takes the shape of a formal installation by the electoral body, so to speak, during the lifetime of the incumbent. But in every case the person installed is supposed to be competent to initiate the *murids* into the mysteries of the *tarikat* (*the holy path*). In the present case the evidence is, that in accordance with the general practice and the practice prevailing in the *durgah* in question, the plaintiff was appointed. And I am of opinion that that appointment was valid, and the plaintiff has a title to maintain this suit.

As regards the question of estoppel, I agree with the Subordinate Judge. Upon the evidence, I am by no means satisfied that the plaintiff attested the document in favour of Hasina, nor is there any evidence pointing to the fact that the plaintiff knew, at the time he attested the other documents referred to in argument, that Abdur Ruzzack had purported to deal with Khundwa as his private property.

For these reasons, I am of opinion that this appeal should be dismissed with costs.

Appeal dismissed.

C. D. P.

PRIVY COUNCIL.

KHOO KWAT SIEW AND OTHERS (PLAINTIFFS) *v.* WOOI TAIK HWAT AND OTHERS (DEFENDANTS).

*P.C.** 1891 *November* 12 & 13.

[On appeal from the Court of the Recorder of Rangoon.]

Insolvency of trading partnership—Mortgage by trading partnership of all its assets, when solvent, for advances, present and future—Change of partners with continuance of mortgage liability—Validity of mortgage security.

If a trader assigns all his property, except on some substantial contemporaneous payment, or substantial undertaking to make a subsequent payment, that is an act of insolvency, and is void against the creditors on his insolvency, simply because nothing is left wherewith to carry on the business; whereas, if he receives such assistance, something is left to carry on the business.

* *Present:* LORDS WATSON, HOBHOUSE, and MORRIS, SIR R. COUCH and LORD SHAND.

1891

KHOO KWAT SIEW v. WOOI TAIK HWAT.

A trading partnership, before its insolvency, assigned by mortgage all its assets to a creditor, who simultaneously made a substantial advance to the firm, agreeing to make future advances.

Held, that the mortgage would have covered such assets of the then firm as were in existence at the time of the insolvency, and would not have been void, as against the other creditors, and the Official Assignee, because the assistance was substantial, and the then solvent firm was not left by the assignment without means.

Another question was raised upon the facts that, after the mortgage and before the insolvency, new partners entered the firm, and new stock-in-trade was brought in. The new partners were to be under the same liability to the secured creditors, the security continuing, with respect to the new firm and the after-acquired stock, as it stood with respect to the old. *Held*, that this arrangement did not invalidate the prior security, amounting, as it did, to a mere substitution of persons and goods at the time of the change.

Also the incoming partners received substantial consideration; for, although the obligation, under the former agreement with the old firm, for the rest of the advances, not then made, was remitted, a new obligation was entered into that a sum of money should be provided, which was afterwards supplied. The incoming partners got the benefit of a suretyship which the mortgagees had entered into for the former firm. These were the considerations to the incoming partners at the time. As the original contract would have been, the new one was, valid against the Official Assignee.

APPEAL from a decree (24th April 1890) of the Recorder of Rangoon.

The plaintiffs, appellants, were members of the firm of Chen Hoo and Company, merchants in Rangoon. The defendants, respondents, Wooi Taik Hwat, Khoo Bean Poot, Khoo Yin Inn and Khoo Hock Chie, under the style of Pinthong and Friends, carried on business as general dealers in Rangoon. The members of the partnership were subsequently changed, and the business (which had been bought in 1888 for Rs. 54,000) was carried on till the insolvency of the firm in December 1889. The incoming partners were also defendants, respondents, viz., Khoo Cheng Wah and Saw Pang Lim. And by an order made on 5th March 1890 the Official Assignee was added as a defendant.

The principal questions related to an assignment by mortgage deed, made by the firm of Pinthong and Friends on the 11th March 1889; and were, whether this could be enforced as against

other creditors, represented by the Official Assignee, and what effect was to be given to the substitution of new partners.

