith to the auction-purchaser. No doubt he knew he was purchasing a minor's rights and interests, but this knowledge does not necessarily imply connivance in any fraud on the minor, nor have the lower Courts found fraud on his part, nor is it implied that he knowingly bought what he knew was a risky purchase. He seems to have honestly believed that the minor's rights and interests were

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properly saleable under the decree, and when, in course of execution-proceedings taken by the decree-holder under the decree, the Court ordered the sale of the minor's interests, he was justified in believing that those interests were properly saleable under the decree. He might perhaps have been somewhat more careful in looking into the decree, but at most was guilty of some carelessness, and not of the bad faith or sharp practice to which the conduct of the decree-holder appears to me to amount, and I therefore consider his position to be a better one than that of the decree-holder. The cases referred to by the Judge appear to me much in point, while the facts in the case of *Kelly v. Gobind Das* (1) appear somewhat different. In that case Kelly, the auction-purchaser, bought at auction-sale property which he had already privately purchased and then conveyed to his wife, and he must have known the insecure nature of his auction-purchase, which was afterwards set aside at his wife's suit, and he may well have been held to have bought accepting the risk, and so not entitled to recover back his purchase-money from the decree-holder. I would affirm the decree of the lower appellate Court and remand the suit to the Court of first instance, that the amount due to the plaintiff might be ascertained, and a decree to that amount should be given against the heir of the decree-holder as his representative, and I would dismiss this appeal with costs.

The plaintiff appealed to the Full Court against the judgment of Stuart, C.J., under cl. 10 of the Letters Patent, on the ground that (i) there was no evidence to show that he was guilty of laches or fraud, and as the rights of the minor were sold at the instance and on the application of the decree-holder, the decree-holder was liable to make good the loss sustained by the plaintiff; and (ii) that the case of *Kelly v. Gobind Das* (1) was distinguishable from the present case inasmuch as in the present case the conduct of the decree-holder from the beginning was such as to make him liable to the plaintiff's claim.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji) and *Munshi Hanuman Prasad*, for the appellants.

(1) H. C. R., N.-W. P., 1874, p. 168.

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Babus *Oprakash Chandar* and *Jogindro Nath Chaudhri*, for the respondent.

The following judgments were delivered by the Court:

STUART, C.J.—I adhere to my first judgment, having heard nothing from the bar when the case come before the Full Bench or from the other members of the Court to induce me to change my opinion in any respect.

PEARSON, TURNER, SPANKIE, and OLDFIELD, J.J., concurring.— (After stating the facts as set out, the judgment continued): The purchaser has appealed to the Full Court, and it is contended on his behalf that there is no evidence of any fraud on his part nor of any such laches as disentitle him to recover, and that as a *bonâ fide* purchaser he is entitled to the return of his purchase-money now that the sale of the minor's share has in effect been set aside. Firstly, then, as to the question of fraud, it is to be noticed that no allegation was made in the written statement filed by the decree-holder imputing fraud to the purchaser. It was indeed stated that he was acquainted with the circumstances set out in the proceeding ordering the sale, that he knew he was purchasing the property of a minor brought to sale for the satisfaction of a debt stated to have been contracted on the minor's behalf, but it was not alleged that he was aware the debt had not been so contracted, nor that he was aware the order for sale was not warranted by the terms of the decree. The Munsif having dismissed the suit without trial, the only evidence as to the present appellant's knowledge of the circumstances of the sale is that which is to be derived from the examination of the present appellant in the High Court. That evidence is insufficient to justify the inference that he was in any way a party to or had cognizance of the fraud of the decree-holder.

It is, however, argued that the purchaser ought not to recover his purchase-money because he was aware he was purchasing the property of a minor, and therefore incurring risk, and that in the next place he did not take the pains to see that the order was warranted by the decree. To hold that the purchaser, if the sale of a minor's property is set aside, is not entitled to recover back the consideration from a third party who has brought about the sale and obtained the consideration would very greatly depreciate the

selling value of the property of minors, and no authority has been cited to support the contention. It is not apparent why in purchasing the property of minors the purchaser should be deprived of an equity which cannot injure the minor, and to which a purchaser would be entitled if the property purchased had belonged to a person of full age.

