1885

TAPONIDI HORDANUND BHARATI v. MATHURA LALL BHAGAT.

respect of two annas of the property, and he was, so far as appears, the sole mortgagee. Therefore, the present defendants, when they purchased that property upon which the plaintiff hold a mortgage, and purchased it under proceedings to which the plaintiff was no party, purchased subject to the mortgage. *Primâ facie*, therefore, when the defendants paid off that mortgage, they paid it off for their own benefit in order to clear their property of an encumbrance. What the District Judge appears to have done was this, not to allow them to deduct the whole of that amount before ascertaining what was distributable, but to allow them to reckon this judgment-debt as one of the claims in respect of which, with others, a rateable distribution was to be made. Whether he was right in doing that, and whether he may not, perhaps, have dealt with the matter on a footing too favorable to the present defendants, it is not necessary for us to consider, because there is no cross-appeal before us. It is clear, we think, that the principle on which the matter has been dealt with has not given undue advantage to the plaintiff.

The result is that the appeal will be dismissed with costs.

J. V. W. *Appeal dismissed.*

Before Mr. Justice Mitter and Mr. Justice Agnew.

LALA JUGDEO SAHAI (PLAINTIFF) *v.* BRIJ BEHARI LAL AND OTHERS (DEFENDANTS).*

1886 *January* 14.

Transfer of Property Act (IV of 1882), s. 131—Transfer of Debts—Notice of transfer—Assignment of Mortgage—Mortgagor, Liability of, to Assignee of Mortgagee when no notice of Assignment given.

The provisions of the Transfer of Property Act apply to the assignment of a mortgage made after that Act came into force, although the mortgage may have been made before the commencement of that Act.

An assignment is perfectly valid though the notice referred to in s. 131 of the Transfer of Property Act has not been given, though the title of the assignee as against third parties is not complete until such notice has been given; the object of such notice being the protection of the assignee.

* Appeal from Appellate Decree No. 746 of 1885, against the decree of Baboo Grish Chundra Chatterji, Officiating Subordinate Judge of Tirhoot, dated the 27th of January 1885, affirming the decree of Baboo Gopal Chundra Banerji, Munsiff of Hajipore, dated the 29th May 1884.

1886

LALA JUGDEO SAHAI v. BRIJ BEHARI LAL.

Section 131 of the Transfer of Property Act makes no alteration in the law as it obtained in England previous to the passing of that Act and as laid down in the cases cited in the note to *Ryall* v. *Rowles* (1), the first portion of the section merely fixing the time when the section comes into operation, and the latter providing for the protection of the debtor if he deals with the debt before that time.

Where therefore an assignee of a mortgagee brought a suit on the mortgage against the mortgagor and the mortgagee, and no notice of the assignment had been given to the mortgagor under s. 131 of the Transfer of Property Act:

Held, that the Court was wrong in dismissing the suit merely on the ground that no notice was served, as after the suit was instituted the mortgagor became aware of the assignment, and the transfer accordingly came into operation on the date when he thus became aware of it.

IN this case the plaintiff, as assignee of a mortgage bond, executed by defendants Nos. 1 to 4 in favor of defendant No. 6, sued on the bond to recover the amount due thereunder and to enforce the mortgage lien.

He alleged that defendants Nos. 1 to 5 were members of a joint family; that defendant No. 5 who was in the employment of defendant No. 6, as putwari, had been guilty of criminal misappropriation of certain monies collected on behalf of defendant No. 6, and that a warrant for his arrest had been issued from the Criminal Court; that thereupon an arrangement had been come to between the defendants, whereby defendants Nos. 1 to 4 paid to defendant No. 6 a portion of the sum misappropriated by defendant No. 5, and executed the mortgage bond, the subject-matter of the suit, to secure the repayment of a further portion, the defendant No. 6 giving up the balance. The plaintiff further alleged that, although the bond was executed by defendants Nos. 1 to 4 only, it mortgaged the joint family property, and the consideration money was applied for the benefit of defendant No. 5. He also stated that the bond was assigned to him by defendant No. 6 by a registered deed of sale on the 21st October 1883, after the money secured by it had become due, and he accordingly instituted this suit to recover the amount due and to enforce the mortgage lien.

The mortgage bond contained a recital to the effect that

(1) 2 W. and T. L. C., pp. 777—779, 4th ed.

1886

LALA JUGDEO SAHAI v. BRIJ BEHARI LAL.

defendants Nos. 1 to 5 were members of a joint family living in commensality.

Defendants Nos. 1 to 4 contested the suit, and in their written statement denied that they were joint, alleging that defendants Nos. 1 and 5 were separate. They also pleaded that there was no consideration for the mortgage bond; that their signatures to the bond had been obtained by undue influence; and that, as no notice had been given them of the assignment to the plaintiff, the suit could not be maintained under the provisions of s. 131 of the Transfer of Property Act.

Defendant No. 5 also filed a written statement, in which he took the same objections as defendants Nos. 1 to 4, and in addition contended that he could not be held liable as he was not a party to the mortgage.

Defendant No. 6 filed a written statement in which he admitted the assignment to the plaintiff, and supported his case as to the reasons for the mortgage being given. He also alleged that the assignment to the plaintiff was made with the knowledge of his co-defendants, and contended that he should not have been made a party to the suit at all.

The Munsiff held that the defendants Nos. 1 to 4 were estopped from pleading separation, inasmuch as they had led the original mortgagee to accept the bond upon the statement that they were members of a joint-family, that the bond was executed voluntarily and for good consideration, and that the plaintiff had proved that branch of his case. He, however, dismissed the suit upon the ground that it could not be maintained, as no notice of the assignment had been given to defendants Nos. 1 to 5 under s. 131 of the Transfer of Property Act.

