APPELLATE CIVIL.

Before Coldstream and Bhide JJ.

R. H. SKINNER (DEFENDANT) Appellant

versus

THE BANK OF UPPER INDIA, LTD. (IN LIQUIDATION) (PLAINTIFF) AND OTHERS (DEFENDANTS) Respondents.

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Nov. 11.

Civil Appeal No 71 of 1931.

Indian Limitation Act, IX of 1908, section 19: Acknowledgment by mortgagors subsequent *to sale of equity of redemption — whether keeps the mortgage alive to bind the purchaser of the equity of redemption.*

The mortgage money under a simple mortgage in favour of the respondent Bank was payable on the 7th May, 1914. On the 30th May, 1914, the two mortgagors sold the equity of redemption to S., the present appellant. On the 10th March, 1916, the mortgagors made an acknowledgment in favour of the mortgagee. On the 27th June, 1927, the mortgagee sued for recovery of the money on the basis of the mortgage, when the question arose whether the suit was within time by virtue of the acknowledgment by the mortgagors, dated 10th March, 1916.

Held, that under section 19 of the Limitation Act, the acknowledgment by the mortgagors, although made subsequent to the sale of the equity of redemption, kept the mortgage alive, and that the suit against the purchaser of the equity of redemption was, therefore, within time.

Case law discussed.

First appeal from the preliminary decree of Bawa *Daswandha Singh, Senior Subordinate Judge, Hissar, dated 27th August, 1930, decreeing the suit with interest.*

SHAMAIR CHAND, J. L. KAPUR, PARKASH CHAND and YASHPAL, for Appellant.

MUHAMMAD AMIN KHAN, MUHAMMAD DIN JAN and SHAM LAL, for Respondents.

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BHIDE J.—This judgment will dispose of the connected appeals Regular First Appeals Nos.71 of 1931 and 755 of 1932, which are from a preliminary and final decree in a suit on the basis of a mortgage.

The pedigree-table of the parties concerned in these appeals is attached to this judgment as appendix A. It may be mentioned here that one branch of the family has become Muhammadan and members of this branch have been known by Muslim as well as Christian names.

On the 7th May, 1910, two brothers named Thomas Skinner (defendant No.1) *alias* Sultan Mirza, and Robert Skinner *alias* Sardar Mirza (who is now dead and is represented by defendants Nos.2 and 3) mortgaged a $\frac{1}{2}$ share in the village Siswal in the Hissar District in favour of the Bank of Upper India (now in liquidation) for a sum of Rs.40,000 (*vide* Ex. P/11). The mortgage was a simple one and carried interest at 7 *per cent. per annum*, which was to be either paid, or calculated and added to the principal every six months. The whole amount was to be repaid in four years in half-yearly instalments of not less than Rs.5,000 each, commencing from the 7th November, 1910, *i.e.* by the 7th May, 1914. In default of payment of any instalment or breach of any other condition of the mortgage, the whole amount was to become due and payable at once.

On the 30th May, 1914, the mortgagors along with another co-sharer named George Skinner agreed to sell the above-mentioned half share in the village Siswal along with their land in certain other villages to Robert Hercules Skinner, defendant No.4, for a sum of Rs.4,23,000 (*vide* Ex. P/16). According to the terms of this agreement Rs.5,000 was to be paid by

way of earnest money. A sum of Rs. one lakh was to be paid into the Bank of Upper India on or before the 18th June, 1914, by the vendee and in default of such payment the sale was to become null and void. The vendee was also to arrange for the payment of the balance by transfer of accounts in the Bank of Upper India.

The earnest money and the sum of one lakh were duly paid, but the balance was not paid. Possession of the property was, however, given to the vendee in pursuance of this agreement and mutation was also effected in his favour in spite of the objections of the vendors on 24th January, 1915 (*vide* Ex. P/15). Intimation about the agreement of sale was given to the Bank of Upper India by the mortgagors on 5th June, 1914.