Before the 11th March 1889 the plaintiffs had either advanced in cash to the firm, or had paid on its account, sums amounting to Rs. 55,000. The mortgage deed of that date recited that the mortgagees were liable for the mortgagors on promissory notes, hundis, and other securities, and " had agreed to lend money to them in like manner hereafter, on being secured in the manner hereinafter." It also stated that the mortgagees had agreed to secure the mortgagors to the amount of a lakh of rupees against all payments which they might at any time be called upon to make, or might become liable for, both in respect of instruments already executed and those which they might execute. The deed then assigned to the mortgagees all the stock-in-trade, fixtures, utensils, and effects of the firm which then were or might at any time during the continuance of the security be brought upon or appertain to the premises of the firm, and the good-will of the business, together with all book-debts and trade outstandings. There was also given a right of entry upon failure to repay.

On the 29th May 1889 the defendants, Khoo Bean Poot and Khoo Yin Inn, sold their shares to Khoo Cheng Choon and Khoo Cheng Wah, and the defendant Khoo Hock Chie sold his share to Saw Pang Lim. The incoming partners were all defendants. The firm paid off Rs. 15,000 of the amount then due. In July 1889 Wooi Taik Hwat retired from the firm, but was re-admitted on the 7th September following, having bought the shares of Khoo Cheng Wah and Saw Pang Lim. In that month the plaintiffs paid Rs. 40,000 on account of the firm to creditors, and after demanding this sum without obtaining payment, they claimed, but were refused, possession of the mortgaged assets. On the 11th September they filed their suit claiming, under the mortgage, possession of the stock and effects in the firm's warehouse, held by Wooi Taik Hwat and Khoo Cheng Choon, and of the book-debts and trade outstandings, together with an injunction restraining these two from interference; also claiming payment of any balance that might remain after the proceeds of the sale of the above should have been credited. On the 12th December 1889 a receiver was appointed. On the 16th of the same month

1891

KHOO KWAT SIEW v. WOOI TAIK HWAT.

the firm of Pinthong and Friends was adjudicated insolvent on their petition to the Court of the Recorder in its insolvency jurisdiction, that upon their compliance with the provisions of the statute, relating to insolvent debtors in India, the 11th and 12th Vic., c. 21, they might have the benefit of it. Thereupon the Official Assignee was made a defendant in this suit.

Four of the defendants filed their written answer, and three others, including the Official Assignee, filed none. The defence set up by the written statement was in substance that the plaintiffs only held a mortgage over the stock of the firm, as it was constituted at the date of the transaction, but held no mortgage over the assets of the new firm, as it was constituted after the change of partners in May 1889. It was also a ground of defence that at the time of the mortgage of the 11th March 1889 the plaintiffs had agreed to lend money to Pinthong and Friends to the amount of a lakh, if required; and that when the new partners came in the plaintiffs agreed to postpone calling in a balance of Rs. 40,000 then due to them from Pinthong and Friends, but afterwards refused this accommodation, thus disentitling themselves to possession under the mortgage.

At the hearing it was admitted that the incoming partners took with notice of the mortgage, and accepted what liability might arise under it. The defence then made on behalf of the Official Assignee was the invalidity of the mortgage as against the creditors other than the plaintiffs.

The Recorder dismissed the suit with costs, on the ground that the mortgage deed of the 11th March 1889 was void as against the general body of creditors, and the Official Assignee. There was, as he held, no agreement to make further advances on the mortgage, which assigned substantially all the property of the firm securing a past debt only, and not future advances coupled with it. The mortgage, therefore, necessarily had the effect of withdrawing the firm's property from being security for other creditors, and was therefore void as against the Official Assignee. He cited Robson on Bankruptcy, 6th edition, page 145, and thus referred to cases:—

"There are a number of authorities on the point; one in particular, *Lindon* v. *Sharp* (1), appears to me to be very much in

