

maintenance payable to her. The Revenue Court being doubtful whether it has jurisdiction to entertain the application has referred this case to this Court under section 195 of the Tenancy Act. The award, which is incorporated in the decree of this Court, provides that if the maintenance due to Anupa Kunwar is not paid she may enforce payment by taking proceedings in a competent court (*ba-charajoi adalat majaz hasb zabta*). It seems to us that the persons who drew up the award knew that there would be difficulty in executing a decree for maintenance in a Revenue Court and therefore, instead of providing that enforcement of the decree should be by proceedings in the execution department, they provided that Anupa Kunwar should take proceedings in a competent court. We regard this portion of the decree as merely declaratory of Anupa Kunwar's rights to receive maintenance. In our opinion she should bring a regular suit in the Civil Court to enforce her right to maintenance. Section 195, sub-section (3) of the Tenancy Act provides "on any such reference being made the High Court may order the court either to proceed with the case, or to return the plaint, application or appeal for presentation to such other court as it may declare to be competent to try the same." It seems to us that we should not take either of these courses. In our opinion the application for execution should be dismissed. With this expression of opinion we direct that the papers be returned to the court which has made this reference.

1914

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 ANUPA  
KUNWAR  
v.  
ACHHAIYAR  
SINGH.

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 APPELLATE CIVIL.
 

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*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir  
Pramada Charan Banerji.*

BALBEO SAHAI (PLAINTIFF) v. BEHARI LAL AND OTHERS (DEFENDANTS).\*

1914  
November, 28.

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*Promissory note—Suit by assignee of promissory note against executors—  
Payment of consideration by assignee irrelevant.*

*Held* that in a suit by the assignee of a promissory note against the executors the latter are not concerned with the question whether the assignment was for consideration or not. All that they are entitled to have ascertained is that the plaintiff is the legal holder of the note and able to give them a good discharge.

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\* Second Appeal No. 1640 of 1913 from a decree of Mubarak Husain, Subordinate Judge of Meerut, dated the 17th of June, 1913, reversing a decree of Lal Gopal Mukerji, Munsif of Meerut, dated the 27th of February, 1913.

1914

BALDEO  
SAHAI  
v.  
BEHARI LAL.

THIS was a suit for recovery of money on a promissory note executed by defendants 1 and 2 in favour of defendant 3. Defendant No. 3 assigned it to the plaintiff, who brought this suit. The first two defendants pleaded want of consideration and want of title in defendant No. 3. The courts below found these facts in favour of the plaintiff. The appellate court, however, dismissed the suit on the ground that the plaintiff had paid no consideration to the 3rd defendant. The plaintiff appealed to the High Court.

Dr. *Satish Chandra Banerji*, for the appellant.

Babu *Sital Prasad Ghose*, for the respondent, cited *Kashi Das v. Chaitan* (1) and *Baldeo Sahai v. Harbans* (2).

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit in which the plaintiff sought to recover the amount due under a promissory note. A number of pleas were taken, and amongst others a denial of consideration. The court of first instance granted the plaintiff a decree. The lower appellate court reversed the decision of the court of first instance and dismissed the plaintiff's suit. Both courts have found that there was good consideration for the note. But the lower appellate court has held that the plaintiff, who is the holder of the note under an assignment, dated the 17th of June, 1912, did not give any consideration for the assignment of the note. It seems to us that this finding was immaterial. Even if we assume the finding to be correct, the defendants, Behari Lal and Nathu Singh, have no concern with the question whether consideration was paid or not paid by the assignee of the note. If they are liable under the note all that they are entitled to have ascertained is that the plaintiff is the legal holder of the note and able to give them a good discharge. It is quite clear that the plaintiff is entitled to give a discharge to the defendants. The case cited has no application to the present case. In that case the transferor was a party to the suit and he repudiated the transfer in favour of the plaintiff, contending that he had retained all his original rights. We must allow the appeal and setting aside the decree of the court below, restore the decree of the court of first instance. The appellant will have his costs in this Court and in the court below.

*Appeal allowed.*

(1) (1913) 23 Indian Cases, 313. (2) (1911) 1 L. R., 33 All., 626.