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that decision, however, do not appear in the report of the case. Possibly it may have been based on the terms of the bond.

"I have the honour then to ask whether I am to follow that ruling, and, if I am, what procedure am I to adopt on a person's applying under s. 344 to secure his subsequent attendance till discharged or otherwise."

EDGE, C.J., and TYRRELL, J.—We are of opinion that the case of *Koylask Chandra Shaha v. Christophoridi* (1) was rightly decided and applied, and that the surety is discharged. The record will be returned.

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July 17.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

HAKIM-UN-NISSA (PLAINTIFF) v. DEONARAIN AND OTHERS (DEFENDANTS).^{*}

Act IV of 1882 (Transfer of Property Act), s. 135—Actionable claim—Transfer of claim for an amount less than its value—Suit by transferee to enforce claim—Defendant not entitled to plead that terms of transfer were unconscionable.

A mortgagee by conditional sale having obtained an order for foreclosure under Regulation XVII of 1806, his heirs, who were out of possession, executed a deed of assignment to a third person, transferring to him the rights acquired by the mortgagee under that order. At the time of the execution of the deed no steps had been taken by the mortgagee or his heirs to bring a suit for declaration of their title and for possession of the property. A suit for that purpose was brought by the assignee, the defendants being the conditional vendors and also the assignors under the deed above-mentioned. The latter made no defence, but admitted the justice of the claim, and a decree was passed in favour of the plaintiff against them as well as against the other defendants.

Held that the answering defendants, the conditional vendors, could not take advantage of the terms of the assignment for the purpose of defeating the claim, on the ground that the assignment was an unconscionable bargain, so unfair that the Court should not enforce it. If a person who has an actionable claim against another chooses to sell it cheap, that is no reason why that other is to stand cleared and discharged of his liability to the assignor.

Held also that the answering defendants were entitled to the benefit contained in the first paragraph of s. 135 of the Transfer of Property Act (IV of 1882), and would be entitled to take the bargain off the plaintiff's hands by paying to him the

* Second Appeal No. 461 of 1887, from a decree of G. J. Nicholls, Esq., District Judge of Ghazipur, dated the 22nd December 1886, reversing a decree of Pandit Ratan Lal, Subordinate Judge of Ghazipur, dated the 29th September 1885.

price and incidental expenses of the sale with interest on that price from the day that the plaintiff paid it to the date of its repayment to him. *Jani Begam v. Jahangir Khan* (1) followed. *Grish Chandra v. Kashisauri Devi* (2) and *Khoshdeb Biswas v. Satar Mondol* (3) dissented from.

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On the 18th October 1862, Manbasi Rai, Tehlu Rai and Ajajib Rai executed a deed of conditional sale of immoveable property to Behari Bhagat, for Rs. 400. In June 1873, Ram Ghulam and Bhusi, representatives of Behari Bhagat, instituted foreclosure proceedings under Regulation XVII of 1806, and an order for foreclosure was passed on the 16th June 1874. On the 30th July 1884, Ram Ghulam and Bhusi, being out of possession, and not having commenced any suit for declaration of their title and for possession by virtue of the order for foreclosure, executed a deed of assignment in favour of Musammat Hakim-un-nissa Bibi, by which they transferred to her all their rights as conditional vendees. The deed recited the inability of the assignors to find funds to prosecute a suit, and contained the following passage:—

“ And if, after proper endeavour, the aforesaid rights above specified in this deed do not anyhow come into the purchaser's possession, or the principal with interest is not realized, the purchaser will be entitled to the refund of Rs. 200, *i.e.*, half the consideration mentioned in this bond, also of whatever cost the purchaser may have actually incurred in her attempt to obtain possession of the said rights and of whatever sum she may have paid to any party as costs, &c., or any other sum that the purchaser may have to pay in connection with this transaction will be recoverable from the person and property, moveable and immoveable, of the executant.”

The present suit was brought by Musammat Hakim-un-nissa for proprietary possession of the property comprised in the conditional sale-deed of the 18th October 1862 and affected by the foreclosure order of the 16th June 1874. She impleaded as defendants to the suit the heirs of the original conditional vendors, and also her assignors under the deed of the 30th July 1884, Ram Ghulam and Bhusi:

(1) I. L. R., 9 All., 476.

(2) I. L. R., 13 Calc., 145.

(3) I. L. R., 15 Calc., 436.

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These latter admitted the claim and did not defend the suit. The other defendants resisted the claim on the ground, *inter alia*, that the deed of the 30th July 1884, was a champertous transaction which the Courts ought not to enforce.

