the case, and therefore as provided by s. 578, Act X of 1877, he ought not to have made the order he did reversing the decision of the Munsif. We must, therefore, set aside the Judge's order and direct him to try the appeal that was taken to his Court on the merits. Costs to abide the result.

1880

MEHDI HUSAIN v. MADAR BAKHSH.

Cause remanded.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

1880 *May* 13

NASIR HUSAIN (DEFENDANT) *v.* MATA PRASAD AND ANOTHER (PLAINTIFFS)*

Voluntary alienation—Good Faith—Fraud—Consideration.

A decree-holder instituted a suit against his judgment-debtor and the latter's son for a declaration that a gift by the judgment-debtor to his son of certain property was fraudulent, and that such property was liable to be taken in execution of the decree. *Held* that, such gift having been made by the donor out of natural love and affection for the donee and in order to secure a provision for him and his descendants, and therefore for good consideration, and having operated, and the donor having reserved to himself sufficient property to satisfy the decree, the mere fact that the donor reserved to himself no property within the jurisdiction of the Court which made the decree was not a ground for holding that such gift was fraudulent and not made in good faith, and for setting it aside and allowing the decree-holder to proceed against the property transferred by it.

The law relating to voluntary alienations explained.

The facts of this case are sufficiently stated for the purposes of this report in the order of the High Court (SPANKIE, J., and OLDFIELD, J.,) remanding the case.

The *Senior Government Pleader* (Lala *Juala Prasad*) and Shah *Asad Ali*, for the appellant.

Pandit *Nand Lal* and Babu *Jogindro Nath Chaudhri*, for the respondents.

The High Court's order of remand was as follows :—

OLDFIELD, J. (SPANKIE, J., concurring)—It appears that Zulfikar Husain executed a deed of gift dated 14th December, 1872, by which he bestowed a large portion of his property on his son Nasir Husain. The plaintiff held at the time of gift a decree against him

* Second Appeal, No. 168 of 1879, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 23rd December, 1878, reversing a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 21th December, 1877.

1880

SIR HUSAIN v. MATA PRASAD.

dated 21st November, 1867, and the debt which was unsecured amounted at the time of institution of the suit to Rs. 4,838-15-0; and he seeks in this suit to have it declared that the deed of gift was fraudulent, that certain house-property and a garden, part of the property conveyed by it, is the property of Zulfikar Husain and is liable to be sold in satisfaction of his decree. Nasir Husain, appellant, before us, pleaded that the deed was *bonâ fide* and valid, and that his father still possesses ample property sufficient to satisfy the debt, which he reserved from the operation of the gift; that the suit is barred by limitation; and that the decree sought to be satisfied is also barred by limitation. The first Court decided that there was no valid objection on the ground of limitation taken, and that the gift was valid, being on good consideration and *bonâ fide*, and the executant had at the time reserved to himself shares in twenty-five villages with an income of Rs. 200 a month. The Judge has reversed this decree; he remarks that Zulfikar Husain "transferred by deed of gift the bulk of his property lying in many districts including Cawnpore to his son for no consideration, but merely as it is orally alleged because of his own reckless expenditure in charitable acts, charging his son with the redemption of the mortgages existing on a considerable portion of the said property, and reserving to himself for maintenance the income of some twenty-five villages, more or less, in the district of Sarun. The debts secured by mortgages are mentioned in the deed of gift but unsecured debts are not alluded to, nor is the house property in Cawnpore which appellant now seeks to attach and sell in satisfaction of his decree covered by any mortgage, nor is there mention made in the deed of any reservation of property by the donor for his own purposes. If the gift be looked on as a *bonâ fide* valid alienation, the creditor who has not been prudent enough to secure his debt by collateral security must, regardless of the distance or expense attending the effort, proceed to Sarun in Bengal to satisfy his decree from such property as his debtor may possess in that district; he may or may not find it already incumbered in a manner he did not expect. There is no authentic indication on the record of any property being reserved by the judgment-debtor to himself. It is true that respondents offer to prove it but such proceeding is unnecessary: the law protects judgment-creditors as well as their

