

"It is well settled that in an action for non-delivery or non-acceptance of goods under a contract of sale the law does not take into account in estimating the damages anything that is accidental as between the plaintiff and the defendant, as, for instance, an intermediate contract entered into with a third party for the purchase or sale of the goods."

In the present case had the appellant supplied the timber the respondents would have made their profit and would have still had the other timber to sell, upon which they were entitled to make such profit as they could.

Their Lordships will humbly advise His Majesty to dismiss the appeal with costs.

Solicitor for appellant:—*Douglas Grant.*

Solicitor for respondents:—*Orr, Dignam and Co.*

Appeal dismissed.

APPELLATE CIVIL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Gokul Prasad.

BALLU MAL AND ANOTHER (PLAINTIFFS) v. RAM KISHAN (DEFENDANT)*
 Act No. IV of 1882 (Transfer of Property Act), section 41—*Ostensible owner—Duty of transferee to inquire into transferor's title—Transferor in possession as sister's son of last full owner—Duty of transferee to ascertain whether any collaterals existed.*

Defendant took a mortgage of a house from a person who was the son of a sister of the last full owner (a Hindu). The house was entered in the municipal register as in the possession of the mortgagor; but the mortgagee did not appear to have made any inquiry as to the title, although there was reason to suppose that he must have been aware of the existence of collaterals of the last owner. *Held*, on suit by the collateral heirs for recovery of possession of the house, that the defendant mortgagee, not having made proper inquiries as to his mortgagor's title, was not entitled to the protection afforded by section 41 of the Transfer of Property Act, 1882.

THE facts of this case are fully set forth in the judgment of the Court.

Dr. S. M. Sulaiman, for the appellants.

Dr. Kailas Nath Katju, for the respondent.

BANERJI and GOKUL PRASAD, JJ.:—This appeal arises out of a suit for possession of a house in the City of Cawnpore which

* First Appeal No. 436 of 1917, from a decree of Muhammad Husain, Additional Subordinate Judge of Cawnpore, dated the 20th of September, 1917.

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belonged at one time to one Janki Prasad. The plaintiffs claim as reversionary heirs to Janki Prasad and in this suit they have impleaded the heirs of one Mathu, sister's son of Janki Prasad, who entered into possession of the house on the death of Janki Prasad in 1909 and who made a mortgage in favour of Ram Kishan, respondent. Certain persons who laid claim to this house as heirs of Mathu have also been made parties. The contesting defendant, who is the only person who has appeared in this appeal, is Ram Kishan, the mortgagee. A large number of questions were raised in defence, but for the purposes of this appeal it is not necessary to discuss them in detail. All of them have been found against the defendant respondent except a plea raised by him under section 41 of the Transfer of Property Act, namely, that he is a *bona fide* transferee for value and his mortgage cannot, therefore, be overridden by the plaintiffs' suit.

The sole point which we have to decide in this appeal is whether the plaintiffs' suit is barred by the operation of section 41 of the Transfer of Property Act. In order to obtain the protection afforded by the said section it is necessary for the transferee to prove—

- (1) that he has given valuable consideration ;
- (2) that he acted in good faith, and
- (3) that he had made reasonable inquiries to ascertain that the transferor had power to make the transfer.

The learned Subordinate Judge has found that all these three elements have been proved in this case. For the purposes of deciding this appeal we may assume that the transferee respondent has given valuable consideration. As regards the other points the facts which have been proved from the evidence on the record are these:—

Mathu, who, as we have stated above, was the son of a sister of Janki Prasad, lived with Janki Prasad. After the death of Janki Prasad he put in an application in the Municipal office asking for the entry of his name in place of his deceased maternal uncle Janki Prasad; his name was so entered, and he continued to be in possession of this house so long as he was alive. He made a mortgage of this house to Ram Kishan on the 19th of June, 1916, and died the following year. This suit was

brought a few weeks after his death. It is in evidence, and we think clearly established, that at the time when Ram Kishan advanced the loan to Mathu he knew that Mathu was the son of a sister of Janki Prasad. The only inquiry which he seems to have made is that he had the Municipal register inspected and was told that the name of Mathu had been mutated in place of that of Janki Prasad in the year 1909. He also says that he made inquiries from the neighbours and was told that Mathu was the owner of the house. He makes a somewhat vague statement about having seen the title deeds of the house in possession of Mathu but he has not been able to give the particulars of, or even the nature of, the title deeds which he says he saw. We do not think any reliance can be placed on this statement of his. He is the next door neighbour, his house being adjacent to the house in dispute. Knowing that Mathu was after all a sister's son, who would not under the ordinary Hindu law be an heir to his maternal uncle Janki Prasad, being excluded by collaterals up to fourteen degrees, he should as a reasonable man, have made some inquiries at least as to who, if any, the collaterals were. There is absolutely no evidence on the record to show that he made any such inquiries. It is somewhat strange that even the witnesses whom he has produced have not been able to say where Janki Prasad came from, or if he had any other relations. Of course, if the statement of the plaintiff Ballu Mal is to be believed, he attended the obsequies of Janki Prasad and it is not easy to believe that Ram Kishan did not know the existence of these collateral relations who were only three degrees removed from the common ancestor. There is this direct evidence of the presence of these collateral relations which in any event ought to have put Ram Kishan on his guard. We would go further and say that the very fact that Ram Kishan knew that Janki Prasad was the maternal uncle of Mathu ought to have put him upon inquiries as to whether there were any collaterals of Janki Prasad. This he never attempted to do, and we think that one of the most essential elements which would bring section 41 of the Transfer of Property Act into operation does not exist in this case. We think that the learned Subordinate Judge was wrong in giving the protection

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of section 41 of the Transfer of Property Act to the defendant respondent, inasmuch as there were circumstances in this case which ought to have put him on inquiry if he had acted as a reasonable man. As we have stated above, the other issues of fact have been decided against the defendant respondent. This was the only point on which the case was decided in his favour and as we have disagreed with the Subordinate Judge on this point we modify the decree of the court below and decree the plaintiffs' claim in full with costs in all courts.

Appeal allowed.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Gokul Prasad.

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SHAHZADI BEGAM (PLAINTIFF) v. MUHAMMAD IBRAHIM AND OTHERS
(DEFENDANTS).*

Construction of document—Compromise—Compromise settling all matters in dispute except one—Agreement therein that on that matter the parties would be bound by the finding of the court—Finding of the court not appealable.

The parties to a suit for the recovery of property of various kinds by right of succession agreed in respect of the various classes of property except one. As to this, however, they agreed that they would be bound by the finding of the court in respect of it. *Held* that the effect of this last term of the compromise was that the finding of the court was final and binding upon the parties and that no appeal would lie against it. *Bahir Das Chakravarti v. Nobin Chunder Pal* (1) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

Dr. S. M. Sulaiman, for the appellant.

Dr. Kailas Nath Katju, for the respondents.

BANERJI and GOKUL PRASAD, JJ. :—This appeal arises out of a suit brought by Musammat Shahzadi Begam for recovery of her legal share in the estate of her deceased father Baqar Ali. The defendants to the suit were her brother Muhammad Ibrahim and her sisters or their legal representatives. The suit was mainly defended by the brother, who alleged that part of the property claimed was *waqf* property, that part was property which exclusively belonged to him, and that the plaintiff was

* First Appeal No. 428 of 1917, from a decree of Kshirod Gopal Banerji, Subordinate Judge of Cawnpore, dated the 14th of September, 1917.

(1) (1901) I. L. R., 29 Cal., 306.