FULL BENCH.

1883
March 19.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

HABIB-ULLAH (PLAINTIFF) v. NAKCHED RAI AND OTHERS (DEFENDANTS).*

Mortgage—Registration—Act. III of 1877 (Registration Act), ss. 17, 50—Act VIII of 1871 (Registration Act), s. 17—Registered and unregistered documents.

Held by the Majority of the Full Bench (STRAIGHT and OLDFIELD JJ., dissenting) that the principal sum secured by a mortgage of immoveable property is alone to be considered for the purpose of deciding whether the registration of the instrument of mortgage is optional or compulsory under the Registration Act, 1877.

The ruling of the Full Bench in *Himmat Singh* v. *Sewa Ram* (1) overruled.

Held, therefore, where an instrument of mortgage by way of conditional sale, dated the 2nd July, 1871, secured the payment of a principal sum of Rs. 72, with interest at Rs. 2 per cent. per mensem, on the 12th May, 1873, the whole amount thus secured exceeding Rs. 100, that the registration of such instrument was optional and not compulsory.

Held by the Divisional Bench (STUART, C J., and BRODHURST, J.) that, under s. 50 of the Registration Act, 1877, an instrument the registration of which under the Registration Act, 1871, was compulsory, and which was registered under that Act, took effect, as regards the property comprised therein, as against an instrument relating to the same property, the registration of which under the Registration Act, 1871, was optional, and which was not registered under that Act.

THERE were two questions raised in this appeal, viz.—(i) whether an instrument of mortgage by conditional sale, bearing date the 2nd July, 1871, by which the payment of Rs. 72, with interest at Rs. 2 per cent. per mensem, on the 12th May, 1873, was secured by a mortgage of certain immoveable property, required to be registered; and (ii) whether an instrument of simple mortgage, bearing date the 12th May, 1872, the registration of which was compulsory, and which was registered under the Registration Act, 1871, took effect, as regards the property comprised therein against the deed of conditional sale above-mentioned, which related to the same property, and had not been registered under that Act. The latter instrument ran as follows :—"We (mortgagors) have borrowed Rs. 72 of the current coin from (mortgagee) at

* Second Appeal No. 1360 of 1881, from a decree of T. Benson, Esq., Judge of Azamgarh, dated the 3rd August, 1881, reversing a decree of Munshi Mata Din, Munsif of Nagra, dated the [illegible].

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the rate of Rs. 2 per cent. per mensem: we shall repay the principal with interest on the 12th May 1873: we have for the satisfaction of the said creditor pledged (certain immoveable property): should we fail to pay the money with interest on the expiration of the term (fixed), he (creditor) may enter into possession of the said property, neither we nor our heirs shall have any claim to the property: the said creditor shall have power to get our names expunged and his name entered in the official papers, and remain in possession as proprietor and zamindar; neither we nor our heirs have and shall have objections in this respect: that before the repayment of this money, should we execute a deed of mortgage or pledge of any nature whatever to any one, such deed shall be invalid as against this deed." The Divisional Bench before which the appeal came for hearing (STUART, C. J., and BRODHURST, J.) referred the first question to the Full Bench for determination, the order of reference being as follows:—

STUART, C. J.—In this case the question is again raised as to how the value in an instrument is to be considered with reference to its optional or compulsory registration. The course of decisions by this Court, differing from that of all the other High Courts, has been to the effect that the principal sum alone is not to be considered, but that the value may include with the principal sum the addition of interest to a certain amount according to the terms of the deed. I have taken occasion to express my doubts as to the soundness of that reading of the Registration Law, see *Basant Lal* v. *Tapeshri Rai* (1), and *Himmat Singh* v. *Sewa Ram* (2), in which I reconsidered the law and went very fully into the subject, quoting judgments by the Madras and Bombay Courts. I arrived at the conclusion that the course of decisions in this Court of late years was altogether mistaken, and being still of that opinion and holding it very strongly and clearly, I am desirous that this Court, which is differently constituted now from what it was when the last Full Bench ruling was made, should have an opportunity of reconsidering the question.

The question then I would refer to the Full Bench and ask my colleagues to reconsider is, whether the value in such an instrument as the present is for the purpose of its registration to be taken

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to be the principal sum alone or that sum with the addition of any interest or other increment?

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BRODHURST, J., concurred in the reference being made.