The Court of first instance (Subordinate Judge of Gházipur) decreed the claim. On appeal, the lower appellate Court (District Judge of Gházipur) reversed the first Court's judgment and dismissed the suit, on the ground that the terms of the deed of the 30th July 1884 were extortionate and inequitable, and contrary to public policy. This view was principally based on the smallness of the consideration for the deed. The District Judge observed—
“If the litigation succeeded, the plaintiff got Rs. 2,498 odd, or the zamindari, while Ram Ghulam and Bhusi got nothing save perhaps the Rs. 200 shown to the Registrar: if it did not succeed, they were to pay her Rs. 200 and every cost, legitimate and illegitimate; the woman chose to demand. She could say what she liked as to costs and payments out of Court. I find that this suit is one contrary to public policy and therefore not maintainable.”

The plaintiff appealed to the High Court.

Kunwar *Shivanath Sinha*, Pandit *Ajudhia Nath* and Pandit *Sundar Lal*, for the appellants.

Mr. *Amir-ud-din* and Munshi *Kashi Prasad*, for the respondents.

STRAIGHT J.—The suit to which this appeal relates was one of some peculiarity. In order to make the question which has been raised in appeal and the view I take of it intelligible, it is necessary that I should state briefly the main facts out of which the litigation arises. It appears that in the year 1862 three persons by name Manbasi Rai, Telhu Rai and Ajaib Rai were owners of a thirteen *gandas* share of *muza* Mahwari Kalan situate in the Gházipur district. On the 18th October 1862, those three persons, for a consideration of Rs. 400, made a conditional deed of sale, the term of which was to expire on the 31st October 1868, in favour of one Behari Bhagat, who is now dead and is represented by two persons named Ram

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Ghulam and Bhusi. In the year 1873 certain proceedings for foreclosure under the old Regulation then in force were taken by Behari Bhagat under his conditional sale-deed, and upon the 16th June 1874 an order of foreclosure was made. Nothing appears to have been done upon that order by Behari Bhagat or by Ram Ghulam and Bhusi, his heirs. On the 30th July 1884, by a deed of assignment executed by Ram Ghulam and Bhusi in favour of Musammat Hakim-un-nissa, the plaintiff-appellant before us, those two persons transferred to Musammat Hakim-un-nissa the rights that they had acquired under the foreclosure order of the 16th June 1874. That right, the vendors not being in possession of or having obtained possession of the share originally conditionally sold to Behari Bhagat, consisted of a right to go into Court, if resisted by the conditional vendor, to have it declared that under the foreclosure order they had a good title to the property as proprietors, and to have possession of the same by ejectment of the vendor in possession. I have no doubt that, upon the face of that assignment of the 30th July 1884, what was sold by Ram Ghulam and Bhusi to Musammat Hakim-un-nissa was an actionable claim of the kind and description I have mentioned. Upon the strength of that assignment the plaintiff has come into Court with her present suit. It is unnecessary for me, for the purpose of dealing with this case up to the point it has reached in the Court below, to say any more than this, that among the defences raised on the part of the defendants was a defence that the agreement, as between the plaintiff and her vendors, was open to objection on the ground of its being champertous, and that accordingly it ought not to be recognised as giving the plaintiff a title upon which she can come into Court and sue. The Subordinate Judge, who tried the case as a Court of first instance, decreed the plaintiff's claim for proprietary possession of the property, holding, so I understand, that the foreclosure order of the 16th June 1874 was a good and binding order, and that upon the strength of it the plaintiff as the assignee of the conditional vendees had a good title, upon which she could prefer the claim put forward by her in the present suit. The defendants appealed to the learned Judge,

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and his judgment is entirely occupied with the discussion of the single question, as to whether the plea of champerty put forward by the defendants was a good plea and defeated the claim of the plaintiff-respondent before him. He has come to the conclusion, for the reasons stated in his judgment, that the transfer by the vendees of their right under the foreclosure order to the plaintiff was a champertous transaction, that the consideration given was wholly inadequate for the interest passed, and that the condition requiring the vendor to make good to the vendees all the money expended by her in the course of the litigation and otherwise, in the event of her failing to succeed in the suit to be brought by her, was a most onerous condition, which no Court ought to enforce.