(1) 6 Man. and G., 895.

point. There a trader assigned his goods to a banker to secure £1,000, £864 being the amount due to the banker at the time Although advances were actually made by the banker after the execution of the assignment on the faith of it, yet as there was no covenant in the deed that future advances should be made, so as to afford an inference that the security was given to enable the trader to carry on his trade, and as the deed placed it in the power of the banker to take possession at any time and to sell in default of payment on demand, it was held an act of bankruptcy, although possession was never taken by the banker under his security. In *Smith* v. *Cannan* (1), the Exchequer Chamber held that a conveyance necessarily delaying a trader's creditors is an act of bankruptcy, although it has not the effect of stopping his trade. In *ex-parte Hawker in re Keely* (2), an assignment of all a debtor's property, except a pension, which would not pass to the trustee in bankruptcy, and could not be taken in execution, was held to be an act of bankruptcy. In another case in the same volume, *ex-parte Fisher in re Ash* (3), there was an assignment of all the debtor's property to secure a past debt, and a fresh advance which was made on a conditional promise, that if the fresh advance was not paid within ten days, the debtor would make the assignment; and it was held that, having regard to the conditional nature of the promise and the smallness of the fresh advance, the assignment was an act of bankruptcy and void as against the creditors. Mellish, L.J., said:—'We are of opinion that if we were to hold this bill of sale to be valid, we should practically abrogate the rule that the assignment of the whole of a debtor's effects in consideration of a past debt is an act of bankruptcy, and should in every case enable a favoured creditor who can trust his debtor, to give him a bill of sale of all his property when required, to obtain payment of his debt in full to the prejudice of the other creditors.'

"In *ex-parte King in re King* (4), James, L.J., says:—'In each case, looking at all the circumstances, you have to answer these questions—Does the assignment include all the property, or is there a substantial exception? Is it wholly to secure a pre-existing debt? And if there is a further advance, is it a substantial one; or only one

(1) 2 El. and Bl., 35. (3) L. R. 7, Ch. Ap., 636.
(2) L. R. 7, Ch. Ap., 214. (4) L. R., 2 Ch. Div., 256.

1891

KHOO KWAT SIEW *v.* WOOI TAIK HWAT.

intended to give colour to a security which is in reality made only for the purpose of recovering a pre-existing debt.' Mellish, L.J., says:—'The numerous cases on the subject have settled the law. The only difficulty is in the application of it. An assignment of all a debtor's property for a past debt is an act of bankruptcy. A merely nominal exception of part of the property will not prevent this, but an exception of a substantial part will prevent it.' In *ex-parte Ellis in re Ellis* (1), Mellish, L.J., said:—'The result of the authorities is that where a debtor assigns his whole property as a security for a past debt only, it is an act of bankruptcy, whatever the motives of the parties may have been. If there is a further advance it is not a question whether the further advance is great or small, but whether there was a *bonâ fide* intention of carrying on the business.' The last case to which I think I need refer is *ex-parte Chaplin in re Sinclair* (2), where Cotton, L.J., says:—'If persons will take from a man who is in difficulties a deed of this description, which has the effect of withdrawing, and is intended to withdraw, all the property of the debtor from the legal process which his creditors have a right to enforce against him and bankruptcy ensues, the deed is void under the bankruptcy law. It is fraudulent as well as void, whatever may have been the view of those who were engaged in the transaction that it might be the best thing for the debtor, or that it might afford an effectual way of paying the creditors.' "

The plaintiffs having appealed,

Mr. *H. H. Asquith, Q.C.*, and Mr. *F. Mellor*, for the appellants, argued that the Recorder had erred in holding the mortgage to be invalid as against the Official Assignee. It was valid, and was binding on the newly constituted firm and its property. This was not a case of the withdrawal of all the assets of a trading firm from the reach of the creditors of the firm other than those whom the latter had attempted to secure. Such a security, for a past debt only, would be invalid; but here the case was different, there having been a substantial payment by the mortgagee simultaneously with the assignment of all the mortgagors' assets; and there having been also an undertaking to make future advances. This

