

1880

GHIYAM  
MUSTAFA  
v  
HURMAT.

apply to a so-called gift made in lieu of a dower-debt, which is really of the nature of a sale. Case No. 21 in Macnaughten's Precedents of marriage, dower, divorce, and parentage is on all fours with the present case and entirely supports the decision of the lower Courts. The just claims of the heirs are not interfered with by the payment of debts which must be paid before the heirs can enter upon the inheritance. The lower Courts have found on the evidence that the executant of the deed in question in the present case was in his sound senses when he executed the deed; and from the medical evidence it is doubtful whether he was then labouring under the disease which caused his death shortly afterwards. The appeal fails and is dismissed with costs.

*Appeal dismissed.*

1880  
April 28.

*Before Mr Justice Pearson and Mr. Justice Straight.*

BHAGWAN PRASAD (JUDGMENT-DEBTOR) v. SHEO SAHAI (DECREE-HOLDER)\*

*Execution of decree—Act X of 1877 (Civil Procedure Code), s. 326.*

S. 326 of Act X of 1877 does not apply to a decree which directs the sale of land or of a share in land in pursuance of a contract specifically affecting the same. The Court, therefore, cannot authorize the Collector to stay the sale in such a case under s. 326.

THE decree in this case, bearing date the 16th August, 1878, had been made in a suit on a bond for the payment of certain money charging certain land paying revenue to Government with such payment. Among the reliefs asked for in the suit was the sale of such land for the satisfaction of the bond-debt. The decree directed, *inter alia*, the sale of such property in satisfaction of such debt. The property having been attached in the execution of the decree, the Collector, with reference to s. 326, Act X of 1877, represented to the Subordinate Judge, the Court executing the decree, by a proceeding dated the 17th December, 1878, that the sale of the land was objectionable, and that the decree might be satisfied by instalments within eight years by a lease of the land for that term; and asked the Subordinate Judge to postpone the sale of the land which was fixed to take place on the 20th December, and to authorize him

\* Second Appeal, No. 25 of 1880, from an order of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 19th January, 1880, reversing an order of Babu Ram Kall Chandhri, Subordinate Judge, dated the 11th March, 1879.

to provide for the satisfaction of the decree in the manner recommended by him. The Subordinate Judge accordingly postponed the sale, and on the 11th March, 1879, made an order sanctioning the Collector's recommendation. On appeal by the decree-holder from this order, the District Judge set it aside, having regard to the case of *Womdu Khanum v. Rajroop Koer* (1).

The judgment-debtor appealed to the High Court, contending that there was nothing in s. 326 of Act X of 1877 confining its provisions to money-decrees.

Munshis *Hawman Prasad* and *Ram Prasad*, for the appellant.

Pandit *Ajudhia Nath*, for the respondent.

The judgment of the Court (PEARSON, J., and STRAIGHT, J.) was delivered by

PEARSON, J.—Reading s. 326 with s. 322 of the Code, we are of opinion that the lower appellate Court's order, referring to a decree which directs the sale of immoveable property in pursuance of a contract specifically affecting the same, is right; and we therefore dismiss the appeal with costs.

*Appeal dismissed.*

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.*

MUMFORD (PLAINTIFF) v PEAL AND ANOTHER (DEFENDANTS).\*

*Bond—Waiver—Act IX of 1871 (Limitation Act), sch. ii, art. 75—Cause of Action.*

The mere acceptance by the obligee of a bond payable by instalments, which provides that in case of failure to pay one or more instalments the whole amount of the bond due shall become payable, of instalments after default does not constitute a "waiver," within the meaning of art 75, sch. ii, of Act IX of 1871, of the obligee's right to enforce such provision.

In the case of such a bond the cause of action arises on the first default, and limitation runs from the date of such default.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Straight, J.

(1) I. L. R., 3 Calc., 335.

\* Second Appeal, No. 912 of 1879, from a decree of H. Lushington, Esq., Judge of Allahabad, dated the 18th April, 1879, affirming a decree of Rai Makhan Lal, Subordinate Judge of Allahabad, dated the 2nd September, 1878.

1880

BHAGWAN  
PRASAD  
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1880  
April 29.