1880

NASIR HUSAIN v. MATA PRASAD.

debtors from the consequence of a fraudulent act or from that which although not exactly a fraud cannot be held to be done in good faith towards all creditors. Ordinarily the law would not presume bad faith if a judgment-debtor, when alienating a portion of his property, leaves the means to his creditors of recovering their dues from his other assets. A creditor has the power to attach his debtor's property both before and after decree, and on failure to do so he has no lien on any particular portion of the property for the discharge of his claim more than the rest; but at the same time where, as in the present case, the unincumbered property is alleged to be some hundred miles beyond the jurisdiction of the Court executing the decree, and the decree could have been satisfied from unincumbered property lying within the jurisdiction of the Court, it is neither fair nor equitable to the creditor to require him to do that which his debtor acting in good faith should have done for him, or by accepting as valid the post-decretal transfer of the property to subject him to the possibility of finding himself shut out from relief by other lien-holders' preferential claims on the residue of the property;" and the Judge concludes by not finding the alienation to be made in good faith. The Judge then seems to find that there was no good consideration for the gift and that it was not *bonâ fide*. But his judgment shows he has arrived at these conclusions through an inaccurate view of the law on the subject of voluntary conveyances. He holds that the conveyance, if made from a motive to provide for the son and to protect him from the consequences of the father's habit of careless expenditure in charitable purposes, cannot be held to be on good consideration, and in finding that it was fraudulent, he has rejected as quite immaterial the explanation that at the time of the gift Zulfikar Husain reserved to himself ample property to satisfy existing creditors, and has clearly been guided in his decision by the consideration that it was not only the duty of the debtor to reserve sufficient property to meet his creditors' demands, but to reserve property within the jurisdiction in which his creditors might reside or in which they might hold decrees against him; and the Judge appears even to think that a creditor who holds a decree at the time his debtor makes a voluntary conveyance of his property can claim to have it set aside, if it does not reserve property to

1880

ZULFIKAR HUSAIN v. MATA PRASAD

meet his decree within the jurisdiction of the Court that gave the decree.

Voluntary conveyances of property liable to be taken in execution for payment of debts must be shown to be made on good consideration and to be *bonâ fide*, in order that they may be protected against the claims of creditors who hold claims at the time the conveyances were made; and there will be a presumption that voluntary conveyances are not *bonâ fide* in respect of debts that existed at the time, but this presumption will be rebutted when the circumstances of the indebtment and the conveyances repel fraud. The law may be taken to be as given in Story's Equity Jurisprudence, 11th ed., vol. i., s. 365,—"Mere indebtment would not *per se* establish that a voluntary conveyance was void, even as to existing creditors, unless the other circumstances of the case justly created a presumption of fraud, actual or constructive, from the condition, state, and rank of the parties, and the direct tendency of the conveyance to impair the rights of creditors. In the latest English case, touching this subject, it was unequivocally held that a voluntary deed, made in consideration of love and affection, is not necessarily void as against the creditors of the grantor, upon the common law, or the statute of Elizabeth, but that it must be shown from the actual circumstances, that the deed was fraudulent, and necessarily tended to delay or defeat creditors."

In the case before us the deed gives the reasons for the conveyance as follows: "I have no other male child, and through him I expect to perpetuate my name and lineage, and also because he has ever been very dear to me, and since his attaining discretion up to this day has been devoted to my service and to please me and never acted contrary to my will, I put the donee in full proprietary possession, &c;" and all rights of creditors secured by the mortgages of the said property are specially reserved by the deed.