Mr. *Spankie*, for the appellant, contended that the instrument came within the terms of s. 17(*b*) of the Registration Act, 1871, and therefore its registration was compulsory. He relied on the ruling of the majority of the Full Bench in *Himmat Singh* v. *Sewa Ram*(1).

Mr. *Conlan* and Munshi *Sukh Ram*, for the respondent.

The following opinions were delivered by the Full Bench:—

STUART, C. J.—Having fully reconsidered the question submitted by this reference, I adhere, without doubt or hesitation, to the views and conclusions stated in my judgment in *Himmat Singh* v. *Sewa Ram* (1), where, in agreement with the rulings on the same question by the other High Courts, I held the principal sum alone was, for the purpose of the question of registration, to be taken to be the value. In the present case the consideration stated in the conditional sale-deed of the 2nd July, 1871, was Rs. 72, and under s. 18 of the Registration Act then in force, Act VIII of 1871, its registration was optional and not compulsory in order to make the document evidence. I may add that s. 59 of the Transfer of Property Act, IV of 1882, which was referred to at the hearing plainly supports my opinion. The first part of that section is in these terms:—"Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses." The second part of the section almost in terms describes the present case, it being there provided that "where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a single mortgage) by delivery of the property." But without reference to the Transfer of Property Act of 1882, or my consideration other than the actual Registration Law, any answer to this reference is, that the value to be taken into account is the principal sum alone, and that having been only Rs. 72, the conditional sale-deed, in order to be received

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as evidence of the contract which it records, did not require registration.

BRODHURST, J.—On the question referred to us, I am of opinion that, for the purpose of registration, the value of a deed should be estimated merely by the principal amount secured by it, and sound reasons for thus estimating the value are, I think, given in the judgment of the learned Chief Justice, reported on page 157, vol. 3, All. Series, I. L. R., and in the judgments of the High Courts of Calcutta, Madras, and Bombay therein alluded to. The mortgage or conditional sale-deed referred to in the case before us bears a date corresponding to the 2nd July, 1871, and the principal amount is Rs. 72, and registration of the deed was therefore optional. S. 59 of the Transfer of Property Act has no bearing upon the present case, but no deed of mortgage executed since the 1st July, 1882, the date on which the Act came into force, will be admissible in evidence unless it has been registered.

TYRRELL, J.—I have always held the opinion that the language of the Indian Registration Acts is legitimately susceptible of the reading that the principal sum alone is to be considered as the sum secured by a deed on the date of its execution. Holding this opinion then the arguments *ab convenienti* in favour of the learned Chief Justice's view are more than sufficient to outweigh the considerations on which the opposite opinion is founded. I may add as an illustration of the inconveniences besetting this latter reading of the law, that if the instrument in the case before us be carefully scrutinized, it will be found that it undoubtedly does not secure with certainty or even with approximate probability any interest in excess of the principal sum; for while it gives the debtor a fixed period, short of which the terms of the contract cannot be enforced against him, it does not contain a word to hinder the debtor from paying off the principal and interest at any time within that period. The obligee could make no demand till the arrival of a fixed date, but the obligor might repay his debt at any time. It is obvious that a principal debt of Rs. 72 with a monthly interest of Rs. 2 might run for many months without reaching the sum of Rs. 100; and that therefore it would be impossible for the parties to this

instrument to know on the date of its execution what sum was secured on it. An interpretation of the Registration Act in this respect which gives occasion to, if indeed it does not necessitate, researches and speculations of this sort in the case of every instrument of this character which approaches the limit of Rs. 100, seems to me eminently inconvenient and unpractical.

STRAIGHT and OLDFIELD, JJ.—We have heard nothing to induce us to alter the opinion expressed by us, after full and careful consideration of the question and the authorities bearing upon it, in *Himmat Singh* v. *Sewa Ram* (1) as to the construction to be placed on s. 17 of the Registration Act, 1877. We may add that any doubt or difficulty upon the point seems, so far as mortgages and charges upon immoveable property are concerned, to have been set at rest by the plain terms of s. 59 of the Transfer of Property Act, 1882.

