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division of the estate to hold good for ever, and that not a word is introduced which of its own force imports less than an absolute ownership, they find it impossible to doubt that the true intention of the parties was to give to all alike the same amount of interest in the shares conceded to them, *viz.*, that absolute ownership which each was claiming for himself in the whole or part of the property.

On those grounds their Lordships agree with the decision of the Courts below, though not for the same reasons, and the result is that the appeal will be dismissed.

Their Lordships will humbly advise Her Majesty in accordance with that opinion, and the appellant must pay the costs of the appeal.

Appeal dismissed with costs.

Solicitors for the appellant: Messrs. *Watkins & Latley.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

P. C.*
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AMANAT BIBI (PLAINTIFF) v. LACHMAN PERSAD AND OTHERS
(DEFENDANTS.)

December 16.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Specific Relief Act (I of 1877), s. 31—Rectification of instrument.

A mortgagor alleged that a sum in excess of his debt to the mortgagee had been inserted in the instrument; but, on the facts, there being no reason to suppose that there was any fraud or deceit on the part of the mortgagee, or that there was any mutual mistake of the parties as to the amount stated as that for which the security was given, a suit, under s. 31 of Act I of 1877 (the Specific Relief Act) to have the instrument rectified was held to have been rightly dismissed.

APPEAL from a decree (10th March, 1881) of the Judicial Commissioner of Oudh, affirming a decree (5th August, 1880) of the District Judge of Faizabad.

The appellant was the widow of the original plaintiff, Malik Hidayat Hussain, who died while these proceedings were pending, and who was talukdar of an estate, named Samanpur, in the Faizabad District. The respondents were bankers of Faizabad, to whom

* Present: LORD HOBHOUSE, SIR B. PEACOCK, and SIR R. COUCH.

the deceased talukdar had in his lifetime executed a mortgage. The question now raised was whether the mortgage deed should be rectified under s. 31 of Act I of 1877, the Specific Relief Act.

On the 16th July, 1874, the Land Mortgage Bank of India obtained a decree for Rs. 2,59,714, with interest at 10 per cent., from the 1st June, 1874, and further interest at 12 per cent. on such portions of the interest as might be six months in arrear against Malik Hidayat Hussain. This decree was, on the 18th May, 1876, assigned to the respondents, who themselves had obtained three decrees against the same defendant for amounts aggregating Rs. 29,826. Under these decrees execution was issued against Malik Hidayat Hussain, who, to prevent a sale of his property executed a mortgage, dated 15th October, 1878, which led to the question now raised.

The following was the material part of the mortgage deed :—

“Whereas the aforesaid taluka has, at present, been advertised for sale by an order of the Court of the Deputy Commissioner of Faizabad District, the date of the sale being fixed for the 28th of October, 1878, in execution of the decrees of Babu Lachman Persad, Bisheshar Pershad and Narotam Das, Raisan and Mahajans of Benares, Mohalla Nandan Sah, the decrees being dated the 16th of July, 1874, 14th of August, 1876, and 27th of November, 1876, aggregating Rs. 4,04,576-12 : and whereas I have lately borrowed Rs. 32,700 from the aforesaid Mahajans in order to repay the debt of Ram Kishen and Lalti Pershad, Mahajans—the total sum of both the aforesaid items amounts to Rs. 4,37,276-12—I, the declarant, while in good health and in a sound state of mind, with a view to save my estate from serious loss—that is, to save it from being sold off at the auction sale in execution of decree—have mortgaged my ilakas detailed hereinafter, with my proprietary right.....And the term of the mortgage is fixed to be for the period beginning from 1286 F. to 1299 F.”

The mortgagees were to have possession.

The plaint, which was filed on the 11th December, 1879, alleged the above facts, and that the real amount of those four decrees and of the debt to Ram Kishen should have been stated in the deed as

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 AMANAT amounting to Rs. 58,688 had been inserted by "mistake and fraud,"
 BIBI as had been discovered on the 25th January, 1879.
 v.
 LACHMAN To the plaint was appended an account, by which it appeared
 P. B. S. A. D. that there was due upon the aforesaid four decrees to the end of
 May, 1878, for principal and interest the sum of Rs. 3,79,888-2-7
 From which there was deducted as paid 34,008-0-0

Leaving a balance of	3,45,880-2-7
To which there being added the debt to		
Ram Kishen	32,700-0-0

The total was ~~Rs. 3,78,588-2-7~~

which the mortgagor alleged was all that the mortgage should have been for.

