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it and not to question the validity of the decree. I still adhere to the views which I expressed in that case, and following them am constrained to decree this appeal, and setting aside the orders of both the lower Courts, to remand the case to the Court of first instance for executing the decree of the 24th February, 1882, with reference to the observations which I have made. Costs will abide the result. I wish only to add that I must not be understood to say anything as to whether the auction-sale which would take place in execution of the decree would or would not convey any valid title to the purchaser (1).

Cause remanded.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

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December 5.

BANSIDHAR (DEFENDANT) *v.* SANT LAL AND ANOTHER (PLAINTIFFS).*

Hypothecation—Moveable property—Non-existent moveables—Contract to assign after acquired chattels—Completion of assignment on property coming into existence—Transferee with notice of hypothecation—Suit against transferee for damages for wrongful conversion—Measure of damages.

Held, upon principles of equity, that a hypothecation of certain future indigo produce was a valid contract to assign such produce when it should come into existence; and that the hypothecation became complete when the crop was grown and the produce realized; and was enforcible against a transferee of such produce with notice of the obligee's equitable interest. *Collyer* v. *Isaacs* (2) and *Holroyd* v. *Marshall* (3) referred to.

Held also that such an interest would not avail against a transferee without notice. *Joseph* v. *Lyons* (4) and *Hallas* v. *Robinson* (5) referred to.

In a suit against such a transferee with notice, who had sold the produce, for damages for wrongful conversion of the security,—*held* that the measure of damages, under ordinary circumstances, and where a fair price had been obtained, would be the amount which the defendant had realized by the sale. *Misri Lal* v. *Mozhur Hossain* (6) referred to.

The facts of this case are stated in the judgment of the Court.

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* Second Appeal No. 1430 of 1886, from a decree of T. R. Wyer, Esq., District Judge of Meerut, dated the 22nd July, 1886, reversing a decree of Babu Brij Pal Das, Subordinate Judge of Meerut, dated the 12th April, 1886.

(1) This case was followed in *Ramgobind Das* v. *Gulzar Singh* (S. A. No. 698, of 1887) decided the 11th August, 1887, *Jugraj Puri* v. *Harbans Dyal* (S. A. No. 268 of 1887) decided the 3rd January, 1888, and *Janki Rai* v. *Ram Ghulam* (S. A. No. 896 of 1887) decided the 27th January, 1888.

(2) L. R., 19 Ch. D. 342.
(3) L. R., 10 H. L. 191; 36 L. J. Ch. 193.
(4) L. R. 15 Q. B. D. 280.
(5) L. R., 15 Q. B. D. 288.
(6) I. L. R., 13 Calc. 262.

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BANSIDHAR v. SANT LAL.

The Hon. *T. Conlan* and Maulvi *Abdul Majid*, for the appellant.

Pandit *Sundar Lal* and Babu *Ratan Chand*, for the respondents.

STRAIGHT and BRODHURST, JJ.—This was a suit for damages brought by the plaintiff-respondent against the defendant-appellant under the following circumstances. On the 13th June, 1884, one Deoki Prasad executed a bond in favour of the plaintiffs for Rs. 4,000, the material portion of which was as follows:—"For the satisfaction of the said bankers the indigo produce for 1292 fasli of mauza Jarah, mauza Secunderabad, shall remain hypothecated in lieu of the amount of the bond. I shall not sell it to any one else until the whole principal and interest of the amount of the bond, *i. e.*, the entire demand of the bond, shall have been paid." On the 5th November, 1884, the amount of the bond not having been paid, the plaintiff brought a suit against Deoki Prasad for recovery of the amount due, and attached before judgment ten boxes of the indigo produce of the mauza mentioned in the bond, which were then in the hands of the police at the Dadri police station. The present defendant Bansidhar preferred objections to this attachment, alleging that the indigo had been sold to him by Deoki Prasad. Subsequently, how does not exactly appear, he got possession of the ten boxes, forwarded them to Calcutta, and realized by their sale Rs. 3,894-6-9. On the 7th of January, 1885, the plaintiffs got a decree against Deoki Prasad, but by this time their security had been appropriated by the defendant Bansidhar, as has already been stated. By the present suit the plaintiff seeks to recover the amount of Deoki's debt with interest, namely Rs. 4,900, by way of damages from the defendant for his wrongful conversion of the security created by the bond of the 13th June, 1884. The first Court dismissed the claim, but the Judge in appeal decreed it for Rs. 3,894-6-9, the amount realized by the defendant on the sale of the indigo. The defendant appeals to this Court, and the substantial ground upon which the case has been argued before us is, that as, at the time of the bond of the 13th June, 1884, the indigo of mauza Jarah for 1292 fasli was not in existence, no valid pledge in law could be made, because no tangible thing was in

