

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nánábhái Haridás.*

TA'RA'CHAND, (ORIGINAL PLAINTIFF), APPELLANT, v. SUKLA'L AND
ANOTHER, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1888.
April 18.

Champerty—Agreement to divide property after litigation if successful—Furnishing money under such agreement.

An agreement to furnish money for litigation on the terms of sharing the property to be recovered thereby, is not necessarily void in India, unless accompanied by circumstances which lead to the conclusion that it was not a "bond-fide one for the acquisition of an interest in the subject-matter of litigation, but an illegitimate transaction got up for the purpose merely of spoil, or of litigation, disturbing the peace of families, and carried on from a corrupt and improper motive."

THIS was a second appeal from a decision of J. B. Alcock, Assistant Judge of Khándesh, confirming the decree of Ráv Sáheb K. N. Pátankar, Subordinate Judge of Bhusával.

The plaintiff claimed, as assignee of the equity of redemption of Rámji and Sakhárám, to redeem a plot of ground alleged to have been mortgaged by Rámji and Sakhárám's father to the first defendant in 1863.

The deed of sale, on which the plaintiff founded his claim, was, as stated by the Assistant Judge in his judgment, "an agreement to furnish money for litigation on terms of sharing the property recovered."

The Court of first instance rejected the plaintiff's claim.

The plaintiff appealed to the Assistant Judge, who confirmed the lower Court's decree with the following remarks:—

"* * * * In the present case, however, the purchase is without consideration and champertous. The alleged consideration for the appellant's deed of sale consists of the amount of the mortgage to Sukal plus Rs. 100 in cash. The vendor Rámji states that the appellant retained Rs. 75 for purposes of litigation and that it was agreed, when the mortgaged ground had been redeemed, it should be equally divided amongst the parties to the deed. I think that the Subordinate Judge was right in holding

*Second Appeal, No. 505 of 1885.

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that this is not a genuine purchase of the equity of redemption, though he has not expressed himself either clearly or accurately in saying that the agreement is against morality or public policy. The so-called deed of sale is nothing but an agreement to furnish money for litigation on terms of sharing the property recovered, and is, therefore, void * * *."

The plaintiff preferred a second appeal to the High Court.

*Inverarity (Vásudev Gopál Bhandárkar with him) for the appellants:—*The doctrine of champerty has been wrongly applied. Such a transaction, as this, is not void. It is not opposed to public policy or immoral. The agreement to pay off the mortgage-debt is a good consideration for the bond in question. It is not denied that the property is redeemable. The doctrine of champerty and maintenance has been held not to apply to India without proof of corrupt and improper motive in supporting litigation to the annoyance and disturbance of peace of families—*Chedambara Chetty v. Renga Krishna*⁽¹⁾; *Rám Coomár Coondoo v. Chunder Canto Mookerjee*⁽²⁾; *Abdool Hakim v. Doorga Prashád Banerjee*⁽³⁾.

*Farran (Ghanashám Nilkanth Nádkarni with him) for the respondents:—*The property sought to be redeemed had been mortgaged with a *gahán-lahán* clause, and the respondents have spent a considerable amount of money over it. It would, therefore, be hard to allow it to be redeemed. The mortgagors allege that they have been cheated by the appellant. The whole transaction, therefore, is suspicious and should not be recognized.

SARGENT, C. J.:—Both the Courts below, apparently following the strict English law, have held the agreement to be void, on the ground that it was one to furnish money for litigation on the terms of sharing the property recovered. Such a transaction, however, is not necessarily void in this country, unless accompanied by circumstances, which, in the language of the Privy Council in *Chedambara Chetty v. Renga Krishna*⁽¹⁾ and *Rám Coomár Coondoo v. Chunder Canto Mookerjee*⁽²⁾, lead to the conclusion that it was not a "boná-fide one for the acquisition of an interest in

(1) L. R., 1 Ind. Ap., 241.

) L. R., 4 Ind. Ap., 23; I. L. R., 2 Calc., 233.

(3) I. L. R., 5 Calc., 4.

the subject of litigation, but an illegitimate transaction got up for the purpose merely of spoil, or of litigation, disturbing the peace of families, and carried on from a corrupt and improper motive". In *Abdool Hálim v. Doorga Proshád Banerjee*⁽¹⁾ the application of this test is considered, and the judgment may perhaps be of assistance to the Courts below in determining whether the agreement in the present case was contrary to "good policy and justice" in the sense in which that expression is used by the Privy Council in the cases above referred to. We must, therefore, reverse the decree of the Court below, and send back the case for a fresh decision, having regard to the above remarks. Costs of this appeal to follow the result.

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Decree reversed.

) I. L. R., 5 Calc., 4.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS v. J. GRANT.*

1888.

April 30.

European British subject—Privilege—Waiver—High Court—Jurisdiction of High Court over European British subjects in Sind—Code of Criminal Procedure (Act X of 1882), Secs. 4, Cl. (i), 453 and 454—Bombay Act XII of 1866.

Where a European British subject waives his right to be dealt with as such by the Magistrate before whom he is tried, he thereby loses all the benefits of the special procedure provided for him under Chapter XXXIII of the Code of Criminal Procedure (Act X of 1882), including the right to have the proceedings in his case reviewed by a Presidency High Court, if another Court exercises the highest revisional jurisdiction under the Code in cases other than those against European British subjects in the place where he is tried.

The definition of "High Court" in section 4, clause (i), of the Code of Criminal Procedure (Act X of 1882) must be read with reference to the "special proceedings" against European British subjects contemplated in Chapter XXXIII, and not with reference to proceedings generally against Europeans, including proceedings in which they waive their rights under that chapter.

If, therefore, in any particular case, the special rules contained in Chapter XXXIII of the Code cease to have any application, the definition of "High Court" in the former part of section 4, clause (i), ceases also to have any application to such a case. The definition in the latter part of the section then prevails, and the case falls within the category of "other cases" to which that part of the section applies.

* Review, No. 58 of 1888.