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in this Court. The lower appellate court has tried to distinguish the present case from those quoted, on the ground that the *wajib-ul-arz* stated that the right of pre-emption exists among the owners of each class of property as such, but if the *wajib ul-arz* had merely stated that the custom existed, the learned Additional Judge would have felt bound by the rulings cited and would have applied the Muhammadan Law in the case. We do not think that the language of the present *wajib-ul-arz* is such as to enable us to distinguish it from those in the cases quoted. The meaning of the document is simply this that among the co-sharers of the *khalsa* the custom of pre-emption prevailed. None of the incidents are set forth, and it seems to us clearly a case in which the right is co-extensive with that given by the Muhammadan Law. We, therefore, before deciding the case, must have a decision by the court below on the fourth issue framed by it. The parties will be allowed to give fresh evidence on that point relevant to the issue. Ten days will be allowed on receipt of the finding for objection.

Issue remitted.

PRIVY COUNCIL.

PADARATH HALWAI AND OTHERS (DEFENDANTS) *v.* RAM NAIN UPADHIA AND OTHERS (PLAINTIFFS) AND ANOTHER APPEAL, TWO APPEALS CONSOLIDATED.

*P.C.
1915.
May, 13, 14.
June, 3.

[On appeal from the High Court of Judicature at Allahabad.]

Act No. IV of 1882 (*Transfer of Property Act*), *section* 59—*Mortgage deed executed by pardanashin ladies, attestation of Requirements as to identity of executants, and as to the witnesses seeing signatures made—Waiver of right of priority by first mortgagee in favour of second mortgagee—Right to recover unsatisfied portion of claim in subsequent suit from purchaser of mortgagors' interest in other property comprised in mortgage.*

In a suit on a mortgage executed by two pardanashin ladies the defendant objected that the deed had not been duly attested in accordance with the provisions of section 59 of the Transfer of Property Act (IV of 1882), as interpreted in the decision of the Privy Council in *Shamu Patter* v. *Abdul Kadir Ravuthan* (1), and was therefore not operative as a mortgage. On this point the High Court differed, Sir H. G. RICHARDS, C. J., finding that the attestation was not complete, because the attesting witnesses had not actually seen

Present :—Lord ATKINSON, Sir JOHN EDGE and MR. AMEER ALI.

(1) (1912) I. L. R., 35 Mad., 607 ; L.R., 39 I.A., 218.

the signatures of the executants put on the deed, and Sir P. C. BANERJI being of opinion that that requirement as well as all others necessary had been observed. *Held* (upholding the finding of BANERJI, J.) that the deed had been duly attested within the meaning of section 59 of the Act. Two, at least, of the witnesses were well acquainted with the executants, and though they did not see their faces, they recognised their voices and saw them sign the mortgage deed. *Held* also (affirming the decision of the High Court) that the fact that the plaintiffs (respondents) had not in a former suit insisted on their right as prior mortgagees, but had waived it in favour of the second mortgagees, and so left their claim only partly satisfied, did not, under the circumstances of the case, disentitle them from recovering the unsatisfied portion of the debt in the present suit from the appellants (defendants) who were purchasers of the mortgagor's interest in another portion of the property comprised in the mortgage.

Two consolidated appeals, 30 and 31 of 1912, from two decrees (29th March, 1909) of the High Court at Allahabad, which varied a judgement and decree (25th May, 1905) of the Court of the Subordinate Judge of Jaunpur.

The suit out of which these appeals arose was brought by the first three respondents as mortgagees under a deed, dated the 25th of June, 1892, for a decree for the sale of part of the properties comprised in the mortgage deed.

The questions for determination were (1) whether the deed was not invalid as a mortgage for want of attestation ; and (2) if it was valid as a mortgage, whether the plaintiffs were entitled under the circumstances of the case to enforce their claim thereunder either wholly or in part against the appellants (defendants) and the lands in their possession. The Subordinate Judge made a decree in their favour for part of their claim which the High Court (Sir JOHN STANLEY, C.J., and BANERJI, J.) allowed in full.

For the purpose of this report the facts are sufficiently stated in the judgement of the Judicial Committee.

As to the first question, in the Court of the Subordinate Judge, in order to prove the mortgage the plaintiffs called Shib Saran Lal, one of the persons whose name appeared thereon as an attesting witness. He stated that he signed the document at the request of the executants (who were pardanashin ladies), and on cross-examination he said he had not actually seen the ladies writing as" they affixed their signatures to the document sued on behind the pardah." The attestation was not then disputed;

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it was in fact a sufficient attestation according to the view then, and on the appeal to the High Court, obtaining in Allahabad.