existence that was capable of actual or constructive possession. It was also contended that there was no evidence from which the Judge below could infer that at the time the defendant appropriated the indigo he had notice of any lien thereon in favour of the plaintiff. This latter point had best be disposed of first. As to this the Judge observes: "I am clearly of opinion that Bansidhar knew perfectly well of the lien, and I have but little doubt that the sale to Bansidhar was a collusive arrangement executed with a view to defraud the plaintiff." This conclusion he arrives at from a view of all the circumstances, and this being a second appeal we are bound by this finding of fact, unless there is absolutely no evidence to support it. The learned counsel for the appellant did not emphasize his contention on this head by reference to the proofs on the record, but we have looked to see what they were, and after doing so we are not prepared to say that there were no circumstances in evidence which warranted the Judge in drawing the conclusion he did. It therefore must be taken as a fact found against the defendant that he appropriated and sold the ten boxes of indigo with notice and knowledge of the plaintiff's claim thereto.

Then arises the main point, the nature of which has already been stated, namely, whether the instrument of the 13th June, 1884, created any valid security in favour of the plaintiff. We think that it did, and in support of this view we cannot do better than refer to the remarks of Jessel, M. R., in *Collyer* v. *Isaacs* (1). "The creditor had a mortgage security on existing chattels and also the benefit of what was in form an assignment of non-existing chattels, which might be afterwards brought on the premises. That assignment in fact constitutes only a contract to give him the after-acquired chattels. A man cannot in equity any more than at law assign what has no existence. A man can contract to assign property which is to come into existence in future, and when it has come into existence, equity treating as done that which ought to be done, fastens upon that property and the contract to assign them becomes a complete arrangement." See also *Holroyd* v. *Marshall* (2).

(1) L. R., 19 Ch. D. 342. (2) L. R. 10 H. L. 191; 36 L. J. Ch. 193.

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Now we think, applying the principle thus laid down to the instrument of the 13th June, 1884, that it was a contract to assign something that was to come into existence, namely, the produce of the crop for 1292 fasli of mauza Jarah, which according to the authority of *Clements* v. *Matthews* (1) would constitute a sufficiently specific description for the purpose of creating a valid assignment in equity. The evidence establishes that the crop in question was grown and the produce of it realised before the defendant purchased it from Deoki Prasad, and putting aside the question whether it was in fact, prior thereto, handed over to the servant of the plaintiff, of which there undoubtedly is proof upon the record, so as to constitute a clear pledge, there was enough to create an equitable interest in the plaintiff in respect thereof. The equitable title so acquired by the plaintiff would no doubt in the absence of notice of that title not avail him against the defendant (see *Joseph* v. *Lyons* (2), *Hallas* v. *Robinson* (3); but here the defendant is fixed with notice, and it is found that, despite such notice, he appropriated and sold the produce. The defendant therefore was in our opinion a wrongdoer and the plaintiff had a right to damages, as against him, the measure of which would, under ordinary circumstances, where the fair price has been realized and such as subsist here, be the amount he realized by the sale. A somewhat analogous view was adopted by the Calcutta Court in *Misri Lal* v. *Mozhar Hossain* (4), and we may add that in this country, where contracts of the kind disclosed in this case, are very largely entered into with regard to the cultivation of indigo, which industry without them would be seriously hampered from a financial point of view, it is in the highest degree important that effect should be given to the obvious intentions of the parties making them, if it can be, without violence to the law or equity our Courts have to administer. We think the Judge below was right therefore in the view that he took, and we dismiss this appeal with costs (5).

Appeal dismissed.

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(1) L. R., 11 Q. B. D. 808.
(2) L. R., 15 Q. B. D. 280.
(3) L. R., 15 Q. B. D 288.
(4) I. L. R., 13 Calc. 262.
(5) See also *Rajah Sahib Prahlad Sen* v. *Baboo Budhu Sing* (2 B. L. R., P. C. at p. 117), *Ranee Bhobosoondree Dasseah* v. *Issur Chunder Dutt* (11 B. L. R. 36), and *Kedari* v. *Atmarambhat*, 3 Bom. H. C. Rep. (A. C.) 11.