1899.

SHET MANIBHAI v. BAI RUPALIBA.

an agent, and consequently no warranty such as would support a suit could arise out of such a representation—*Beattie* v. *Ebury*[1]. Then it has been argued that the representation really was that she had power to bind the estate, so that we will pass to consider whether looked at from this point of view the plaintiff's case is bettered. In our opinion it is not. If the case be so regarded, we have to seek a solution elsewhere than in the words of section 235, and the Advocate General in effect has argued that he relies on the principle on which section 235 is based and of which, he claims, it is only a particular illustration. But still it seems to us that by this way the plaintiff gets no further; for even if it be conceded that there was a representation as to her power to bind the estate, it was one on a point of law, and thus on the authority of the case we have named incapable of supporting a suit. We have so far assumed a representation, but we have little doubt that in truth the plaintiff never relied on any representation at all, but was content to take the risk on the facts which were within his knowledge. We, therefore, think the appeal must be dismissed with costs.

Appeal dismissed.

[1] (1872) L. R., 7 Ch., 777; L. R., 7 H. L., 102.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899. *September* 11.

KAZI HASSAN AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* SAGUN BALKRISHNA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS. *

Mahomedan law—Wakf—Mutawalli—Alienation of wakf property—Suit to set aside such alienation—Right to sue—Civil Procedure Code (Act XIV of 1882), Sec. 539.

Plaintiffs sued to recover possession of certain lands, alleging that they had been granted in wakf to their ancestor and his lineal descendants to defray the expenses for, or connected with, the services of a certain mosque; that their father (defendant No. 3) and cousins (defendants Nos. 4 and 5), who were mutawallis in charge of the said property, had illegally alienated some of these lands, and had also ceased to render any service to the mosque, whereupon they

* Second Appeal, No. 22 of 1899.

(the plaintiffs) had been acting as mutawallis in their stead. They, therefore, claimed to be entitled, as such, to the management and enjoyment of the lands in dispute. It was contended (*inter alia*) that the plaintiffs could not sue in the life-time of their father (defendant No. 3), he not having transferred his rights to them.

Held, that the plaintiffs were entitled to sue to have the alienation made by their father and cousins set aside and the wakf property restored to the service of the mosque. They were not merely beneficiaries, but members of the family of the mutawallis, and were the persons on whom, on the death of the existing mutawallis, the office of mutawalli would fall by descent, if, indeed, it had not already fallen upon them, as alleged in the plaint, by abandonment and resignation.

Wakf property cannot be alienated, and any person interested in the endowment can sue to have alienations set aside and the property restored to the trust.

Per RANADE, J. :—As a suit for possession, the suit was defective in form and could not be maintained. It was a suit for partition of a moiety of the lands, and the owner of the other moiety was not a party.

The suit was, however, really a suit for a declaration that the lands were the inám property of the mosque, and, as such, were not liable to alienation for the private debts of defendants Nos. 3, 4 and 5. The plaintiffs were entitled to sue for such a declaration, although they could not obtain actual possession. They were beneficiaries and had a right to sue under section 42 of the Specific Relief Act (I of 1877).

When a suit is brought to set aside an alienation made to a stranger, such a suit by the worshipper at a mosque or temple can be maintained and does not fall within section 539 of the Civil Procedure Code (Act XIV of 1882). That section is only applicable where there is an alleged breach of trust created for a public, charitable, or religious purpose, and the direction of the Court is necessary for the administration of the trust. As against strangers, section 539 does not apply.

SECOND appeal from the decision of Ráo Bahádur A. G. Bhave, First Class Subordinate Judge, A. P., at Ratnágiri.

Suit for possession and management of certain lands alleged to have been granted in wakf.

The plaintiffs were the sons of defendant No. 3 and the cousins of defendants Nos. 4 and 5. The lands in question had formerly been in the possession of defendants Nos. 3, 4 and 5, but had been alienated by them to defendants Nos. 1 and 2, who now held them.

The plaintiffs alleged that these lands were a portion of certain lands which had been granted in inám to the Kazi family, to

1899.