When, however, the appeal by the defendants to His Majesty in Council came on for hearing on 12th of February, 1913, objection was taken that the attestation of the mortgage deed was not shown to be sufficient to satisfy the provisions of section 59 of the Transfer of Property Act (IV of 1882), nor in accordance with the ruling of the Privy Council in 1912, in the case of *Shamu Patter* v. *Abdul Kadir Ravuthan* (1), and that the document was consequently invalid and inoperative as a mortgage. Their Lordships accordingly remanded the case to the High Court for the purpose of obtaining evidence of the attestation, and the finding of the High Court upon it.

The evidence was recorded in due course by the Court of the Subordinate Judge and its nature appears from the findings of the High Court (Sir H. G. RICHARDS, C. J. and Sir PRAMADA CHARAN BANERJI, J.) who differed in opinion on its effect, the CHIEF JUSTICE thinking it did not prove that the witnesses actually saw the ladies sign the deed, and BANERJI, J., being of a contrary opinion.

Sir H. G. RICHARDS, C. J., said :—

"The first witness Bisheshar Lal after stating that he knew the two ladies who executed the document deposed that there was a bamboo *chick* hanging on a door, and from outside this *chick* he saw the ladies affix their signatures. He said that he recognised them by their voices, and the persons who had called and brought them said that the Musammats had come. The witness then goes on to state that he lives close to where the Musammats lived in the same village : that he was a tenant of the ladies and had dealings with them. He said that they used to converse with him from behind the 'pardah' , . . The next witness is Raghunandan Singh. The father of this witness was in the service of the Musammats and he says he knew them from the time he was a boy. He lives in the village, and his evidence is very much on the same lines as that of Bisheshar. He says there was a bamboo screen hanging outside the door. That the Musammats were sitting behind the door leaves, one of which was closed, and the other open ; that while they were affixing their signatures their hands extended outside the door-leaf and he then saw the execution . . . . The defendants produced witnesses for the purpose of showing that the particular place where the document was executed by the ladies was not the same place as that deposed to by the plaintiffs' witnesses. They further alleged that there never was a bamboo chick at the place in question but that

(1) (1912) I.L.R., 35 Mad., 607 : L.R., 39 I.A., 218.

there was a 'tat pardah,' that is to say a screen through which it would be impossible to see . . . . . In my opinion the evidence establishes that the witnesses Bisheshar Lal, Bachu Lal, Shib Saran Lal and Raghunandan Singh signed their names to the document immediately after the document had been executed by the two ladies. I believe that they knew that the ladies were executing the document and had come for the purpose of signing the document as witnesses. I find, however, the greatest difficulty in believing that the witnesses actually saw the ladies sign their names. In the first place their evidence on this point does not agree. It must also be remembered that prior to the decision of their Lordships in the case of *Shamu Patter* v. *Abdul Kadir Ravuthan* (1), the execution of a mortgage by 'pardanashin' ladies and their admission of having signed from behind the pardah was always taken as sufficient and it was never thought necessary that ladies should extend their hand or make themselves visible. A pardah is for the purpose of preventing people seeing through, not for the purpose of enabling people to see through . . . I therefore think it very improbable that in the year 1892 those ladies extended their hands from behind the pardah so that the witnesses might see their execution of the document or that they were seen through the pardah. The evidence given by Shib Saran was just what one might have expected considering the view then taken as to the execution of deeds by pardahnashin ladies. I fear that the evidence taken after the witnesses knew what they were expected to say cannot be much relied on. There is just as much reason for believing or disbelieving the witnesses on both sides. If, therefore, it was absolutely necessary that two of the witnesses to the mortgage should have actually seen the ladies write their names I cannot hold that this has been proved. I believe that the ladies signed the deed behind the pardah, and that none of the witnesses saw them sign."