The respondents on the 20th February, 1880, filed their written statement, in which they maintained that there was neither fraud nor mistake in fixing the principal amount mentioned in the mortgage at Rs. 4,37,276-12-0: that this amount had been arrived at by calculating the interest on the debt to the Land Mortgage Bank at 12 per cent. instead of at 10 per cent., which increased interest was the consideration to the respondents for entering into the arrangement, and by adding an item of costs which the mortgagor had agreed to pay: that the mortgagor had wrongly taken credit in his account for a sum of Rs. 5,000, and that the sum of Rs. 34,000 deducted above ought to be reduced to Rs. 32,173-7-9, and that the mortgagor had brought the interest account down only to the end of May, in place of bringing it down to the 15th October, 1885, the date of the deed, which was the arrangement, and had made a mistake in calculating interest.

The first and main issue was whether the mortgagor was bound by the mortgage deed of 15th October, 1878, stating the mortgage debt to be Rs. 4,37,274-12.

The District Judge found that there was no doubt that the plaintiff, or his agents, had had full opportunity to examine the accounts, and that it had not been shown the defen-

dants had misrepresented anything, or concealed any material fact. He accordingly found against the mortgagor on the above issue, and dismissed the suit with costs. On appeal the Judicial Commissioner affirmed this judgment.

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On this appeal,—

Mr. C. W. Arathoon, for the appellant.

Mr. J. H. A. Branson, for the respondents.

For the appellant it was argued that a case had been made out for the rectification of the mortgage deed on the ground that the appellant had acted under a mistake of fact: the respondents being aware of this had concealed it, taking undue advantage of the appellant. The judgments in *Barret v. Hartley* (1); *Kelly v. Soluri* (2) were referred to.

Mr. J. H. A. Branson for the respondent was not called upon.

Their Lordships' judgment was delivered by

SIR B. PEACOCK.—The question in this case is whether there are sufficient grounds made out by the plaintiff for reforming or altering the deed of mortgage which was executed on the 15th October, 1878. The plaintiff in his plaint declares: "That on the 15th October, 1878, at Faizabad, the present plaintiff, having been deceived by the defendants, executed, according to the accounts furnished by the defendants, and without examining them, an instrument for Rs. 4,37,376-12 in lieu of the aforesaid decrees, and of the debt due to Ram Kishen Mahajun." Then he says that, looking to the actual accounts between the parties, "Rs. 58,688 ought to be deducted from the mortgage money entered in the aforesaid instrument," and so on; and then that the cause of action accrued on the 25th June, 1879, when he found out the mistake.

The Judge in giving judgment at the trial says: "The plaintiff admits that, previous to the execution of the mortgage deed, an account was produced before him, and that Uma Persad, his Dewan, stated that a certain sum was due. Mir Ghazafur Husain, a well-known talukdar and a man of ability, had also been requested by the plaintiff to examine the account, and the plaintiff has deposed that he relied on him. A draft of the deed was prepared only after the accounts had been produced; and the plain-

(1) L. R., 2 Eq., 794.

(2) 9 M. & W., 54.

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tiff says, moreover, that it was discussed for some fifteen days, and altered." In another part of his judgment he says: "The defendants have not produced clear proof that plaintiff entered into a special agreement about interest, nor that he authorised them to include other debts in the mortgage deed, or to appropriate payments on account of decrees to the liquidation of other claims, but it is only reasonable to assume that, when the defendants were entering into such a heavy transaction with the plaintiff, they would make a general settlement of their claims, and not leave small, or comparatively small, debts outstanding." It appears to their Lordships that, putting a correct construction upon the deed, and taking the evidence which was adduced, and the findings of the learned Judge, there is no reason to suppose that there was any fraud or deceit on the part of the defendants, or that there was any mutual mistake of the parties as to the amount which was stated as the sum for which the security was to be given.

Under these circumstances their Lordships are of opinion that the decision of the Judge, who tried the case in the first instance, and the decree of the Judicial Commissioner who affirmed that decision, are correct, and they will, therefore, humbly advise Her Majesty that the judgment below be affirmed, and that the appeal be dismissed, the appellants paying the costs of the appeal.

Appeal dismissed.

Solicitors for appellants: Messrs. *Barrow & Rogers*.

Solicitors for the respondents: Messrs. *Watkins & Lutley*.

C. B.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Cunningham.

1887
 February 10. HOSSAIN BUX (PETITIONER) v. MUTOOKDIHAREE LALI AND OTHERS
 (OPPOSITE PARTIES).*

Bengal Tenancy Act (VIII of 1885), ss. 93, 143—Manager, Application for—Appeal—Civil Procedure Code (Act XIV of 1882), s. 2.

An application under s. 93 of the Bengal Tenancy Act, 1885, is not a suit between a landlord and tenant within the meaning of s. 143, and no appeal lies from an order rejecting such an application.

* Appeal from Order No. 396 of 1886, against the order of T. Smith, Esq., District Judge of Gya, dated the 11th of August, 1886.