(1) L. R., 2 Ch. Div., 797. (2) L. R., 26 Ch. Div., 319.

had been done, with good faith on both sides; and the security had been given to secure both the then present, and the then contemplated, but subsequent advances, when they should have been made. This had not been done with a view to future probable insolvency. On the contrary, the consideration, consisting of present and subsequent advances, was that the firm should be assisted and supported. This was done by the creditor, who having given this assistance was entitled to have the benefit of the security executed in his favour. An assignment would hold good to bind what would be, at the date of it, as yet not existing stock-in-trade, also book-debts afterwards to be entered and realized, provided always that they were specific property, such as could be made the subject of contract capable of specific performance. No subsequent act of the character of transfer of possession was necessary; the assignment in equity being complete as soon as the property came into existence; the only question being one of its identification with the property described in the mortgage. Again, the judgment of the Court below, so far as it was based on the conclusion that there had been no agreement for further advances, was wrong. This had arisen from the want of a clear distinction, which should have been made between the evidence relating to the agreement of the 11th March, and that relating to the agreement of the 29th May 1889. On the latter date the incoming partners took over all the liabilities of the old firm of Pinthong and Friends to the plaintiffs; thus agreeing, in effect, with them that the assets of the new firm should remain as security according to the terms of the mortgage of the 11th of March. Those of the respondents who afterwards joined the firm did so with notice of the mortgage; and the assets of the old firm remained subject to the mortgage in the hands of the partners who came in. Neither the change of persons, nor the change of moveables charged, had any effect to invalidate the mortgage as against the Official Assignee. The issues should have distinguished the rights of the incoming partners from those of the Official Assignee. But it was apparent enough that the mortgage was originally valid as against the old firm; and when subsequently extended, on the 29th May, at the incoming of the new partners, it was valid also as against the newly constituted firm, binding it, and its assets; and that the mortgage was first and last valid against the Official Assignee.

1891

KHOO KWAT SIEW *v.* WOOI TAIK HWAT.

Mr. *J. D. Mayne* and Mr. *J. Alderson Foote*, for the respondent Purna Chunder Sein, the Official Assignee of the estate of Pinthong and Friends, argued that the mortgage was substantially an assignment of the firm's property for a past debt, and that there had been no sufficient evidence of any agreement to make further advances after the 11th of March, or of the actual making of any such subsequent advance. So far as the new partners were concerned the debts were past, and the obligations were pre-existing. If when these partners came in, on the 29th May, they had executed a mortgage like that of the 11th March, it would have been in consideration of previous advances and past debts. The arrangement carried out on the 29th May could not put the mortgage into any more effective state as regarded the new partners. Whatever the original arrangement between the plaintiffs and the old firm, the effect of the new arrangement was to rescind and determine the former mortgage, and to render it void as against creditors. There was no new obligation on the part of the mortgagees entered into on or after the 29th May 1889, and the debts at that date were all pre-existing. The stock-in-trade, brought in after that date, would not be subject to the original mortgage, nor was there any new arrangement whereby it would be rendered a security in the hands of the new partners. Reference was made, in regard to the rights of the Official Assignee, to *ex-parte Johnson in re Chapman* (1), *ex-parte Wilkinson in re Berry* (2), *ex-parte Dann in re Parker* (3), *ex-parte Baring* (4), and other cases cited in "Williams on the Law in Bankruptcy," 5th edition, 1891, dealing with section 4 of the Act of 1883. Also section 23 of 11 and 12 Vic., c. 21, relating to insolvent debtors in India was referred to.