Sir P. C. BANERJI, J. said:—

The only question which we have to determine is whether the evidence now adduced proves that the witnesses who purported to sign the document as attesting witnesses saw the ladies sign the document. The first witness, Bisheshar, is, as the learned Chief Justice has pointed out, a person who knew the ladies, and he positively swears that from outside a bamboo *chick*, which was hanging at the door behind which the ladies were sitting at the time when they executed the document, he saw them affix their signatures. The next witness, Raghunandan Singh, gives evidence to the same effect. The ladies used to appear before him. He was the son of a servant of theirs and used to go to their house since the age of eight. He also says that he saw the ladies affix their signatures from behind a door-leaf, their hands being extended beyond the door-leaf. If the statements of these witnesses are true, it has been fully established that the document was duly attested. I see no reason to disbelieve their statements. They are persons who knew the ladies, and they are admittedly persons who signed the document as witnesses to it. It is not improbable that they could see the hands of the ladies from outside the *chick* behind which they were sitting. They do not profess to have seen their faces, but all that they saw was that the ladies put their signatures on

(1) (1912) I.L.R., 35 Mad., 607 ; L.R., 39 I. A., 218.

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the document. The ladies sat behind a door-leaf, and it is very probable that in singing their names they put the document on the ground, as the witnesses state, just beyond the door-leaf and affixed their signatures to it. The witness, Raghunandan, states that he was only at the distance of one cubit, that is, 18 inches from the *chick*, and he also says that Bisheshar was seated at the same distance. It is, therefore, very probable that they saw the two ladies sign the document. It is true that the witness, Sheo Saran Singh, when he gave his evidence before the appeal to His Majesty in Council, stated that he did not see the ladies actually sign the documen, but it appears from the evidence of Bisheshar that this witness was seated at some distance from the other witnesses, namely, at a distance of 4 or 5 cubits. It is very probable, therefore, that although the other witnesses were able to see the ladies affix their signatures, this witness did not see them do so, and only witnessed the document upon being satisfied that they had executed it. It is not unusual to have a *chick*, that is, a bamboo screen, in front of a door leading to a zenana. No doubt, the object of putting a screen is to prevent the ladies inside the *zenana* being seen from outside, but the occasion of the execution of a document and the registration of it is an occasion on which the ladies come forward to a prominent part of the zenana from which they could be questioned by the officer registering the document, and it is not at all unlikely that on that occasion a *chick* was put in front of the door behind which the ladies sat. All persons who were outside the *chick* could not have seen their hands, but those who were very near, such as the two witnesses, Bisheshar and Raghunandan, who sat at a distance of only 18 inches from the door, would be able to see the ladies affix their signatures. That the ladies did sign the document at the spot where they were seated before they admitted execution in the presence of the Sub-Registrar cannot be and is not disputed. In fact, the witnesses for the defendants have admitted that the ladies signed the document, but they say that they did so at another spot where they could not be seen. The story of the 'tat pardah' told by them is unreliable and has apparently been invented because it is said that at the registration of other documents the ladies are said to have sat behind such a screen. In my opinion it is true that when the ladies affixed their signatures to the document some of the witnesses actually saw them do so. The witnesses have made positive statements on oath on the point and I see no reason to disbelieve those statements."

The appeal came on again for hearing by their Lordships of the Judicial Committee on the 13th of May, 1915.

Sir H. Erle Richards, K. C., and *Kenworthy Brown* for the appellants contended that the mortgage sued on had not been proved, and was not enforceable as a mortgage for want of due attestation under section 59 of the Transfer of Property Act (IV of 1882); and reference was made to the case of *Shamu Patter* v. *Abdul Kadir Ravuthan* (1). The effect of the decision in that

(1) (1912) I.L.R., 35 Mad., 607 ; L.R., 39 I.A., 218.

case was that an attesting witness must actually see the executant sign the document. The observations as to the attestation of documents executed by pardanashin ladies made in *Ganga Dei* v. *Shiam Sundar* (1) to the effect that in such cases a larger construction ought to be put upon the word "attested" in section 59 of Act IV of 1882 must therefore be taken as disapproved of by the judgement in *Shamu Patter* v. *Abdul Kadir Ravuthan* (2). Reference was also made to *Anne Casement* v. *John Williamson Fulton* (3) and *Freshfield* v. *Reed* (4). It was necessary now for an attesting witness, in the case of the executant being a *pardahnashin* lady, to satisfy himself, by seeing her sign it, that the document was signed by the person purporting to execute it. The evidence of the attestation of the mortgage in suit taken on remand did not, it was submitted, prove that the attesting witnesses saw the signatures put on the deed. The witness of the attestation in the first Court at the original trial said on cross-examination that he did not see the signatures actually made by the ladies. As the Chief Justice observes it was improbable that in 1892, the witnesses should have seen the hands of the executants actually making the signatures, as it was then not necessary. The Judges differed as to the effect of the evidence to show that the making of the signatures was actually seen by the attesting witnesses; the evidence of that having been done was, it was contended, unreliable.