Admittedly the mortgagors failed to pay the instalments as stipulated in the mortgage deed and the whole amount became payable with interest on 7th May, 1914. As the vendee (Mr. R. H. Skinner—the present appellant) failed to pay the balance of the purchase money, the vendors sued him for 'specific performance' of the agreement to pay the balance of Rs.3,16,200 on the basis of the agreement of sale, dated 30th May, 1914. This suit (which is referred to as suit No.97 of 1918) was decreed on 9th June, 1918, and the decree was affirmed on appeal by this Court on 26th November, 1923. The vendee appealed to their Lordships of the Privy Council and they modified the decree of the trial Court so as to make it run as follows:—That the appellant do pay to the respondents a sum by way of damages made up of Rs.3,16,200 with interest at 7 *per cent. per annum* from the 18th June, 1914, until the date of payment,

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together with costs, and that except as to the payment of the said costs, execution ought to be stayed for six calendar months, and if within that time without prejudice to any right that he may have to specific relief under clause 5 of the agreement, dated 30th May, 1914, after so doing, the appellant shall pay to the Bank of Upper India or their assigns, the said sum to be credited by them ratably in reduction of the principal and interest, the stay ought to be made permanent; but otherwise execution ought to issue. This decree was passed on the 16th December, 1927, and the decision of their Lordships is reported as *R. H. Skinner v. Rosy Skinner* (1).

In the meantime the Bank of Upper India had gone into liquidation on the 16th July, 1917, and Messrs. H. Hunter and C. H. Stuart had been appointed as liquidators with joint and several powers. At the time of liquidation the liquidators were authorised to enter into an agreement with the Trust of India, Limited, Simla, for the sale of the assets of the said Bank and accordingly an agreement for the sale of the assets was entered into on the 16th July, 1917. The Trust of India also went into liquidation on the 2nd January, 1923, and Mr. Damodardas and Mr. H. Hunter, were appointed its liquidators with joint and several powers. On the 27th June, 1927, Mr. H. Hunter, as liquidator of the Bank of Upper India and the Trust of India, instituted a suit for recovery of Rs.1,29,435-0-9 against the mortgagors and their representatives in interest by the sale of the property mortgaged by Thomas Skinner and Robert Skinner in favour of the Bank on the 7th May, 1910.

(1) 1928 A. I. R. (P. C.) 51.

This suit (No.47 of 1927) was contested by the principal defendant — Mr. R. H. Skinner — on various grounds but was eventually decreed. A preliminary decree was passed on the 27th August, 1930, and was followed by a final decree for sale on the 24th March, 1932. From these decrees two appeals have been preferred—*viz.*, Civil Appeal Nos. 71 of 1931 and 755 of 1932—by Mr. R. H. Skinner. A preliminary objection was raised in these appeals that the appeals were not properly instituted, as the decree was amended after the institution of the appeal and no copy of the amended decree was filed by the appellant. There is no force in this objection, as the amendment was of a formal character and merely brought the decree into conformity with the judgment, so far as the right to a personal decree was concerned. The learned counsel for the appellant stated that he was not contesting at all the part of the decree which was thus varied and which made the appellant personally liable. In the circumstances the preliminary objection was overruled.

On the merits the learned counsel for the appellant confined himself to two points—*viz.* the *locus standi* of the Bank of Upper India to institute this suit and the question of limitation. As regards the first point, it was urged that the Bank, having sold all its assets to the Trust of India, Simla, before the institution of this suit, had no *locus standi* to maintain it. It appears, however, that the Bank had only entered into an agreement for the sale of its assets. No deed of sale was executed. The Bank had its Headquarters at Meerut and a sale of its assets could only be effected by a registered document, as the Transfer of Property Act is in force in the United Provinces in which

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Meerut is situated. The Trust of India was joined as a plaintiff only as an interested party. Similarly Mr. Ashworth, Liquidator of the Alliance Bank of Simla, was also made a plaintiff, as an interested party, on an objection raised by the defendants during the pendency of the suits; for the Trust of India had issued debentures worth rupees fifty lacs in favour of the Alliance Bank of Simla and these covered the assets of the Bank of Upper India which were to be transferred to the Trust of India. In my judgment the learned Subordinate Judge was right in holding that the Liquidator of the Bank of Upper India had a *locus standi* to sue in the circumstances in spite of the agreement to sell the assets of the Bank, as the assets had not yet been legally transferred to the Trust of India.

A similar question was raised as regards the status of this very Bank on the same facts in *Fanny Skinner v. Bank of Upper India, Ltd.* (1), and their Lordships of the Privy Council held that the Bank had a *locus standi* to sue.