On the case being returned to the Divisional Bench (STUART, C. J., and BRODHURST, J.), the second question raised in the appeal was disposed of, the judgment of the Bench being as follows:—

STUART, C. J.—This case has come back to us from the Full Bench of the Court for final disposal. The Full Bench has ruled that the registration of the conditional sale-deed of the 2nd July, 1871, the consideration for which was Rs. 72, was, under Act VIII of 1871, the Act then in force, read with the *Explanation* to s. 50 of Act III of 1877, optional and not compulsory in order to be evidence. The first and second reason of appeal urging the contrary must, therefore, be rejected. The fourth reason of appeal is not maintained. But we must allow the third reason of appeal by which it was contended that the mortgage-deed of the 12th May, 1872, being registered, takes effect in priority over the unregistered conditional sale-deed of July, 1871. The (District) Judge in his remarks on this subject appears to have overlooked the *Explanation* at the end of s. 50 of Act III of 1877, which distinctly provides that "where the document is executed after the 1st day of July, 1871,

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'unregistered' means not registered under Act VIII of 1871," and the result is that the mortgage-deed of 1872 takes effect as regards the property comprised therein in preference to the unregistered document of July, 1871.

Appeal allowed.

1883 March 19.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst and Mr. Justice Tyrrell.

JAGAT NARAIN AND ANOTHER (DEFENDANTS) v. JAG RUP AND OTHERS (PLAINTIFFS).*

Mortgage—First and second mortgagees—Sale of property in execution of decree obtained by second mortgagee for sale of property—Holder of prior decree enforcing first mortgage, how to proceed—Execution of decree—Fresh suit—Civil Procedure Code, s. 244 (c)—Meaning of "representative" of judgment-debtor.

A decree enforcing a first mortgage of certain property not being satisfied, the property was sold in execution of a decree of a later date enforcing a second mortgage of the property.

Per STUART, C. J., that the decree enforcing the first mortgage could not be executed against the property, but the holder of such decree was bound to bring a fresh suit against the purchaser of the property to enforce his decree.

Per STRAIGHT, BRODHURST and TYRRELL, JJ., that a fresh suit was the most convenient and expeditious remedy.

Per OLDFIELD, J., that the purchaser not being the "representative" of the judgment-debtor, within the meaning of s. 244 (c) of the Civil Procedure Code, the holder of such decree must bring a fresh suit to enforce it.

THIS was a reference to the Full Bench by Straight and Mahmood, JJ. The facts of the case and the point of law referred are stated in the order of reference, which was as follows:—

MAHMOOD, J.—On Jaith Sudi 7th, 1281 fasli (22nd May, 1874), Salig, defendant No. 1, executed a bond in favour of the plaintiffs, whereby he hypothecated his six-pie share in lieu of a loan of Rs. 191. Again, on Phagun Badi 13th, 1282 fasli (5th March, 1875), he and his co-sharers, Jag Mohan, Sheo Nath, and Murli, jointly executed a bond for Rs. 48 in favour of Shankar, defendant No. 2, hypothecating their one-anna share, which included three pies out of the six-pie share which Salig, defendant No. 1, had previously hypothecated to the plaintiffs. On the 29th March, 1877, the

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* Second Appeal No 1345 of 1881, from a decree of R. J. Leeds, Esq., Judge of Gorakhpur, dated the 15th August, 1881, modifying a decree of Maulvi Muhammad Kamil, Munsif of Basti, dated the 27th April, 1881.

plaintiffs obtained a decree against Salig, defendant No. 1, on their hypothecation-bond above referred to. Similarly, on the 25th March, 1878, Shankar, defendant No. 2, obtained a joint decree against Salig, defendant No. 1, and his three co-sharers above-named, on the hypothecation-bond of 5th March, 1875. In execution of his decree, Shankar, defendant No. 2, brought the hypothecated property to sale on the 20th June, 1878, when it was purchased by Jagat Narain, defendant No. 3, and Sri Kishen, defendant No. 4, who appear to be brothers.

On the 20th April, 1880, the plaintiffs made an application for execution of their decree of 29th March, 1877, for realization of Rs. 375-7 by sale of the property of Salig, defendant No. 1, which had been hypothecated by him under the deed whereupon the decree was passed. That property, as has already been shown, included the three-pie share purchased by defendants Nos. 3 and 4 on the 20th June, 1878, in execution of the decree obtained by Shankar, defendant No. 2. On the 30th July, 1880, the Court ordered the pleader for the decree-holder to put in *talbana* for issue of notices to the opposite party. Nothing appears to have occurred in furtherance of the execution proceedings, and it may be taken that matters stood *in statu quo* when the present suit was brought.