It having been said, during the argument, that the law relating to the assignment of after-acquired property, should be considered; and that, under the former rulings, a mere license to seize could not divest property, their Lordships referred to *Holroyd* v. *Marshall* (5), where the title of mortgagees (upon a question whether as to machinery, added and substituted after the date of the mortgage, they had acquired the property) prevailed over that of the

(1) L. R., 26 Ch. Div., 338.
(2) L. R., 22 Ch. Div., 788.
(3) L. R., 17 Ch. Div., 26.
(4) 1 Mer., 611.
(5) 10 H. L. Ca., 191.

judgment-creditor. They also referred to the opinions expressed in the House of Lords in *Tailby* v. *The Official Receiver* (1), where it was decided that an assignment, by way of security, of certain book-debts, not existing at the time of the assignment, was valid, so as to give the assignee a good title to them when they came into existence.

Mr. *F. Mellor* was called upon to reply only as to the evidence relating to the future advances. At the end of the arguments, their Lordships' judgment was delivered by—

LORD HOBHOUSE.—The only question in this case is whether the mortgage deed of the 11th March 1889, either originally, or as modified in May 1889, is valid against the assignee in insolvency of the mortgagors. It is better not to use the term "fraudulent" in such a case, though that term has, by rather an unhappy use of language, been applied by Courts of equity to transactions which are not at all dishonest in their nature, but are only such as the law will not allow. In this case there is no suggestion from beginning to end of there being anything dishonest in the transaction. The sole question is as to its legal validity.

The well-known rule of law is, that if a trader assigns all his property, except on some substantial contemporaneous payment, or some substantial undertaking to make payment *in futuro*, that is an act of bankruptcy, and is void against the creditors and the assignee, simply because nothing is left with which to carry on his business, whereas if he receives substantial assistance something is left to carry on the business.

Prior to the mortgage of the 11th March 1889 the mortgagees had assisted the mortgagors, either by payments or by incurring liabilities on promissory notes for them, to the extent of Rs. 30,000. At the time of the mortgage more assistance was given. Their Lordships take it to be clear beyond dispute, though it has been argued to the contrary at the bar, that simultaneously with the mortgage the defendants' firm did receive, in the form of a joint promissory note signed by themselves, and by the plaintiffs, further assistance to the extent of Rs. 25,000. They also received an undertaking for further accommodation, amounting in the whole

(1) L. R., 13 App. Cas., 523.

1891

KHOO KWAT SIEW v. WOOI TAIK HWAT.

to a lakh of rupees. This promissory note, like at least one, if not more, of the former ones, was payable on demand, but there seems to have been some understanding—it does not appear exactly what—that it should not be presented until some later date. It was in fact presented in the month of September 1889. It was not taken up by the mortgagors, and it was taken up by the mortgagees. There was therefore substantially an advance of Rs. 25,000 simultaneously with the mortgage. The further accommodation to the extent of a lakh of rupees was not made, on account of a subsequent agreement which will be noticed presently.

That being so, their Lordships consider that this deed must be held to be valid. They are not aware of any case in which a simultaneous advance of a large amount being made, and future support being promised of a large amount, the validity of such a deed has been seriously called in question. In this case the simultaneous advance was nearly as much as the pre-existing debt, and the undertaking to give future advances was considerably more.

It has been argued for the assignee that the proper test is, whether it was the intention of the parties that the trader giving such a security should carry on his business. Their Lordships conceive that that question hardly arises except in those cases where the amount of additional assistance given at the time of the mortgage is so small as to create a doubt whether it is substantial; and then comes in the inquiry into the motives of the parties, whether they did really intend that the business should be carried on or not. It is impossible to raise such a question here, where the amount of simultaneous and future advance is very large. Even if their Lordships did enter into that question, which is one of honesty, the receiver's accounts show that the firm was, as late as the 31st August 1889—in fact till the large amounts due on promissory notes were called *for*—*a solvent firm*. Striking out from the liabilities the debts due to the partners themselves, which of course cannot be taken into account for this purpose and the sum of Rs. 40,000 which was due to or was to be supplied by the mortgagees, it seems that at that date the firm would have had a surplus of something like Rs. 74,000. It was a solvent firm, and we have it in evidence that it was doing

a large business, and it must have been the interest, and doubtless was the motive, of all the parties to keep on its legs a firm that was doing a business bringing in profit.