I now pass on to the issue of limitation which was the main question agitated in these appeals. It has been already mentioned above that the mortgage money became payable on the 7th May, 1914, while the suit giving rise to these appeals was not instituted till the 27th June, 1927. The suit, being, admittedly governed by the twelve years' limitation prescribed in Article 132 of the Indian Limitation Act, was *prima facie* barred by time; but the plaintiffs sought to bring it within limitation by claiming extension of time under section 19 of the Indian Limitation Act on the basis of certain acknowledgments specified in para. 17 of the plaint. The learned Subordinate Judge has

(1) 1935 A. I. R. (P. C.) 108.

held the suit to be within time on the strength of one of these acknowledgments, *viz.*, the one, dated the 10th March, 1916, which is marked as Ex. P/10. The learned counsel for the appellant challenged the correctness of this finding. He contended firstly that the ' acknowledgment ' in question was not genuine and was not proved by any reliable evidence and secondly that the ' acknowledgment ' having been made by the mortgagors *after* they had sold the property to the appellant, could not avail to extend time under section 19 of the Indian Limitation Act. As regards the first point, the learned Senior Subordinate Judge has discussed the evidence relating to Ex. P.10 and I see no reason whatever to differ from his finding that the acknowledgment is genuine. The signatures of Thomas Skinner and Robert Skinner on Ex. P.10 have been proved by the evidence of Mr. H. K. Mookerjee, A. C. Banerjee and Lachman Prasad (P.Ws.6, 7 and 8) which there is no good reason to disbelieve. The signatures appear to tally in most respects with those on Ex.P.9, the genuineness of which was not disputed. The main contention of the appellant was that the signatures on Ex. P.10 do not include the Muslim ' aliases ' of the signatories; but even the widow of Robert Skinner (D.W.4) admitted that the mortgagors did not always write their aliases when signing. The appellant himself had not the courage to deny the genuineness of the signatures when he was examined and merely contended himself with saying that he could not say whether the signatures were genuine or not. Lastly, it is significant that the appellant was not able to produce any evidence in rebuttal on this point. In view of all these facts I feel no hesitation in agreeing with the finding of the learned Subordinate Judge.

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As regards the second point, *viz.*, the sufficiency of the acknowledgment for extension of time under section 19 of the Indian Limitation Act, the learned counsel relied chiefly on the judgment of Mukerjee J. in *Surjiram Marwari v. Barhamdeo Persad* (1), *Yagnanarayana v. Venkata Krishna Rao* (2) and a recent decision of the Allahabad High Court reported as *Ram Sarup v. Bhagwati Prasad* (3), which was followed by the Allahabad High Court in certain similar suits against the appellant arising out of the same transactions, which were tried in the United Provinces and were eventually dismissed as time-barred. The learned counsel for the respondents on the other hand relied on *Krishna Chandra Saha v. Bhairab Chandra Saha* (4) which was followed by the Calcutta High Court in *Domi Lal Sahu v. Roshan Dobay* (5), *Hemo Chandra Chaudhari v. Purna Chandra Chaudhari* (6), *Muthu Chettiyar v. Muthuswami Ayyangar* (7), *Narayana v. Venkataramanna* (8), *Nigah Ali Khan v. Aqilullah* (9), *Ram Sahai v. Kunwar Sah* (10) and *Arbindakeb Rai v. Jageshar Rai* (11). The judgment of Mukerjee J. on which the learned counsel for the appellant laid great stress, is based chiefly on certain English decisions and considerations regarding the hardship likely to result if the acknowledgment of a person who has parted with his property is held to be binding on his transferee. The learned Judge also supports his view from the analogy of section 11 of the Civil Procedure Code. The analogy of the latter section is not very helpful as the two cases do not stand

(1) (1905) 1 Cal. L.J. 337.
(2) 1925 A. I. R. (Mad.) 1108.
(3) 1936 A. I. R. (All.) 636.
(4) I. L. R. (1905) 32 Cal. 1077.
(5) I. L. R. (1906) 33 Cal. 1278.
(6) (1914) 22 I. C. 510.
(7) I. L. R. (1932) 55 Mad. 758.
(8) 1935 A. I. R. (Mad.) 899.
(9) 1930 A. I. R. (Oudh) 56.
(10) 1932 A. I. R. (Oudh) 314.
(11) (1919) 51 I. C. 829.

on the same footing as pointed out in *Amir Mirza v. Lachhmi Narain* (1). As regards English decisions it is conceded that the English Statutes are not in the same terms as section 19 of the Indian Limitation Act, and as pointed out by their Lordships of the Privy Council in *Mussammat Ramanandi Kuer v. Mst. Kalawati Kuer* (2), when there is a positive enactment of the Indian Legislature on any subject, the proper course is to examine its language and ascertain its proper meaning, uninfluenced by any considerations of the English Law on the subject. Now, the wording of section 19 of the Indian Limitation Act, so far as it is relevant for the purposes of the present case, is as follows :—

" Where before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed."

