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or mention documents once, but not at present, in their possession. Therefore the Judge gave the plaintiffs further time to the 16th April, 1885, to amend these defects. On the 15th April, the plaintiffs filed before the Judge an affidavit purporting to be made by them personally, praying that "the Court may have it verified in the manner it thinks proper, provided petitioners' *pardah-nashin* is not interfered with." On the 27th April the Judge disposed of that petition and of the suit by his order which is now appealed to us. It runs as follows:—"The order of this Court not having been complied with, although ample opportunity has been given to the plaintiffs, and no sufficient ground for non-compliance having been shown, I have no alternative, much as I regret the necessity, but to exercise the power given me by s. 136, Act XIV of 1882, and to direct that the suit be dismissed for want of prosecution, and I now make an order to that effect, with costs, and the usual interest thereon."

Without going into the question of the sufficiency or insufficiency of the action of the plaintiffs with regard to the orders made under s. 129 of the Court, it is enough here to say that, looking at the disabilities of the plaintiffs and the circumstances of their suit, it appears to us that the case was not one in which it was expedient to enforce the liability to which they may have exposed themselves under the peculiar provisions of s. 136 of the Code.

We therefore allow the general plea of the appellants, and, decreeing this appeal, remit the case for trial to the Court below. The costs here will be costs in the cause.

Appeal allowed.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

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April 16.

BEHARI LAL (PLAINTIFF) *v.* HABIBA BIBI AND OTHERS (DEFENDANTS).*

Pardah-nashin—Execution of deeds.

A suit was brought upon a bond purporting to have been executed on behalf of two Muhammadan *pardah-nashin* ladies by their husbands, and to charge their immoveable property. The bond was compulsorily registrable, and it was presented for registration by a person who professed to be authorized by a power-of-attorney in that behalf. The only proof given by the plaintiff that this power-of-

* First Appeal No. 199 of 1885, from a decree of Rai Raghu Nath Sahai, Subordinate Judge of Azamgarh, dated the 31st July, 1885.

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-attorney was executed by the ladies, or with their knowledge and consent, was the evidence of a witness who deposed that he was not personally acquainted with them nor did he know their voices, that he went to their residence, that there were two women behind a *pardah* whom the executants of the bond said were their respective wives, and that these women acknowledged they had made the power-of -attorney. There was nothing to show that the ladies had ever benefited in any way from the money advanced under the bond.

Held that, even if the ladies behind the *pardah* were in fact the two defendants, this evidence would not be enough to bind them, and that it was for the plaintiff, who sought to bring their property to sale on the strength of a transaction with them, to show that they were free agents in the matter, and, having a clear knowledge of what they were doing, accorded their consent to it.

Buzloor Ruheem v. *Shumsoonnissa Begum* (1), *Ashgar Ali v. Debroos Banoo Begum* (2), and *Sudisht Lal* v. *Sheobarat Koer* (3) referred to by MAHMOOD, J.

THE plaintiff in this case claimed the amount due on a bond, dated the 16th September, 1873, from Rafi-ud-din Ahmad, and his wife Habiba Bibi, and Salima Bibi, the wife of Nurul Hasan, by whom the bond purported to be executed. He also claimed the sale of certain zamindari property mortgaged in the bond. This property was property which the two female defendants, who were sisters, had inherited from their father. The bond purported to be executed by Habiba Bibi "by the pen of Rafi-ud-din Ahmad," her husband, and by Salima Bibi "by the pen of Nurul Hasan," her husband. It was registered on the 27th September, 1873, by one Maula Khan, under a *mukhtar-nama*, or power-of-attorney, which purported to be executed by Rafi-ud-din Ahmad, Habiba Bibi and Salima Bibi, and was authenticated by the Sub-Registrar, who had issued a commission for the examination of the ladies as to the voluntary nature of the execution of the power by them. The defendant Rafi-ud-din Ahmad did not defend the suit. It was defended by the female defendants, who pleaded that they had not executed the *mukhtar-nama*, or the bond, and had no knowledge whatever of those deeds and had not benefited in any way from the money advanced under the bond.

The Subordinate Judge of Azamgarh, by whom the suit was tried, dismissed it in respect of the female defendants. He found that they had no knowledge of the *mukhtar-nama* or the bond, and

(1) 11 Moo. I. A. 551 ; 8 W. R., P. C. 3.
(2) I. L. R., 3 Calc. 324.
(3) I. L. R., 7 Calc. 245; L. R., 8 Ind. Ap. 39.

had not benefited in any way from the money advanced under the bond. The plaintiff appealed to the High Court.

Munshi *Kashi Prasad* and Munshi *Hanuman Prasad*, for the appellant.

Pandit *Ajudhia Nath* and Munshi *Ram Prasad*, for the respondents.