De Gruyther, K. C., and *B. Dube* for the respondents contended that the word "attest" only means that the witness was present at the execution of the document. It was not necessary for the witnesses to answer for the identity of the executants. But even if it were necessary two of the witnesses were well acquainted with the ladies and were able to identify them by their voices. Here the evidence showed that two witnesses actually saw the signatures made. Reference was made to *Parke* v. *Mears* (5).

Sir H. Erle Richards, K. C., replied.

Their Lordships intimated that they were satisfied that the mortgage deed had been duly attested, and would reserve their reasons.

(1) (1903) I.L.R., 26 All., 69 (71). (3) (1845) 3 Moo. I A., 395.
(2) (1912) I.L.R.,35 Mad., 607 (616): (4) (1842) 9 M. & W., 404.
L.R., 39 I.A., 218 (227).
(5) (1809) 2 B. & P., 217.

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Sir H. Erle Richards, K. C., contended on the second point that the respondents (plaintiffs) had lost their right to the amount secured by the mortgage of 1887 by reason of their not having enforced it in the suit of 1896; and that being so, a proportionate reduction should be made in the amount, if any, now decreed to them as against the encumbered property in the hands of the appellants as subsequent purchasers and mortgagees of the mortgagor's interests. The appellants in fact had been prejudiced by the plaintiffs' laches. If a first mortgagee failed to insist upon his right of priority and thereby affected injuriously the position of a subsequent mortgagee, his claim against the property should be abated to the extent of the loss so caused. Reference was made to *Jugal Kishore Sahu* v. *Kedar Nath* (1); *Ponnusami Mudaliar* v. *Sri Nivasa Naikan* (2); and *Imam Ali* v. *Baij Nath Ram Sahu* (3). The plaintiffs must be taken to have abandoned their rights against Baragaon. The decree made in the suit of 1896 could only have been made by their consent. Reference was made to section 97 of Act IV of 1882.

The respondents were not called upon on this point.

The judgement of their Lordships was delivered by Sir JOHN EDGE:—

These are consolidated appeals from decrees, dated respectively the 29th of March, 1909, of the High Court of Judicature at Allahabad. The two decrees appealed from were made in appeals in the same suit. The suit was brought in the Court of the Subordinate Judge of Jaunpur on the 29th of November, 1904, to enforce, by sale of the village Baragaon and other villages, the payment of Rs. 66,809 odd, due under a mortgage, dated the 25th of June, 1892. The Subordinate Judge decreed the claim in part, and in part dismissed it. Each side appealed to the High Court at Allahabad. The High Court dismissed the defendants' appeal, and in the plaintiffs' appeal gave them a decree for their claim.

When these consolidated appeals first came on for hearing before this Board it was contended on behalf of the appellants that the mortgage upon which this suit was brought had not been attested by at least two witnesses, and as the amount secured

(1) (1912) I.L.R., 34 All., 606. (2) (1908) I.L.R., 31 Mad., 333.

(3) (1906) I.L.R., 33 Calc., 613.

by it exceeded one hundred rupees the alleged mortgage was ineffective and could not be given in evidence. That point had not been raised in either of the Courts below. Under the circumstances this Board remanded the case to the High Court in order to enable the parties to produce evidence on the question of attestation. Evidence on that subject has been taken and has been returned to this Board. On behalf of the appellants it has now been contended that the evidence which was given on the remand in proof of the attestation was unreliable, and, even if accepted as true, did not prove that the two attesting witnesses who gave evidence on the remand had seen the mortgagors sign their names to the mortgage.

The mortgagors were two *pardahnashin* ladies who did not appear before the attesting witnesses, and consequently their faces were not seen by the witnesses. These two attesting witnesses were, however, well acquainted with the voices of the ladies, and their Lordships are satisfied that these two attesting witnesses did identify the mortgagors at the time when the deed was executed. The mortgagors were, on the occasion of the execution of the mortgage deed, brought from the *zenana* apartments of the house in which they were to an ante-room to execute the deed. In the ante-room the ladies seated themselves on the floor, and between them and these two attesting witnesses there was a *chick*, which was not lined with cloth, hanging in the doorway. These two attesting witnesses recognised the ladies by their voices, and they say that they saw each lady execute the deed with her own hand, although owing to the *chick* they were unable to see the face of either of the ladies. On the other side an attempt was made to prove that a *tat*, through which nothing could be seen, was hanging in the doorway. Their Lordships accept the evidence of these two attesting witnesses as true, and hold it proved that the mortgage deed of the 25th of June, 1892, was duly attested by at least two witnesses within the meaning of section 59 of the Transfer of Property Act, 1882. It is not disputed that the mortgage deed was in fact the deed of the two *pardahnashin* ladies, Musammat Niamat Bibi and Musammat Kamar-un-nisa Bibi, the mortgagors.