It will appear from the above that there is nothing in the wording of the section to support the contention that where the acknowledgment is made by a person from whom the defendant derives his title it must have been made before the transfer of the title. It is a cardinal rule of interpretation of statutes that an enactment ought to be construed according to its plain language and it is not for the Court to speculate as regards the intention of the Legislature or to import into the enactment words which do not exist there, in

(1) 1932 A. I. R. (Oudh) 1, 5. (2) 1928 A. I. R. (P. C.) 2.

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order to remove possible or supposed hardship. This was the view taken in the Calcutta and Madras cases relied on by the learned counsel for the respondents. It is true that the Calcutta cases relate mostly to section 20 of the Indian Limitation Act, which is differently worded. But section 19 also was relied on in *Krishna Chandra Saha v. Bhairab Chandra Saha* (1), and the learned Judges (Sir Francis Maclean C. J. and Mitra J.) held, in view of the precise language of the section, that an acknowledgment made by a mortgagor, even after the sale of his equity of redemption, was sufficient to save the limitation. This view appears to have been consistently taken in Madras except in *Yagnanarayana v. Venkata Krishna Rao* (2). The latter case was not followed in *Narayana v. Venkataramanna* (3), in which the case-law, including some English decisions, was fully considered and *Krishna Chandra Saha v. Bhairab Chandra Saha* (1) was followed. The Chief Court of Oudh has also taken a similar view in two recent decisions reported as *Nigah Ali Khan v. Aqilullah Khan* (4) and *Ram Sahai v. Kunwar Sah* (5). In *Arbindakeb Rai v. Jageshar Rai* (6), a Division Bench of the Allahabad High Court, consisting of Walsh and Stuart JJ. took the same view, but this case was dissented from by another Division Bench consisting of Suleman C. J. and Bennet J. in *Ram Sarup v. Bhagwati Prasad* (7). In the latter ruling it was pointed out that there was a difference in the wording of sections 19 and 20, and it was held, following another ruling of the Allahabad High Court reported as *Roshan Lal v. Kanhaiya Lal* (8), and certain English decisions (some of which were

(1) I. L. R. (1905) 32 Cal. 1077.
(2) 1925 A. I. R. (Mad.) 1108.
(3) 1935 A. I. R. (Mad.) 899.
(4) 1930 A. I. R. (Oudh) 56.
(5) 1932 A. I. R. (Oudh) 314.
(6) (1919) 51 I. C. 829.
(7) 1936 A. I. R. (All.) 636.
(8) I. L. R. (1919) 41 All. 111.

also relied on in *Surjiram Marwari v. Barhamdeo Persad* (1), that an acknowledgment given by a mortgagor did not bind a subsequent transferee unless it was given before the transfer in favour of the latter. As regards *Roshan Lal v. Kanhaiya Lal* (2), it may be mentioned that that case was one of 'payment' and not of ' acknowledgment ' and the remarks on the question of ' acknowledgment ' therein are no more than *obiter dicta*. One of the Judges who was a party to that ruling was also a party to a later ruling reported as *Arbindakeb Rai v. Jageshar Rai* (3), which was a case of an ' acknowledgment ' and which supports the respondents in this case. It is true that the question is not discussed at length therein, but the learned Judges have given their reasons for not doing so.

As regards the English decisions, I have already pointed out that they are not really relevant as we are concerned here with the interpretation of an Indian Statute, while the English decisions are based on Statutes, the language of which is different to that of section 19 of the Indian Limitation Act. The English Statutes as well as the decisions based thereon were fully discussed in *Amir Mirza v. Lachhmi Narain* (4), and the learned Judges stated their conclusion as follows :—

" Thus it seems to us that there is no complete harmony in the English decisions on the subject. The decisions are based upon the construction of statutes, the language of which is not identical with the language of section 19, Limitation Act. They do not embody any general principle which can be regarded as of universal application. It has also to be borne in

(1) (1905) 1 Cal. L. J. 337.
(2) I. L. R. (1919) 41 All. 111.
(3) (1919) 51 I. C. 829.
(4) 1932 A. I. R. (Oudh) 1.