If it be as stated that Zulfikar Husain, knowing himself to be a man of expensive habits, and out of affection for his son and in order to secure a provision for him and his descendants, made the gift in question, it cannot be said to have been made otherwise than on good consideration, and if the gift was made *bonâ fide*

1880

NASIR HUSAIN v. MATA PRASAD.

and had operation, there is no reason why it should not be valid; and it is clearly a most material circumstance for judging of the *bonâ fide* character of the conveyance to determine what property Zulfikar Husain reserved to himself, and whether it was sufficient to satisfy all debts existing at the time of the conveyance for which no other provision had been made, and the Judge has attached too much importance to the fact that no property was reserved within the jurisdiction of the Court that gave plaintiff's decree, since there could be no difficulty in reaching other property, the law providing for such cases.

I would remand the case in order that the Judge should re-try the issue of the *bonâ fide* character of the conveyance, after more fully ascertaining the circumstances of the conveyance and of the indebtment of Zulfikar Husain at the time he made it, and allow ten days for objections to the finding after its submission.

On the return of the lower appellate Court's finding the High Court (PEARSON, J., and OLDFIELD, J.) delivered the following judgment disposing of the appeal:

OLDFIELD, J. (PEARSON, J., concurring).—We have now before us the Judge's finding on the issue remitted, and there can be no question that the deed did not operate by conveyance of the property or that it was not made on a perfectly good consideration, and there is nothing to show that, when the deed of gift was executed, the defendant had not reserved to himself ample property sufficient to meet all existing claims of creditors; indeed, it has been found that he is now in possession of seventeen villages and has property abundantly sufficient to satisfy the present claim.

Under such circumstances it is impossible to accept the Judge's finding that the gift was not *bonâ fide* but that it was in fraud of creditors, or to permit plaintiff to have it set aside and to allow him to proceed against the property it conveyed for the satisfaction of his debt. The Judge's reason for still holding the gift to be not *bonâ fide* is the same which we held to be irrelevant in our order of remand, *viz.*, that by the gift of the property it refers to the plaintiff has been deprived of the power of proceeding against property in his

1880

SIR HUSAIN v. MATA PRASAD.

own neighbourhood for satisfaction of the debt. This consideration is too insignificant to stamp the gift with fraud. We decree the appeal and reverse the decree of the lower appellate Court and restore that of the first Court and dismiss the suit with all costs.

Appeal allowed.

1880
May 18.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

RAM BARAN RAM (PLAINTIFF) *v.* SALIG RAM SINGH (DEFENDANT).*

Landholder and Tenant—Trees.

Held that trees accede to the soil and pass to the landholder with the land on the termination of a tenancy, and unless the tenant uses, during the term of his tenancy, his privilege, where he has it, of removing the trees, he cannot do so afterwards; he would then be deemed a trespasser.

Held also that, where a tenant has been ejected in the execution of the decree of a Revenue Court for arrears of rent from the land forming his holding, his tenancy then terminates, and with it all right in the trees standing on such land or power of dealing with them. A person, therefore, who purchases the rights and interests of a tenant after his ejectment in the execution of such a decree, cannot maintain a suit for the possession of the trees standing on the tenant's holding.

THE plaintiff in this suit claimed the possession of certain trees as having belonged to the defendant Harakh Rai, whose rights and interests had been purchased by the plaintiff at an execution sale. Harakh Rai had been the tenant with a right of occupancy of the land on which such trees were standing, but had been ejected, previously to plaintiff's auction-purchase of such trees, in the execution of a decree for arrears of rent obtained against him by the defendant Salig Ram Singh the landholder. The Court of first instance gave the plaintiff a decree on the ground that a tenant did not lose his right to the trees standing on his holding, by reason that he had been ejected from his holding in the execution of a decree for arrears of rent. On appeal by the defendant Salig Ram Singh, the lower appellate Court held that Harakh Rai had lost his right to the trees by reason of his ejectment from his holding, and dismissed the plaintiff's suit.

* Second Appeal, No. 45 of 1880, from a decree of Maulvi Muhammad Bakhsh, Additional Subordinate Judge of Ghâzipur, dated the 26th September, 1879, reversing a decree of Munshi Mohan Lal, Munsif of Ballia, dated the 7th June, 1879.