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The only other question to be considered in these appeals is the contention on behalf of the appellants that the plaintiffs in the suit have by reason of certain events, which will now be referred to, lost their right to enforce against Baragaon payment of a considerable part of the amount which they have claimed.

On the 8th of August, 1887, Musammat Niamat Bibi and Musammat Kamar-un-nisa, who will be hereafter referred to as the mortgagors, mortgaged the villages Arghupur and Baragaon, to Sarju Parshad and Ramanand to secure Rs. 12,000 and interest thereon. On the 19th of February, 1892, the mortgagors mortgaged Arghupur to Lukshmi Prasad and others to secure Rs. 30,000 and interest thereon. The mortgagees of the 19th of February, 1892, and their representatives in title will hereafter be referred to as the second mortgagees. On the 25th of June, 1892, the mortgagors by their deed of that date mortgaged Arghupur and Baragaon, together with three other villages, to Sarju Parshad and Ramanand to secure Rs. 32,000 and interest thereon. This sum of Rs. 32,000 included a sum of Rs. 18,000 principal and interest then due under the mortgage of the 8th of August, 1887. On the 20th of May, 1893, the mortgagors further mortgaged Arghupur to the second mortgagees to secure Rs. 21,324 and interest thereon. Sarju Parshad is dead; he is represented in this suit by his son, Ram Narain, who is one of the three plaintiffs. The other plaintiffs are Ramanand and his son Esh Narain.

On the 14th of December, 1896, the second mortgagees brought a suit in the Court of the Subordinate Judge of Jaunpur upon their mortgages of the 19th of February, 1892, and the 20th of May, 1893, to obtain a decree for the principal moneys and interest due under the said mortgages, and they prayed that in default of payment on a date to be fixed by the Court, Arghupur should be sold by auction and the proceeds of the sale should be applied towards the satisfaction of their decree. To that suit the second mortgagees made Musammat Kamar-un-nisa Bibi as one of the mortgagors and as the heiress of Musammat Niamat Bibi, then dead, the other mortgagor, Sarju Parshad, Ramanand and one Indar Sen Singh, defendants. Indar Sen Singh was a subsequent mortgagee; he is a defendant to this suit, but is not an appellant. In their plaint the second mortgagees stated that Sarju Parshad,

Ramanand and Indar Sen Singh were mortgagees of Arghupur, and that they, the then plaintiffs, "were ready to pay the mortgage money due to any of them who may be prior mortgagees and which they (the plaintiffs) may be legally bound to pay."

In their written statement in the suit of 1896, Sarju Parshad and Ramanand distinctly claimed their right as prior mortgagees and said, "If the plaintiffs be willing to get the hypothecated property sold, after paying in full the prior amount due to these defendants, they have no objection whatever to the plaintiffs' claim."

The then Subordinate Judge of Jaunpur, being obviously in confusion of mind as to the rights of the parties to the suit of 1896, by his judgement of the 19th of January, 1897, decided amongst other things that Arghupur should be sold by auction in the event of the defendants to the suit failing to pay, on or before the 19th of May, 1897, to the plaintiffs in that suit (the second mortgagees) Rs. 49,275-9-0, the principal and interest due under the mortgage of the 19th of February, 1892, and future interest, and that the proceeds of the sale should be applied first in payment of the amount due to the second mortgagees under their mortgage of the 19th of February, 1892, and that the balance, if any, should be "applied in payment of the sum which may be due to Sarju Parshad and Ramanand on that date with interest. Any surplus left to be applied in payment of the sum due to the plaintiffs under the second document, datedt he 20th of May, 1893." The Subordinate Judge apparently overlooked the rights of Sarju Parshad and Ramanand under their prior mortgage of the 8th of August, 1887. In accordance with the judgement a decree was made by the Subordinate Judge. Default having been made in payment on the date fixed a decree absolute for sale of Arghupur was made by the Subordinate Judge of Jaunpur on the 4th of September, 1897. Under the decree of the 4th of September, 1897, Arghupur was sold. The proceeds of the sale were applied first in payment to the second mortgagees of the sum then due to them in respect of their mortgage of the 19th of February, 1892, and the balance of the proceeds of the sale was paid to the first mortgagees; that balance did not satisfy the amount then due to the first mortgagees under their mortgage of the 8th of August 1887. If

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the proceeds of the sale of Arghupur had been first applied to the payment of the amount then due under the mortgage of the 8th of August, 1887, that mortgage would have been satisfied, and the amount due under the mortgage of the 25th of June, 1892, would have been to that extent reduced. As the proceeds of the sale of Arghupur did not satisfy the amount due to the second mortgagees under their mortgage of the 20th of May, 1893, they obtained a decree under section 90 of the Transfer of Property Act, 1882, and in execution of this decree the village of Baragaon was sold on the 20th of April, 1904, and was purchased by the appellants.