KAZI HASSAN v. SAGUN BALKRISHNA.

which they and defendants Nos. 3, 4 and 5 belonged, for the purpose of defraying the expenses connected with the service of a certain mosque. A moiety of the lands so granted was now in the possession of one Kazi Abdul Razak, who was not a party to the suit, and the other moiety had belonged to defendants Nos. 3, 4 and 5, who performed service at the mosque. These defendants, however, in 1891 had ceased to perform their services, and the plaintiffs consequently had been performing them. The plaintiffs further alleged that defendants Nos. 3, 4 and 5 had mortgaged their moiety of the said inám lands to the defendants Nos. 1 and 2, and that the share therein of defendant No. 3 (the father of the plaintiffs) had been subsequently sold and purchased by the said mortgagees (defendants Nos. 1 and 2). The plaintiffs contended that these lands had been improperly alienated, and that they were entitled to recover them on the ground that they were performing the services at the mosque for the purposes of which these lands had been granted.

The suit was contested only by defendants Nos. 1 and 2. They alleged that the lands had been the private property of defendants Nos. 3, 4 and 5, who had mortgaged and sold them. They further denied that the plaintiffs had a right to sue in the life-time of their father (defendant No. 3).

The Court of first instance dismissed the suit on the ground that the plaintiffs' father was still alive and had not transferred his rights to them, and that, therefore, they could not sue.

On appeal the Court confirmed the decree, holding that the suit was not properly framed, and that the proper course to follow was to have the defendants Nos. 3, 4 and 5 removed from being trustees of the mosque. The Subordinate Judge, A. P., stated his reasons as follows:—

"The sanad itself provides for the devolution of the right of management of the property by inheritance to the heirs of the grantee. The plaintiffs, therefore, cannot claim the right of management during the life-time of their father. The plaintiffs rest their right to the management of the property chiefly on the ground that since their separation from their father in 1891 they have rendered 'service' to the mosque, as the defendants Nos. 3, 4 and 5 neglected to do it. The plaintiffs, however, do not state what service they have been doing. It is true that one of the objects of the grant was to secure the services of a public

preacher. But the plaintiffs do not say in the plaint that they have been acting as preachers in the mosque. Moreover, if they did, they must be treated as the usurpers of the office. Having forcibly got into it they now seek by this suit to recover possession of the property appertaining to it, charging their father and other co-sharers with breach of trust, mismanagement, &c. But if they desire to remove the present trustees from their office and to get themselves appointed to it, they must bring a properly constituted suit (1) for that purpose on the ground of their father's alleged misconduct or incapacity (which is referred to, not in the plaint, but in the evidence). The hidden object of this suit appears to me to get the father's alienations set aside, and I strongly suspect that it has been brought in collusion with him. But it is enough for the disposal of this suit to say that the suit not being properly constituted, the plaintiffs cannot claim to be put into possession of the property which belongs to the office which they do not legally fill. The property must go with the office, and unless the plaintiffs establish their right to the latter, they cannot claim possession of the former."

Against this decision the plaintiffs preferred a second appeal to the High Court.

Nasrulla Khan (with him *R. R. Desai*) for appellants.

Manekshah Jehangirshah for respondents.

The following authorities were referred to in argument :— *Zafaryab Ali* v. *Bakhtawar Singh*(2); *Jawahra* v. *Akbar Husain*(3); *Lakshmandas* v. *Ganpatrav*(4); *Jan Ali* v. *Ram Nath*(5); *Thakersey Dewraj* v. *Hurbhum*(6); *Shri Dhundiraj* v. *Ganesh*(7); *Miya Vali* v. *Sayed Bava*(8); *Sayad Mahamad* v. *Venkaji*(9); *Sitaram* v. *Lakhmidasji* (10); *Balkrishna* v. *Balkrishnabhat*(11); Tagore Law Lectures, 1884, Vol. I, 2nd Ed., pp. 367, 450, 454.

PARSONS, J. :—The suit was dismissed by the lower Courts on the ground that the plaintiffs could not claim the right of management during the life-time of their father, and, therefore, had no right to sue for the present possession of the lands in suit. The following are the material allegations on which the suit was brought :—

(1) I. L. R., 11 Cal., 33 ; I. L. R., 16 Bom., 626 ; I. L. R., 14 Mad., 186 ; I. L. R., 20 Cal., 397.
(2) (1883) 5 All., 497.
(3) (1884) 7 All., 178.
(4) (1884) 8 Bom., 365.
(5) (1881) 8 Cal., 32.
(6) (1883) 8 Bom., 432.
(7) (1893) 18 Bom., 721.
(8) (1896) 22 Bom., 496.
(9) P. J., 1885, p. 75.
(10) P. J., 1892, p. 142.
(11) P. J., 1898, p. 316.