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mind that there is a fundamental difference in the theory of acknowledgment according to the law in India as compared with the law of England. In England the acknowledgments or part payments in order to be effective must be such as to amount to a fresh promise to pay. Under the Indian Law no promise to pay either express or implied is required. We are, therefore, of opinion that the English authorities cannot afford any guidance in determining the question, which must be decided on the proper construction of the provisions of the Indian Limitation Act."

The learned Judges of the Allahabad High Court who decided the case reported as *Ram Sarup v. Bhagwati Prasad* (1), have laid stress on the difference in the language of section 19 and section 20, but so far as I can see, the difference throws little light on the question of interpretation with which we are concerned. The words ' or by some person through whom he derives his title or liability ' do not occur at all in section 20. The main point for decision in the case before us is the interpretation to be placed on these words. In the case of a ' payment ' by a mortgagor it is conceded that it *does serve* to extend the period of limitation against transferees even when the payment is made after the transfer. There seems to be no adequate reason in the circumstances why the same principle should not govern an ' acknowledgment ' also. It was urged that ' payment ' stands on a different footing from a mere ' acknowledgment,' as the latter might be made fraudulently. But if there is a possibility of a collusive ' acknowledgment,' there is also a possibility of a collusive ' payment.' For, a

(1) 1936 A. I. R. (All.) 636.

mortgagor might be induced to make small payments fictitiously or fraudulently. But it is really unnecessary to go into the question of fraud; for if an acknowledgment is not genuine it may possibly be ruled out of the purview of section 19 for that reason, as pointed out *Arbindakeb Rai v. Jageshar Rai* (1). Otherwise, an ' acknowledgment ' is also against the interest of the mortgagor as it extends the period of his liability and there is, therefore, no reason why it should not serve to extend the period of limitation against a mortgagee in the same way and for the same reason as a payment falling within the scope of section 20. Of course, an ' acknowledgment ' of liability implies that the person who makes the acknowledgment is still liable and it is only to such cases that the section will, I suppose, apply.

In *Chinnery v. Evans* (2), a case decided by the House of Lords in 1864, in which it was held that payment by a mortgagor to a mortgagee serves to extend time as against a purchaser of the equity of redemption of the mortgaged properties, a question having been raised as to whether a payment even by a stranger would serve to extend time, Lord Westbury remarked as follows :—

" It was said in argument, that if such an interpretation be given to the statute, it would be possible for a stranger to pay the interest to the mortgagee, and thereby to keep alive the mortgage. It is hardly necessary to deal with such an improbable case as that; but the answer to it, I think, would be this; that money paid, that is money handed over, by a stranger to the contract under which it was paid, to the individual entitled to receive it, would not have the

(1) (1919) 51 I. C. 829. (2) (1865) 11 H. L. C. 115.

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characteristics and the legal quality of payment. It would be a voluntary render; a gift or donation, being made by a party, not in any respect subject to liability, to the individual who would not be entitled to receive from the person so rendering it any part of the money which it is supposed would be paid."

The same remarks would apply to an acknowledgment if it is made by a person who is not himself liable. It would not have the " legal quality " of acknowledgment.

The learned Judges who decided the Calcutta case reported as *Krishna Chandra Saha v. Bhairab Chandra Saha* (1) held that the principle to be deduced from *Chinnery v. Evans* (2) was, that " a mortgagee cannot by the act of parties entitled only to the equity of redemption be deprived of his right to resort to any estate comprised in his mortgage, so long as he has not released or given it up and so long as that mortgage is legally kept alive."

In the present instance the suit was to enforce payment of money charged on immoveable property (*cf.* Art. 132 of the Indian Limitation Act) and the acknowledgment was by persons who were still liable for the payment. It is true that the mortgagors had parted with the security, but it must be remembered that a mortgagor is personally liable even if he has parted with the equity of redemption and it is, therefore, against his interests to extend the period of his liability; for if the discharge is delayed, the interest goes on accumulating and there is risk of his being held personally liable for a larger sum. The liability of the transferee on the other hand is confined to the

(1) I. L. R. (1905) 32 Cal. 1077, 1081. (2) (1865) 11 H. L. C. 115.

secured property and he incurs no greater risk by the extension of time. The appellant in this case admittedly knew of the existence of the encumbrance when he purchased the property and he must be taken to have accepted it with all the incidents attached to it. In fact, he had to pay the money required to redeem the prior mortgages. If an acknowledgment gives more time to the mortgagee to sue, it also gives more time to the mortgagor and the purchaser of the equity of redemption to redeem the property. As remarked by the learned Judges in *Narayana v. Venkataramanna* (1) (at page 901, column 1), " the subsequent purchaser or encumbrancer who knows the existence of a mortgage ought also to know the possibility of the mortgage being kept alive by acknowledgment or payment and as he purchased only the equity of redemption it cannot be said that he is disappointed. He gets what he bargained for. He has no right to expect that the mortgage would become barred and he can make a profit in the transaction."