The plaintiff thereupon appealed, but his appeal was dismissed, the lower Appellate Court taking the same view of the law and holding that notice was necessary.

The plaintiff now preferred this second appeal to the High Court.

Baboo *Abinash Chandra Bannerji* for the appellant.

Baboo *Karuna Sindhu Mukherji* for the respondents.

1886

LALA JUGDEO SAHAI v. BRIJ BEHARI LAL.

The judgment of the High Court (MITTER and AGNEW, JJ.) was as follows:—

The plaintiff in this case sued as the assignee of a bond executed by the first party defendants in favor of the second party defendant. The defence was that there was no legal consideration for the bond, and that the suit was not maintainable as no notice of the assignment had been given to the first party defendants under s. 131 of the Transfer of Property Act (IV of 1882). The Munsiff found that there was good consideration for the bond; but he dismissed the suit upon the ground that it was not maintainable as no notice of the transfer had been given. The Subordinate Judge was also of opinion that notice was necessary and dismissed the appeal. Two points have been argued before us. One that, as the bond was executed before the Transfer of Property Act came into force, the Act is not applicable. The assignment, however, was after the Act came into force, and we think, therefore, that the provisions of the Act are applicable to this case. The other point was as to whether notice of the assignment was necessary in order to enable the assignee to maintain the suit. It was contended that, as between the assignee and the debtor, notice is not necessary, and that even if it is, then the suit was sufficient notice. Section 131 of the Transfer of Property Act is as follows:—

"No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party to or otherwise aware of such transfer; and every dealing by such debtor or person, not being a party to or otherwise aware of, and not having received express notice of, a transfer, with the debt or property shall be valid as against such transfer." The Subordinate Judge says: "Primarily the obligor remains liable to the obligee alone upon such a contract. The notice provided for by the section is meant to extend this liability further and make the obligor privy to the transfer to a third party. The force of the word 'any' in the first part of the section cannot be lost sight of, and the meaning of the word 'operation' is sufficiently clear. The illustration refers to the second part of the section,

and it is not exhaustive. The second part of the section is, I think, explanatory, and it does not in any way limit the meaning and effect of the first part of the section. Section 133 provides that on receiving such notice the debtor shall give effect to the transfer. He is not bound to recognize the transfer unless he is a party or privy to it before the receipt of the notice provided for in s. 132. It is sufficiently clear, therefore, that the notice enjoined by s. 132 is essential to bind the debtor and to compel him to recognize or give effect to the transfer. Without such a notice the transfer has no operation." No doubt, at first sight, it does appear as if under s. 131 a transfer is of no effect at all unless notice of it has been given to the debtor. But this is a view so entirely opposed to the law as it existed before the Act came into force that we do not think that we should adopt it unless we are absolutely bound to do so, and unless the words of the section will not bear an interpretation which will make them consonant with the previous law.

The Act is an Act "to define and amend certain parts of the law relating to the transfer of property by act of parties." And the law so to be dealt with is based upon the English law. Now it is well settled according to English law that it is not necessary to the validity of an assignment of a debt as between the assignor and assignee that notice should be taken to the debtor [see the cases referred to in the notes to *Ryall* v. *Rowles* (1)]. The assignment, therefore, is perfectly valid though no notice is given. But the title of the assignee as against third persons is not complete until he has given notice, and the reason is this: As between the debtor and assignor the liability on the part of the debtor is still subsisting, and the debtor may pay the assignor, or the assignor may afterwards assign to a third party who gives notice and so acquires priority. Notice, therefore, ought to be given by the assignee to protect himself and for this purpose only. It is immaterial to the debtor whether he pays his money to the original creditor or to some third person claiming through the creditor so long as he gets a discharge for his debt. If he pays the assignor, having no notice of an assignment, he is protected. The assignment does not in any way affect the liabi-

(1) 2 W. and T. L. C., pp. 777—779, 4th ed.

1886

LALA JUGDEO SAHAI v. BRIJ BEHARI LAL.

lity of the debtor to discharge his debt, but the assignee should take care to let the debtor know that it is he and not the original creditor who is entitled to be paid. *It is, therefore, only for* the protection of the assignee that notice ought to be given. That being the state of the English law on the subject, can the section be so read as to agree with it?

We think that the first branch of the section fixes the time when the assignment comes into operation, and the other branch provides for the protection of the debtor if he deals with the debt before that time. The words of the first branch, *viz.*, "no transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, *until* express notice of the transfer is given to him unless he is a party to or otherwise aware of such transfer" indicate the time when the transfer comes into operation.

In the first place if the debtor is no party to the transfer or not aware of it, the transfer comes into operation when the notice mentioned in it is given. If he is himself a party to the transfer, the transfer comes into operation immediately. If he be not a party to the transfer, but becomes aware of it subsequently, the transfer comes into operation at the time when he becomes aware of the transfer. That is the meaning of the first branch of the section. Putting that construction upon it, it seems to us that, after the suit was instituted, the debtor became aware of the transfer, and the transfer consequently came into operation on the date when he thus became aware of it.

We are, therefore, of opinion that the lower Courts were not right in holding that, although the assignment was proved, and although it was established that the plea put forward in the defence was not correct, still the plaintiff is not entitled to a decree.

We, therefore, reverse the decision of the lower Courts and decree the plaintiff's suit and with costs.

H. T. H. *Appeal allowed.*