The present suit was commenced on the 26th March, 1881, having for its object the recovery of the sum of Rs. 375-7, (being the amount stated in the application of 20th April, 1880), and of Rs. 21, interest thereon, at six per cent. per annum, for 11 months and 6 days, total Rs. 396-7, (said to be still due to the plaintiffs under their decree), by sale of the six-pies share aforesaid, and by avoidance of the auction-sale of 20th June, 1878. Salig, defendant No. 1, did not defend the suit, but Shankar, defendant No. 2, and the purchasers, Jagat Narain, defendant No. 3, and Sri Kishen, defendant No. 4, set up various pleas in defence, which, however, need not be noticed in detail. The Munsif, over-ruling the pleas in defence, decreed the claim as brought. On appeal by the defendants the Judge modified the decree of the Munsif in the following terms :—1st.—The decree will be for the cancelment of the sale so far only as it affects the six-pie share hypothecated to the

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plaintiffs. 2ndly.—The decree instead of being for the recovery of a certain sum, by re-sale of the share, will simply be declaratory of the plaintiff's right to re-sell the property in satisfaction of his prior lien.

The present appeal has been preferred by Jagat Narain, defendant No. 3, and Sri Kishen, defendant No. 4 (auction-purchasers at the sale of 20th June, 1878), but their pleader has abandoned all the grounds of appeal, except the first, which raises the question, whether the present suit was maintainable at all, and whether or not the only remedy open to the plaintiffs was to proceed with the execution of their decree of 29th March, 1877.

In regard to this question, our attention has been drawn to three rulings which lay down contradictory rules of law. In the case of *Pahar Singh* v. *Jai Chund* (1) it was held that, where property hypothecated as security for the debt of a prior judgment-creditor is sold in the execution of the decree of another party, the remedy of the judgment-creditor lies in a regular suit against the auction-purchaser of the hypothecated property, and the sale to the latter cannot be set aside by an order in the miscellaneous department, in execution of a decree in a suit to which he was no party, between the creditor and the debtor, whose property is hypothecated. An opposite view appears to have been taken by a Full Bench of the same Sadr Diwani Adalat, in the case of *Munglo* v. *Rughoonath Dass*(2), wherein the ruling in the first case above cited was noticed.

Again in the case of *Gajadhar Pershad* v. *Daibee Pershad* (3) a Division Bench of this Court, consisting of Pearson and Turner, JJ., without noticing either of the two rulings above-mentioned, held that hypothecation of property as security for a debt gives the party so secured a right to the application of such property, or its sale-proceeds, in satisfaction of his claim; but if such property has been sold under execution of another decree, the secured party cannot cause re-sale without obtaining a decree for that purpose in a fresh suit.

(1) N.-W. P. S. D. A. Rep., 1864, vol. i, p. 543.

(2) N.-W. P. S. D. A. Rep., 1866 p. 72.

(3) N.-W. P. H. C. Rep., 1869, p. 29.

This ruling appears to favour the view taken in the case of *Pahar Singh*, which, as has already been observed, was modified by the Full Bench of the late Sadr Diwani Adalat of these Provinces.

The question, therefore, does not appear to be a settled one, and is, no doubt, involved in some difficulty. We refer the following question to a Full Bench:—

A decree enforcing a prior lien against certain property having remained unsatisfied, the property is sold in execution of a subsequent decree enforcing a subsequent lien against the same property: can the prior unsatisfied decree be executed against the said property, notwithstanding the sale; or is the holder of the prior unsatisfied decree bound to obtain a fresh decree for enforcement of his decretal charge against the property, by impleading the original judgment-debtor, the subsequent decree-holder, and the auction-purchaser, as defendants, to the fresh suit?

Mr. *Simeon* and Babu *Jogindro Nath Chaudhri*, for the defendants (appellants) Jagat Narain and Sri Kishen.

Lala *Lalta Prasad* and Munshi *Sukh Ram*, for the plaintiffs (respondents).

The following opinions were delivered by the Full Bench:—

STUART, C. J.—My answer to this reference is that a fresh suit is the only remedy.