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If the doctrine of *caveat emptor* applies where the sale has been practically set aside, then it may be proper to hold that the omission to see that the order of sale was warranted by the decree amounted to such a want of reasonable care as to deprive the purchaser of his right to relief. But should not the question of what amounts to reasonable care be considered in reference to the circumstances of the place? In England purchases of real estates are rarely made without the intervention of a solicitor and a scrutiny of title. In these Provinces such precautions are almost entirely unknown. However this may be, it would be going too far to hold that the mere omission to see that the order for sale was warranted by the decree ought to deprive the purchaser of relief under the circumstances at present known to the Court, if on other grounds he is entitled to it. Assuming then that the purchaser was innocent of fraud and purchased in the *bonâ fide* belief that the minor's property was properly saleable, there seems no reason why he should not recover back his purchase-money from the decree-holder through whose misfeasance the order for sale was obtained. This case is clearly distinguishable from *Kelly's* case (1) which has been cited at the hearing. Here the sale has been virtually set aside so far as regards the rights and interests of the minor, the owner of the share. In *Kelly's* case the sale was not set aside. Kelly, knowing that his wife had already purchased the judgment-debtor's interests in the property offered for sale, purchased what was offered for sale, that is to say, whatever right, title, or interest remained to the judgment-debtor in the property. On similar grounds it has been held in other cases that a purchaser at auction in execution of decree is not entitled to recover back his purchase-money or compensation, although it may be subsequently discovered that the judgment-debtor has a less interest in the property offered for sale than was suggested by the

(1) H. C. B., N.-W. P., 1874, p. 169.

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advertisement or even no interest at all. But in these cases also the sale has not been set aside (1).

But while the present appellant is entitled to recover from the decree-holder his purchase-money and reasonable interest, it cannot be held that he can recover the costs of a suit which he should not have defended. On receiving information of the minor's claim he might have investigated it, and by surrendering the property have escaped the costs of suit. Had he wished to protect himself from those costs he might have informed the decree-holder that he declined to defend the suit unless he obtained a guarantee for the costs. In the absence of such a guarantee he cannot recover anything on this account as against the decree-holder. The decree of the Division Bench, so far as it dismisses the claim to the purchase-money and interest, is reversed, and the order of the Judge affirmed with proportionate costs.

Tikaitin did not appear in the Court of first instance nor in the Judge's Court, nor did she appeal the Judge's order to the Court, but in carrying out the order the Munsif should see that some cause of action is established against this defendant; at present no cause of action is disclosed.

*Appeal allowed.*

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January 29.

## FULL BENCH.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner and Mr. Justice Spinkie.*

FAKIR MUHAMMAD (DECREE-HOLDER) v. GHULAM HUSAIN AND ANOTHER  
(JUDGMENT-DEBTORS).\*

*Execution of Decree—Limitation—Act IX of 1871 (Limitation Act), sch. ii, art. 187—Application to enforce or keep in force a Decree.*

*Held* by the Full Bench that the date on which an application for the execution of a decree is presented, and not any date on which such application may be pending, is "the date of applying" within the meaning of art. 187, sch. ii of Act IX of 1871.

\* Miscellaneous Regular Appeal, No. 12 of 1876, from an order of Maulvi Muhammad Abdul Majid Khan, Subordinate Judge of Sháhjahánpur, dated the 14th December, 1875.

(1) See *Mahomed Basirulla v. Sheikh Abdulla*, 4 B. L. R., App. 35; *Sowdamini Chowdrain v. Krishna Kishor Poddar*, 4 B. L. R., F. B., 11, S. C. 12 W. B. F.

B. 8; *Rajiblochun v. Bimalamoni Dasi*, 2 B. L. R. A. C. 82; and 6 Bom. H. C. Rep. A. C. J. 258.