On behalf of the appellants it has been contended before this Board and in the Courts below that Baragaon was relieved of all liability in respect of the debt due under the mortgage of the 8th of August, 1887, by reason of the failure of Sarju Parshad and Ramanand to insist on their priority under that mortgage, it being alleged in support of the contention that Sarju Parshad and Ramanand had agreed to waive their priority as mortgagees of Arghupur, or had waived it, of which, if it were material, there is no proof, and that they were guilty of laches in not insisting on that priority. Their Lordships have found it difficult to follow the argument in support of the contention, as the appellants had no interest in Baragaon until they purchased Baragaon on the 20th of April, 1904, and what they then purchased was the interest of the mortgagors in that village.

It is true that had Sarju Parshad and Ramanand appealed against the decree of the Subordinate Judge, they could have had their interests as first mortgagees under the mortgage of 8th of August, 1887, protected, and would, on the sale of Arghupur, have obtained payment of the amount then due under that mortgage. Sarju Parshad and Ramanand did not, by an appeal, insist on their right as prior mortgagees, but the fact that they did not insist on having the amount due under the mortgage of the 8th of August, 1887, satisfied in priority to the claim of the second mortgagees does not disentitle the plaintiffs to recover the full amount of their claim in this suit, and does not entitle the appellants to relief. No other fact which would entitle the appellants to relief has been shown. The appeals fail.

Their Lordships will humbly advise His Majesty that these consolidated appeals should be dismissed.

The appellants must pay the costs.

Appeal dismissed.

Solicitor for the appellants: *Douglas Grant.*

Solicitors for the plaintiffs respondents : *Barrow, Rogers and Nevill.*

J. V. W.

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RAJWANT PRASAD PANDE AND OTHERS (PLAINTIFFS) *v.* RAM RATAN GIR AND OTHERS (DEFENDANTS).

* *P.C.* 1915. *June*, 7, 8.

[On appeal from the High Court of Judicature at Allahabad.]

Res judicata—*Suit on mortgage—Ex parte decree against mortgagors, members of joint Hindu family—Decree set aside against one member for insufficient service while remaining against other members—Decree on retrial made against all the members—Decision that decree was a valid decree in suit on mortgage—Fresh suit to set aside decree on same grounds as in suit on mortgage and between same parties—Civil Procedure Code* (1882), *sections* 13 *and* 244—*Suit to set aside decree made with jurisdiction and allowed to become final—Valid decision unless fraudulent*

A mortgage was executed in 1884, by the manager of a Hindu joint family of which he and his two sons were the adult members, in favour of the predecessor in title of the respondents, and in a suit on a mortgage an *ex parte* decree was, on the 30th of April, 1897, made against the mortgagor and his two sons, one of whom was the appellant, and an order absolute for sale was made in September, 1900. In 1901, the *ex parte* decree was set aside as against the other son, on the ground of insufficient service on him ; and on the retrial of the suit the Subordinate Judge, on the 22nd of September, 1902, made a decree against all three members of the family, notwithstanding that the decree of the 30th of April, 1897, was still in existence against the appellant. In 1906, an order was applied for to make the decree of 1902 absolute against all the judgement-debtors. The appellant made objections which were overruled, and an order absolute for sale was made by the Subordinate Judge on the 3rd of November, 1906, which was affirmed by the High Court on the 26th of February, 1908.

Held that a fresh suit brought by the appellant against the respondents to have the decree of the 22nd of September, 1902, set aside, on the ground that he was not a party to it, and that the Court had therefore no jurisdiction to make it, was, on the principle of res judicata, not maintainable, as being between the same parties, and raising precisely the same grounds and objections as had been raised and disallowed in the former suit and proceedings on the mortgage.

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* *Present* :—Lord SHAW, Sir GEORGE FARWELL, Sir JOHN EDGE, and Mr. AMEER ALI.