STRAIGHT, BRODHURST, and TYRRELL, JJ.—It seems to us a sufficient answer to this reference to say, that we find nothing in the law to prohibit a suit of the kind mentioned in the referring order: indeed, it would appear to be the most convenient and expeditious remedy.

OLDFIELD, J.—The decree-holder can only proceed to execute his decree against the property in the hands of an auction-purchaser, if the latter can be held to be a representative of his judgment-debtor within the meaning of clause (*c*) of s. 244, Civil Procedure Code, so as to make the question one between the parties to the suit or their representatives and relating to the execution of the decree, for there are no direct provisions of the Code on the subject. Otherwise the decree-holder's only remedy is by

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suit against the auction-purchaser, for it would not avail him to attach the property in execution of his decree against his judgment-debtor, since, if the auction-purchaser resisted the attachment, questions would be raised which could not be disposed of by the Court executing the decree. In my opinion the word "representative" used in s. 244 was not intended to include purchasers of a judgment-debtor's property. We find special provisions in the Code for enabling transferrees of decrees by assignment or operation of law to execute their decrees (s. 232), and for a decree-holder to execute a decree against the legal representatives of a deceased judgment-debtor (s. 234.) Had it been intended to give power to execute a decree against an assignee of a judgment-debtor, as representative of a judgment-debtor, some similar provision to that in s. 234 would probably have been made to effect that object, and its omission, coupled with the fact, which is significant, that "legal representative," as used in s. 234, is confined to the heirs of a deceased judgment-debtor, may lead to the inference that the word "representative" in s. 244 has no more extended meaning than heir, devisee, or executor, which also is the proper signification.

I would reply to the reference, that the decree-holder's remedy in the case referred is by suit for the enforcement of his decretal charge against the property.

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APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

HAMILTON (DEFENDANT) *v.* THE LAND MORTGAGE BANK OF INDIA (PLAINTIFF).*

Practice—Conversion of character of suit—Remand.

A Bank sued *H*, its agent, who had appointed *N* to act in the matter of the agency, for money belonging to it which *H* had paid *N* for the purposes of the agency, and which was not accounted for by *N*, claiming the same on the ground that *N* had been appointed to act as a sub-agent without authority. The lower appellate Court found that *N* had been appointed by *H* to act in the matter of the agency with authority, but, instead of dismissing the suit with reference to this finding, gave the plaintiff Bank a decree against *H*, on the ground that he had not exercised ordinary prudence in selecting *N* as an agent for his principal. *Held* that, inasmuch

* Second Appeal No. 859 of 1882, from a decree of W. Duthoit, Esq., D. C. L., Judge of Allahabad, dated the 25th April, 1882, affirming a decree of Babu Pramoda Charan Banarji, Subordinate Judge of Allahabad, dated the 23rd August, 1881.

as the plaintiff Bank had not claimed relief, on the ground that *H* had failed in his duty in naming *N* as an agent for his principal, but on the ground that *N* had been appointed without authority, and had failed to prove its case, the suit should have been dismissed.

THE plaintiff in this case, the "Land Mortgage Bank of India" sued the defendant for Rs. 1,000, principal, and Rs. 412-8-0 interest. The defendant, J. M. Hamilton, was the agent of the plaintiff Bank at Allahabad, and as such negotiated a loan by the Bank to certain persons on the security of a village situated in the Banda district. The Bank having sued to recover the money lent by it to those persons, obtained a decree for the same and for the sale of the security. The village was brought to sale in execution of this decree and was purchased by the Bank. The defendant appointed one Niaz Ali to manage the property, and gave him certain moneys belonging to the Bank for the payment of Government revenue and other purposes. Out of these moneys a sum of Rs. 1,000 was alleged by Niaz Ali to have been paid on account of Government revenue. It was eventually discovered that no such sum had been paid by Niaz Ali on that account; and such sum was not accounted for by him. The Bank accordingly brought the present suit against the defendant to recover the Rs. 1,000 which he had paid to Niaz Ali, together with interest, on the ground that such payment was unauthorized. The defendant set up as a defence to the suit that Niaz Ali was the plaintiff's agent, and therefore the payment to him of the money in suit was not unauthorized. The Court of first instance found that Niaz Ali had not acted for the plaintiff in the matter of the agency, but for the defendant, and that the defendant's selection of Niaz Ali to act in the matter of the agency was a selection wanting in discretion, and in the event gave the plaintiff a decree. On appeal by the defendant the lower appellate Court (District Judge) found that Niaz Ali had acted for the plaintiff in the matter of the agency, and remanded the case for trial of the issues, whether the defendant, in selecting Niaz Ali in the matter of the agency, had or had not exercised due discretion; and whether the defendant had or had not participated or co-operated with Niaz Ali in the act by which the Bank was defrauded. The Court of first instance found the first issue against the defendant and the second

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in his favour. The lower appellate Court affirmed these findings, and, having regard to the first, affirmed the decision of the first Court.