It will thus appear that there is little to be said in favour of the appellant, even on grounds of ' equity ' (if they are relevant at all) on which stress was laid by the learned counsel for the appellant. Indeed in the present instance, the whole litigation was due to the failure of the appellant himself to pay up, as he was bound to do, the balance of the mortgage money consisting of over three lacs which was to be utilised in paying up the prior encumbrances.

It was in the year 1905 that the case reported as *Krishna Chandra Saha v. Bhairab Chandra Saha* (2) referred to above, which was followed in several subsequent rulings, was decided. That case did not

(1) 1935 A. I. R. (Mad.) 899, 901. (2) I. L. R. (1905) 32 Cal. 1077.

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merely refer to a payment but also to an acknowledgment, as has been pointed out already. *Surjiram Marwari v. Barhamdeo Persad* (1), which was decided in the same year, was cited in arguments before the learned Judges who decided *Krishna Chandra Saha v. Bhairab Chandra Saha* (2), but they did not follow or refer to it. The opinion of Mukerjee J. in *Surjiram Marwari v. Barhamdeo Persad* (1) was apparently not shared by his learned colleague Harrington J. though he did not express his views on the point very definitely. The Indian Limitation Act was amended in 1908, but the Legislature did not amend the wording of section 19 and it has not thought it necessary to intervene until now, although the view expressed in *Krishna Chandra Saha v. Bhairab Chandra Saha* (2) has been followed in a number of subsequent rulings, as stated above.

The question is by no means free from difficulty but after a careful consideration of the wording of section 19 and the decisions cited I see no reason in the circumstances of the case to dissent from the view taken by the learned Subordinate Judge, which appears to be supported by the weight of authority.

Before concluding, I may mention one more point which was raised by the learned counsel on behalf of the plaintiff-respondent. It was urged by him that the sale was not completed in favour of the appellant, by execution of a sale deed and the appellant's position was no better than that of a trespasser. It was, therefore, urged that he could not raise the question of limitation at all, as even his 'adverse possession' could not avail against the Bank, who was a simple

(1) (1905) 1 Cal. L. J. 337. (2) I. L. R. (1905) 32 Cal. 1077.

mortgagee and was not entitled to immediate possession. Reliance was placed in support of the latter contention on *Vyapuri v. Sonamma Boi Ammani* (1). As regards this argument it will suffice to say that the contention that the sale was never completed and that the status of the appellant was no better than that of a trespasser was never taken up in the Court below. In para. 5 of the plaint it was clearly recited that on the 30th May, 1914, the property in dispute in the present case along with certain other properties was agreed to be sold to the appellant and that 'accordingly mutation was effected in favour of defendant No.4 and possession of Siswal as well as of the other villages was given to him.' The following paragraphs recite further that defendant No.4, *i.e.*, the appellant R. H. Skinner, had sold portions of the property to other persons who were joined as defendants. There is no suggestion at all in the plaint that the sales in favour of the appellant or his transferees were incomplete or void. There was, therefore, no issue on the point and the plaintiff-respondent cannot be allowed to set up a new case at this stage. It may be noted here that though the document, dated 30th May, 1914 is inartistically drawn up, counsel for both parties agreed that it was no more than an 'agreement to sell.' It is true that no formal sale-deed was drawn up as the appellant failed to pay the balance of the consideration; but the mutation proceedings show that a verbal sale was alleged to have taken place and the vendors themselves had apparently applied for the mutation to be attested. Such a verbal sale is permissible in the Punjab, where the Transfer of property Act is not in force.

(1) I. L. R. (1916) 39 Mad. 811 (F. B.).

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On the above findings I would dismiss these appeals, but in view of all the circumstances leave the parties to bear their costs.

COLDSTREAM J.—I agree.

A. N. C.

Appeal dismissed.

APPENDIX A.