

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.*

DABI DIN RAI (PLAINTIFF) v. MUHAMMAD ALI AND OTHERS (DEFENDANTS).\*

*Pre-emption—Conditional decree—Act X of 1877 (Civil Procedure Code), s. 214—Computation of period specified for payment of purchase-money—Holiday.*

The decree in a suit to enforce a right of pre-emption, dated the 12th December, 1879, declared that the plaintiff should obtain possession of the property on payment of the purchase-money "within thirty days," but that if such money was not so paid, the suit should stand dismissed. The period specified in the decree for the payment of the purchase-money, the day on which the decree was made not being computed, expired on the 11th January following. That day was a Sunday: the plaintiff paid the purchase-money into court on the next day, the 12th January. *Held* that, inasmuch as the day on which the decree was made should not be taken into account in computing the period specified in the decree for the payment of the purchase-money, nor the last day of that period, that day being a Sunday, the plaintiff had complied with the condition imposed on him by the decree.

*Seemle* that, if the plaintiff had actually failed to deposit the purchase-money within thirty days as directed by the decree, his suit would have been liable to be dismissed, as he could not have claimed to have such period computed from the date the decree became final.

THE plaintiff in this suit claimed to enforce a right of pre-emption. The Court of first instance gave him a decree, bearing date the 12th December, 1879. This decree directed that the plaintiff should obtain possession of the property in suit on payment of the purchase-money "within thirty days," and that, if the purchase-money were not paid within that period, "the decree should be extinguished." The period specified in the decree for the payment of the purchase-money, the day on which the decree was made not being computed, expired on the 11th January, 1880. That day was a Sunday: the plaintiff paid the purchase-money into court on the next day, the 12th January. On appeal by the defendants from the decree of the Court of first instance it was contended on their behalf that that decree should be set aside, as the plaintiff had not deposited the purchase-money within the period specified in the decree. The lower appellate Court allowed this contention.

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\* Second Appeal, No. 912 of 1880, from a decree of H. D. Willock, Esq., Judge of Azamgarh, dated the 1st May, 1880, reversing a decree of Mirza Kamar-ud-din Ahmad, Munsif of Azamgarh, dated the 12th December, 1879.

On second appeal to the High Court the plaintiff contended (i) that the period for the payment of the purchase-money into court specified in the decree of the Court of first instance should be computed from the day on which that decree became final; and (ii) that, as such period only began to run on the 13th December, and as the 11th January, being a holiday, should not be computed, the purchase-money had been deposited within time.

Mr. *Niblett* and *Lala Jokhu Lal*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Munshis Hanuman Prasad* and *Kashi Prasad*, for the respondents

The High Court (STUART, C. J., and STRAIGHT, J.,) delivered the following judgments :—

STRAIGHT, J.—It seems to me that this appeal must prevail, and that the case should be remanded back to the Judge for decision on the merits, he having disposed of it on a preliminary point. It does not appear to me to be necessary to discuss the first plea urged by the appellant. The Munsif was acting within the powers given him by s. 214 of the Procedure Code, and I am by no means prepared to hold that, had the pre-emptor actually failed to pay the purchase-money, directed to be deposited by the decretal order, within thirty days, his suit would not have been liable to be dismissed. But as a matter of fact, I cannot see that there has been any breach of the condition imposed by the Munsif as to payment into court of the pre-emption amount. His judgment was passed upon the 12th December, 1879, and it certainly would be straining matters to hold that any portion of that day was to be taken into account, in computing the period allowed to the pre-emptor to satisfy the vendees and secure full effect to his decree. Thirty clear days, which it must have been intended he should have, would have given him until the 11th January following, but this happened to be a Sunday, and the amount was duly deposited on Monday, the 12th. It seems to me, therefore, only reasonable to regard this as a compliance with the condition imposed by the Munsif, and in adopting a contrary view, the Judge acted erroneously. I would accordingly decree the appeal, reverse the decision of the

lower appellate Court, and remand the case for replacement on the file and disposal upon the merits. Costs will follow the result.

STUART, C. J.—I approve of, and concur in, the order of remand proposed by Mr. Justice Straight.

*Cause remanded.*

*Before Mr. Justice Straight and Mr. Justice Duthoit.*

MAUJI RAM (PLAINTIFF) v. TARA SINGH (DEFENDANT).\*

*Guardian and Minor—Mortgage without the sanction of the Civil Court—Act XL of 1858, s. 18—Void Contract—Ratification by minor.*

A minor cannot ratify a mortgage of his immovable property made by his guardian appointed under Act XL of 1858, without the sanction of the Civil Court, such a mortgage being under s. 18 of that Act void *ab initio*.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshi *Hanuman Prasad*, for the appellant.

Pandit *Ajudhia Nath* and Munshi *Kashi Prasad*, for the respondent.

The High Court (STRAIGHT, J., and DUTHOIT, J.,) delivered the following judgment:—

STRAIGHT, J.—On the 29th August, 1872, Prem Sukh, the certificated guardian of the defendant, Tara Singh, then a minor, hypothecated certain immovable property belonging to his ward to Jiwan and Chattar, for an advance of Rs. 95, which was to be repaid on or before the 1st February, 1880. It is admitted that Prem Sukh did this without the sanction of the Civil Court first obtained, as required by s. 18 of Act XL of 1858. It is obvious, therefore, that this contract was void. On the 11th September, 1878, Tara Singh himself executed a bond for Rs. 47, hypothecating property for its repayment, but this instrument was not registered. Its bearing upon the present case is that it contains the following passage: “ Besides this bond there is one bond (registered) for

\* Second Appeal, No. 67 of 1881, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Agra, dated the 27th September, 1880, reversing a decree of Maulvi Mubarak-ul-lah, Munsif of Jalesar, dated the 11th June, 1880.