On second appeal by the defendant to the High Court, it was contended on his behalf that the lower appellate Court should have dismissed the suit when it found that Niaz Ali had acted for the plaintiff in the matter of the agency, inasmuch as the plaintiff had come into Court, seeking relief on the ground that the payment by the defendant to Niaz Ali of the money in question was unauthorised, and had failed to establish such ground, and that, in remanding the case as it had done, and in affirming the decree of the first Court on grounds other than those on which the plaintiff had sought relief, the lower appellate Court had acted erroneously in law.

Messrs. *Colvin* and *Ross*, and Munshi *Ram Prasad*, for the appellant.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the respondent.

The Court (STRAIGHT and TYRRELL, JJ.) delivered the following judgment:—

STRAIGHT, J.—We are very clearly of opinion that this appeal must prevail. It seems to us that the Judge, in remanding the issues he did to the Subordinate Judge for findings under s. 566 of the Code, and deciding the case from the point of view disclosed in his judgment, lost sight of the form of the plaint and the grounds set out therein upon which relief was prayed. The obvious position taken up by the plaintiff Bank on the pleadings is, that Niaz Ali never was an agent of the Bank, and that the payment of Rs. 1,000, if ever made to him in fact by the defendant, was a gratuitous and unauthorised one, and therefore that the latter was liable to make the amount good. The Judge, very properly, as we think, held the agency of Niaz Ali to be satisfactorily proved, and upon that view of the matter it is plain that the suit as brought failed, and as for money had and received to the use of the plaintiff could not be maintained. The Judge, however, treating Niaz Ali as an agent of the Bank, and apparently regarding its claim as preferred *ex delicto*, proceeded to remit issues to the

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first Court for the purpose of having the question determined as to whether, in making the selection of Niaz Ali as agent for the Bank, the defendant exercised the reasonable care and caution of an ordinarily prudent man; and upon the findings being returned to him, virtually disposed of the suit as if it were one for the damages. It seems to us sufficient to say that this was not the footing upon which the Bank came into Court, nor, looking to all the circumstances, do we think it should be permitted to make such a complete change of front, and to obtain relief upon grounds, not only that it did not set up, but by the very plaint itself controverted. Some regard must be paid to the form of pleadings, and though the circumstances out here are such that it would be unwise to test them by very strict or technical rules, we cannot countenance the notion, that a plaintiff, coming into Court with one case, and hopelessly failing to prove it, should be permitted to succeed upon another, and that directly in antagonism with his primary allegations. The plaintiff Bank never claimed to make the defendant liable for the Rs. 1,000 instead of Niaz Ali, on the ground that he had been wanting in diligence and care in selecting that person as an agent: on the contrary, the terms of the plaint repudiate such a notion: yet it is on this footing that relief has been granted to the plaintiff.

We are of opinion that the agency of Niaz Ali having been abundantly established as declared by the Judge, the foundation upon which the claim of the plaintiff rested crumbled away and the suit failed. The appeal is decreed with costs and the suit must stand dismissed.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

1883. March 22.

BUTI BEGAM AND ANOTHER (JUDGMENT-DEBTORS) *v.* NIHAL CHAND AND ANOTHER (DECREE-HOLDERS).*

Execution of decree—Stay of execution—Revival of execution proceedings—Act XV of 1877 (Limitation Act), sch. ii, No. 187.

A decree was made against *B*, *K*, and *Z*. On the 13th May, 1879, application was made for execution of the decree against *B* and *K*. In August, 1879, *Z*, who had preferred an appeal in the suit, applied on that ground for

* Second Appeal No. 74 of 1882, from an order of H. G. Keene, Esq., Judge of Saháranpur, dated the 27th September, 1882, reversing an order of Muhammad Sayyid Khan, Munsif of Muzaffarnagar, dated the 31st July, 1882.