Their Lordships have no doubt whatever about the validity of the mortgage deed of the 11th March 1889. That would, at all events, cover such assets of the then firm as were in existence at the time of the insolvency; and the receiver's accounts again show that those assets were something substantial.

But then it is argued that as regards the partners who came into the firm on the 29th May 1889, and as regards the new stock-in-trade which was brought into the business after that time, the mortgage deed cannot operate. First, it was said that there was no arrangement that it should operate on the future stock. But their Lordships consider it to be well established by the evidence that the arrangements made were of the nature which has been succinctly stated by witnesses on both sides. The principal plaintiff says: "I said that if an agreement was made"—that is the agreement for incoming partners—"they would have to pay Rs. 15,000,"—that was paid down—"and Rs. 40,000 on due date." Then he says: "It was secured by the document." What was secured? The sum of Rs. 40,000 was secured. But this sum certainly would not have been secured if the goods of the old firm, which were being exhausted week by week, had been the only security for it, and the goods substituted for them were not to form part of that security. The same witness afterwards says: "When the incoming partners came into the firm it was understood that I should continue to guarantee the Rs. 40,000 until Bugwan Doss and the Chetty's notes became due." One of the outgoing partners says, speaking of the incoming partners: "They undertook to pay all debts contracted by the firm"—that is the old firm—"as well as what was due under the mortgage. The security of the mortgage was to continue, but no further advances were to be made. * * * * It was also said that the amount due on Exhibit A was to be reduced to Rs. 40,000, and that there was to be no more accommodation, and the Rs. 40,000 was to be paid on due date or on demand. The stock was to continue as security."

On those passages it was argued that that merely meant that the mortgage of the 11th March 1889 was to continue according to its

1891

KHOO KWAT SIEW v. WOOI TAIK HWAT.

legal operation as it was made, that is its operation on the assets of the old firm. But such an interpretation would be making the parties enter into a nonsensical agreement. It is impossible to suppose that the incoming partners, who were to take all the benefit and the profits of the existing stock, the mortgagees not enforcing their security against it which they could enforce, were not agreeing under these expressions, if those were the expressions used, or that the witnesses did not intend to state that they were agreeing, that the stock for the time being of the firm then constituted was to be the security to the mortgagees. An incoming partner, and one of the defendants, Khoo Cheng Choon, says: "I said" to Khoo Kwat Siew, "I would pay Rs. 15,000,"—that was done—"and for the balance Rs. 40,000 you must stand guarantee. He agreed. If he hadn't done so I wouldn't have entered into the firm." Therefore it seems that the incoming partner entered into the firm on the promise of the plaintiff Khoo Kwat Siew to guarantee these Rs. 40,000 which actually were paid. This statement of Khoo Cheng Choon leads to the same inference in the minds of their Lordships that they have drawn from the preceding evidence. In his cross-examination Khoo Cheng Choon says: "When Taik Hwat,"—the senior partner,—"went out it was arranged that the security should continue." Their Lordships interpret the meaning of this to be that the security should continue with respect to the new firm and the new stock, exactly as it stood with respect to the old firm and the old stock.

Then it is argued by Mr. Mayne that if this new arrangement had been the first arrangement, and if we take the facts as they stood at the time when the new arrangement was made, all the debts then secured were past debts or existing liabilities, and so the security, the mortgage, would fall within the rule which makes void assignments of all a trader's property. It is an ingenious argument, but their Lordships cannot accede to it. In the first place it is impossible to take the case as if the original arrangement did not exist. We find a valid mortgage existing over the assets of the firm, immediately before the arrangement of May 1889. New partners then came in, and the mortgagees' assent has to be obtained, because they could seriously embarrass, probably could break up the firm at any moment. The new

partners then have the benefit of the going concern, and they make the reasonable arrangement that the going new concern shall be under the same liabilities to the secured creditors as the going old concern. It is impossible to say that such an arrangement as that would invalidate the prior valid security, because it amounts to a mere substitution of persons and goods at the time of the change. But further, it is not true that substantial consideration in payment did not pass to the incoming partners. It is true that Rs. 15,000 of the debt was then paid off, and that the obligation of the mortgagees to provide accommodation up to a lakh of rupees was then remitted, but there still remained their obligation to provide the Rs. 40,000, which was actually provided in the succeeding month of September.