STRAIGHT, Offg. C. J.—This was a suit brought by the plaintiff Behari Lal upon a bond dated the 16th of September, 1873, for Rs. 6,700, purporting to have been executed by one Rafi-ud-din, for himself and for his wife Habiba Bibi, and by one Nurul Hasan on behalf of his wife Salima Bibi. The two ladies were the daughters of Fakhr-ud-din Ahmad, and Rafi-ud-din was his nephew, and the property said to have been charged admittedly came to the hands of the obligors upon the death of Fakhr-ud-din, to whom it had belonged. The bond of the 16th of September, 1873, was, as I have said, not signed by either Habiba Bibi or Salima Bibi, and it was subsequently presented for registration by one Maula Khan, who professed to be authorized in that behalf by a power of attorney dated the 17th September, 1873. Now the bond can only be given in evidence and held to be binding against the ladies, *qua* their immoveable property charged therein, if it was duly registered, and the question whether it was so registered turns upon whether the power-of-attorney was in fact made by them, with their conscious consent and full knowledge and comprehension of what they were authorizing Maula Khan to do. The Subordinate Judge has found that the bond to the plaintiff was not proved to have been executed with the knowledge of the ladies; that they are not shown to have benefited by it in any way; and, as I understand him, he also rejected the power-of-attorney as not binding on them.

It is upon this latter point that I am prepared to deal with the appeal and dispose of it. Now there can be no doubt—and many Privy Council rulings are to be found approving the principle—that in cases such as that before me, in which the interests of *pardah-nashin* women are concerned, those who seek to affect them with liability under an instrument of the kind sued on here, are bound to prove that they had knowledge of the nature

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and character of the transaction into which they are said to have entered, that they had some independent and disinterested adviser in the matter, and that they put their hands to the document relied on, or authorized some other persons to execute it for them, fully understanding what they were about in doing so. In the present case all that the plaintiff has proved by one witness, Imam-ud-din, is that upon a particular day he went to the residence of the ladies, with whom he was not personally acquainted, nor did he know their voices. He says their were two women behind a *pardah* who were said by their husbands, Rafi-ud-din and Nurul Hasan, to be their respective wives, and that these persons ackowledged they had made the power of attorney. Now I will go the length of saying that even if the ladies behind the *pardah* were in fact the two defendant Musammats, I should not, in reference to the principles already enunciated, be prepared to hold that this is enough to bind them. I think it was for the plaintiff—who is seeking to bring their property to sale on the strength of a transaction with these two *pardah-nashin* ladies—to show that they were free agents in the matter, and, having a clear knowledge of what they were doing, accorded their consent to it. This, in my opinion, he has wholly failed to do, and, under such circumstances, I think the lower Court was right in dismissing the suit, and I therefore dismiss the appeal with costs. With regard to the application made to-day for the admission of the *mukhtar-nama*, which was rejected below, it is unnecessary to say more than that I have dealt with the case as if it were in evidence.

MAHMOOD, J.—I am of the same opinion. I entirely concur with the learned Chief Justice in his estimate of the evidence. It is an estimate which I, from my acquaintance with the facts of Muhammadan life to which it refers, accept as in keeping with the rulings of the Privy Council in such matters, which have done for the *pardah-nashin* women what their life requires, which is, that they should be placed, by analogy, on a footing somewhat similar to that of persons *non compotes mentis*. The doctrines of equity which relate to such persons have been stated in s. 228 of Story's work on Equity Jurisprudence, where it is laid down that "Courts of equity deal with the subject upon the most enlightened principles, and

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watch with the most jealous care every attempt to deal with persons *non compotes mentis*. Wher ever, from the nature of the transaction, there is not evidence of entire good faith (*uberrimæ fidei*), or the contract or other act is not seen to be just in itself, or for the benefit of these persons, Courts of equity will set it aside, or make it subservient to their just rights and interests." I desire to embody this passage in my judgment for the benefit of the subordinate Courts, to which, generally speaking, such works as Story's are not accessible ; and for the same reason I wish to read certain passages from the judgments of the Lords of the Privy Council in order to show the manner in which their Lordships have from time to time applied the doctrine of equity to *pardah-nashin* ladies. The leading case upon the subject is *Buzloor Ruheem* v. *Shumsoonnissa Begum* (1), where their Lordships made the following observations (p. 585)—" The Attorney-General, indeed, argued that a distinction is to be drawn in this respect between a Muhammadan and a Hindu woman ; nay, that in all that concerns her power over her property, the former is by law more independent than an Englishwoman of her husband. It is no doubt true that a Musulman woman, when married, retains dominion over her own property, and is free from the control of her husband in its disposition ; but the Hindu law is equally indulgent in that respect to the Hindu wife. It may also be granted that in other respects the Muhammadan law is more favourable than the Hindu law to women and their rights, and does not insist so strongly on their necessary dependence upon, and subjection to, the stronger sex. But it would be unsafe to draw from the letter of a law, which, with the religion on which it is chiefly founded, is spread over a large portion of the globe, any inference as to the capacity for business of a woman of a particular race or country. In India the Musulman woman of rank, like the Hindu, is shut up in the *zanana*, and has no communication, except from behind the *pardah*, or screen, with any male persons, save a few privileged relations or dependants ; the culture of the one is not, generally speaking, higher than that of the other, and they may be taken to be equally liable to the pressure and influence which a husband may be

(1) 11 Moo. I. A. 551 ; 8 W. R., P. C. 3.