It seems to me that the judgment of the learned Judge and his finding of fact]has proceeded upon a misapprehension of the ruling of the Privy Council to which he refers. He has forgotten the circumstance that in this case there is no conflict as between the vendors to the plaintiff and the plaintiff in regard to the *bona fides* of the transaction or its fairness. The vendors were defendants to the suit in the Court below, but they made no defence. On the contrary, they admitted the justice of the plaintiff's claim; and, that being so, a decree was passed as against them, as well as against the other defendants. It must be taken as now finally determined that they have no right to assail their assignment to the plaintiff upon the ground that it was an unconscionable bargain, and so inequitable that the Court should not enforce it. That being so, it appears to me that the answering defendants-respondents before us and the appellants in the Court below cannot take advantage of the terms of this arrangement between the plaintiff and her vendors for the purpose of defeating the plaintiff's claim. Because, if a person who has an actionable claim against another chooses to sell it cheap, that is no reason that that other is to stand cleared and discharged altogether from the liability that he is under to the assignor. In the present case, assuming—it must be understood I am not deciding this question, because it was never entered into by the Court below—that the foreclosure order was a good one, and that the defendants are themselves or represent the original conditional vendor,

and that there are no legal obstacles in the shape of limitation or otherwise standing in the way, there is no reason that I can see why they should not be made to pay what, I will presently point out, the law requires them to pay, or surrender the property.

Now the learned Judge in his judgment apparently was not aware of the provisions which are contained in s. 135 of the Transfer of Property Act. No doubt in the two rulings of their Lordships of the Privy Council, one *Chedambara Chetty v. Renja Krishna Muthu Puchanja Naickar* (1) and the other *Ram Coomar Coondoo v. Chunder Canto Mookerjee* (2) their Lordships have justly remarked that there is no law of champerty or maintenance in force in India, at any rate in the *mufassil*. I have had myself occasion on more than one occasion to make the same observation. But in the case of *Jani Begam v. Jehangir Khan* (3) I took occasion very carefully to point out what appeared to me to be the departure, so far as India is concerned, that has been taken in that respect by the Transfer of Property Act. I regret that the view I expressed in that case was in difference with one that had found expression from the learned Judges of the Calcutta High Court in the case of *Grish Chandra v. Kashisauri Debi* (4), and I cannot help further regretting that I still find myself in conflict with another judgment of the same Court of the learned Chief Justice and Tottenham, J., in *Khoshdeb Biswas v. Satar Mandol* (5).

But I see no reason to alter the opinion I expressed in the ruling to which I have referred, and it seems to me that that ruling must be applied and ought to be applied to the present case. I do not think that the defendants are entitled to take advantage of the terms of the contract by which the rights under the foreclosure order of the 16th June 1874 were passed to the plaintiff. It is not found by the learned Judge nor is it suggested that there was no contract and no real sale: what is suggested is that there was a contract and a real sale, but for a most inadequate price. As I have said, I do not think that the defendants are entitled to take advantage of that

(1) L. R., 1 I. A., 241.

(3) I. L. R., 9 All., 476.

(2) L. R., 4 I. A., 28.

(4) I. L. R., 18 Calc., 145.

(5) I. L. R., 15 Calc., 436.

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circumstance, but I do think they are entitled to the benefit of the provision that is contained in the first paragraph of section 135 of the Transfer of Property Act. Hereafter when the appeal comes to be tried upon the merits and in reference to the evidence upon the record, and it has been found what was the true and real consideration for the assignment to the plaintiff of the rights under the foreclosure of the conditional sale-deed, the defendants will be entitled, subject to their not succeeding upon other pleas, to take the bargain off the hands of the plaintiff by paying to the plaintiff the price and incidental expenses of the sale with the interest on that price from the day that the plaintiff paid it to the date when it is repaid to her. That being the view I take of this case, it is clear that the judgment of the learned Judge cannot stand, and that it must be and it is set aside. This appeal being allowed, the case will be remanded to the lower appellate Court under section 562 of the Civil Procedure Code for restoration to the file of pending appeals and for disposal upon the merits. Costs will be costs in the cause.

BRODHURST, J.—I concur in allowing the appeal and remanding the case under section 562 of the Civil Procedure Code.

Cause remanded.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

RAMPHUL TIWARI AND ANOTHER (DEPENDANTS) v. BADRI NATH
 (PLAINTIFF). *

Act IX of 1859, s. 20.—Forfeiture of rebel's property—Limitation.

A Hindu widow in possession of a six annas zamindari share of her husband's, sold the share in 1855 to persons who, in 1858, were convicted of rebellion, and their estates, including the share, were confiscated by Government. The share was granted to other persons as a reward for loyalty, and remained in their possession until 1886, when a suit for possession and mesne profits was brought, just before the expiry of twelve years from the widow's death, by a reversioner to her husband's estate, on the ground that the sale of 1855 could not affect more than the widow's life interest, and that nothing more had been confiscated by the Government in 1858

* Second Appeal No. 338 of 1887, from a decree of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 8th December 1886, confirming a decree of Maulvi Shah Ahmad-ullah, Subordinate Judge of Gorakhpur, dated the 31st July 1886.

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 August 13.