This obligation did not exist as between the mortgagees and the incoming partners till the arrangement of May 1889 was made. Then the incoming partners got the benefit of the suretyship into which the mortgagees had entered for the former partnership.

Their Lordships therefore hold that, even if this had been the original arrangement, it would have been supported by the passing of a substantial consideration to the incoming partners at the time of the arrangement.

The result will be that the decree of the Recorder of Rangoon should be reversed, and that the plaintiffs should have a decree substantially in accordance with the plaint. Probably the property has undergone change during the progress of the suit, in a way to vary the precise mode of relief. It will be right to declare that the indenture of the 11th March 1889 is a lawful and valid instrument, and that by virtue thereof the plaintiffs were, at the date of the insolvency of Pinthong and Friends, mortgagees of all the stock-in-trade, fixtures, utensils, and effects then upon or in or appertaining to their premises in Merchant Street, and of the good-will of their business, with all book-debts and trade outstandings then payable to or recoverable by the said firm.

There is some further care required in framing the decree, because the suit was originally brought, and this appeal is brought, against all of the seven persons who, between the 11th March 1889 and the date of suit, viz., the 11th September 1889, were partners in the firm of Pinthong and Friends. None of those persons have appeared here, and their Lordships must act in their

1891

KHOO KWAT SIEW v. WOOI TAIK HWAT.

absence. Three of these persons, Khoo Bean Poot, Khoo Hock Chie, and Khoo Yin Inn, do not appear to have made any defence, or to have caused or incurred any costs. The effect of the arrangement of May 1889 was to transfer the liability created by the mortgage of March from the then outgoing partners to the incoming ones. The outgoing partners are the three defendants in question. Against them there should be no costs. The other four, Wooi Taik Hwat, Khoo Cheng Choon, Saw Pang Lim, and Khoo Cheng Wah, put in a written statement denying the validity of the mortgage. In March 1890 the Official Assignee under the insolvency was added as a defendant, and though the individual has been changed, the Official Assignee is a party to this appeal, and has appeared to maintain the Recorder's decree. Whether a decree against the insolvents will be of any value to the plaintiffs their Lordships cannot tell, but they think that the plaintiffs are entitled to it. All the remedies that the mortgage deed is calculated to give them, they are entitled to against the persons who undertook the obligations, and against the Official Assignee on whom the mortgage property has devolved. The four defendants last mentioned and the present Official Assignee should be ordered to pay the costs of the suit and of this appeal.

Their Lordships will humbly advise Her Majesty accordingly.

Appeal allowed.

Solicitors for the appellants: Messrs. *Bramall* and *White.*

Solicitors for the respondent, the Official Assignee: Messrs. *Prior*, *Church*, and *Adams.*

C. B.

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*P. C.** 1891 *November* 10 *and* *December* 12.

BEHARI LAL (PLAINTIFF) *v.* MADHO LAL AHIR GAYAWAL AND ANOTHER (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

Hindu widow's estate—Life estate of Hindu widow, surrender of—Acceleration of estate of heir requires absolute conveyance by Hindu widow—Ikrarnama by Hindu widow in favour of heir, when she retains possession of estate, effect of—Reversioners, rights of.

A Hindu widow can accelerate the succession of the heir by conveying absolutely her life-estate to him, but it is essential that she should

* *Present:* LORD WATSON, LORD MORRIS, SIR R. COUCH, and LORD SHAND.