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presumed to be likely to exercise over a wife living in such a state of seclusion. Their Lordships must, therefore, hold that this lady is entitled to the protection which, according to the authorities, the law gives to a *pardah-nashin*, and that the burden of proving the reality and *bona fides* of the purchases pleaded by her husband was properly thrown on him". The principles upon which these observations proceed must not be lost sight of in connection with such cases. Again, in *Ashgar Ali* v. *Debroos Banoo Begum* (1), which was also a case in which a Muhammadam *pardah-nashin* lady was concerned, their Lordships made observations which seem to me to be very pertinent to cases like the present. Their Lordships said (p. 327) :—" It is incumbent on the Court, when dealing with the disposition of her property by a *pardah-nashin* woman, to be satisfied that the transaction was explained to her, and she knew what she was doing, and especially so in a case like the present, where, for no consideration, and without any equivalent, this lady has executed a document which deprives her of all her property." There are many other cases to be found in the Reports which lay down the same doctrine, but I will cite only one more passage from the judgment of their Lordships in a recent case—*Sudisht Lal* v. *Sheobarat Koer* (2), in which the facts were somewhat similar to those of the present case :—" Their Lordships desire to observe that there is no satisfactory evidence that this *mukhtar-nama* was explained to the defendant in such a way as to enable her to comprehend the extent of the power she was conferring upon her husband. In the case of deeds and 595, w executed by *pardah-nashin* ladies, it is requisite that those who reply upon them should satisfy the Court that they had been explained to, and understood by, those who execute them. There is a want of satisfactory evidence of that kind in the present case. But their Lordships do not desire to rest their decision upon this ground ..... If it had been proved that the husband had contracted loans and obtained advances on behalf of his wife, it may be that under this power-of-attorney she would be bound by his acts, as being within the scope of his authority. But it would have to be shown, not only that he borrowed the money, but that

(1) I. L. R., 3 Calc. 324.
(2) I. L. R., 7 Calc. 245; L. R., 8 Ind. Ap. 39.

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it was borrowed for her." These passages seem to me to be closely applicable to the circumstances of this case.

With reference to the observations of the learned Chief Justice, I have only to add that in all these transactions, the important thing to see is what was actually done. In the present case there is nothing to show that this large sum was ever utilized for the ladies' benefit, and there is no satisfactory evidence to show that they took part in the execution of the *mukhtar-nama*, or understood its contents, or that they were aware of the existence of the bond, or that it was executed with their consent. The findings of the lower Court are satisfactory, and I would not interfere.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

KOJI RAM (PLAINTIFF) *v.* ISHAR DAS AND ANOTHER (DEFENDANTS) *

1886 *April* 17.

Suit for money paid by a pre-emptor under a decree for pre-emption which has become void—Act XV of 1877 *(Limitation Act), sch* ii, *Nos.* 62, 97, 120—*Suit for money had and received for plaintiff's use—Suit for money paid upon a existing consideration which afterwards fails.*

Pending an appeal from a decree for pre-emption in respect of certain property conditional upon payment of Rs. 1,595, the pre-emptor decree-holder, in August, 1880, applied for possession of the property in execution of the decree, alleging payment of the Rs. 1,595 to the judgment-debtors out of court, and filing a receipt given by them for the money. This application was ultimately struck off. In April, 1881, judgment was given in the appeal, increasing the amount to be paid by the decree-holder to Rs. 1,994, which was to be deposited in court within a certain time. The decree-holder did not deposit the balance thus directed to be paid, and the decree for possession of the property accordingly became void. In 1882, the decree-holder assigned to *K* his right to recover from the judgment-debtors the sum of Rs. 1,595 which he had paid to them in August, 1880. In December, 1883, *K* sued the judgment-debtors for recovery of the Rs. 1,595 with interest.

Held that No. 62 of the Limitation Act did not govern the suit, but that No. 97, and, if not, No. 120, would apply, and the suit was therefore not barred by limitation.

THE suit out of which this appeal arose was brought under the following circumstances:—In February, 1880, one Ram Lal obtained a decree for pre-emption in respect of certain property,

* Second Appeal No 1264 of 1885, from a decree of W. R. Barry, Esq., Additional Judge of Aligarh, dated the 30th July, 1885, reversing a decree of Maulvi Sami-ullah Khan, Subordinate Judge of Aligarh, dated the 22nd May, 1884.