1899.

KAZI HASSAN v. SAGUN BALKRISHNA.

"The lands in suit were granted in wakf 'for the illumination of the mosque and for the stipend of the priestship' to the sons of the late Kazi Mahamad and after them to their successors or to any person of their lineage. The defendants Nos. 3 to 5 and one Kazi Mahamad Alli are the persons to whom the right of enjoying the lands belongs, and the last of these persons is in enjoyment of the moiety of it. Since 1891 the defendants Nos. 3 to 5 have not been rendering service to the mosque, and these defendants have also improperly and illegally sold some and mortgaged other of their moiety of the lands to the defendants Nos. 1 and 2. The plaintiffs, who are the sons of the defendant No. 3 and the cousins of the defendants Nos. 4 and 5, have been rendering the service of the mosque and performing the duties of the wakf in their stead and have the right to the enjoyment of their moiety of the lands."

The defendants Nos. 1 and 2 only appeared to contest the suit, and their chief plea was that the lands, which they and their ancestors had obtained by purchase and mortgage from defendant No. 3 and the father of defendants Nos. 4 and 5, were not the subject of any wakf. An issue was raised on this plea but was never decided, the suit having been dismissed, as I have above said, on the ground that the plaintiffs had no right to sue. No doubt they would not have the right to bring the suit if it be regarded as one to remove the defendants Nos. 3, 4 and 5 from the office of mutawalli which they hold by right of inheritance, to appoint the plaintiffs mutawallis in their stead, and to restore the wakf property to the latter as such. It would seem that the Subordinate Judge, A. P., thought that the suit ought to have been one of this nature and that no other kind of suit would lie, for he says:—

"The sanad provides for the devolution of the right of management of the property by inheritance to the heirs of the grantee. The plaintiffs, therefore, cannot claim the right of management during the life-time of their father. The plaintiffs rest their right to the management of the property chiefly on the ground that since their separation from their father in 1891 they have rendered 'service' to the mosque, as the defendants Nos. 3, 4 and 5 neglected to do it. The plaintiffs, however, do not state what service they have been doing. It is true that one of the objects of the grant was to secure the services of a public preacher. But the plaintiffs do not say in the plaint that they have

been acting as preachers in the mosque. Moreover, if they did, they must be treated as the usurpers of the office. Having forcibly got into it they now seek by this suit to recover possession of the property appertaining to it, charging their father and other co-sharers with breach of trust, mismanagement, &c. But if they desire to remove the present trustees from their office and to get themselves appointed to it, they must bring a properly constituted suit for that purpose on the ground of their father's alleged misconduct or incapacity (which is referred to 'not in the plaint' but in the evidence). The hidden object of this suit appears to me to get the father's alienations set aside, and I strongly suspect that it has been brought in collusion with him. But it is enough for the disposal of this suit to say that the suit not being properly constituted, the plaintiffs cannot claim to be put into possession of the property which belongs to the office which they do not legally fill. The property must go with the office, and unless the plaintiffs establish their right to the latter, they cannot claim possession of the former."

That view does not commend itself to us. For the purpose of argument, the hidden object of the suit may be taken to be its real object, and it may be regarded as one to recover trust property which has been improperly alienated away from the trust.

The first and most material point, therefore, to be determined is whether the property in suit is wakf or not. If it is not, then the suit fails, but if it is, then the further question arises whether the plaintiffs can bring the suit. The sanad (Exhibit 95) settled certain property in wakf on the sons of the late Kazi Mahamad and directed that after them the land should be handed down to their successors or to persons of their lineage, and should not be given to any other man who bears no relation to this family. If the property in suit be a portion of that wakf, there is no doubt that it cannot be alienated, and it would seem that any person interested in the endowment could sue to have the alienations set aside and the property restored to the trust. That is the decision of the Allahabad High Court in *Zafaryab Ali* v. *Bakhtawar Singh*[1] and *Jawahra* v. *Akbar Husain*[2]. The following passages out of the works of Sayad Amir Alli on Mahomedan Law were cited to us during the argument (Tagore Law Lectures, 1884, Vol. I (2nd Ed., 1892)):—

"An attempt to sell or alienate the allowance or to create a charge upon it has been regarded as misconduct sufficient to pass the vazifa or allowance, if

(1) (1883) 5 All., 497. (2) (1884) 7 All., 178.

1899.

KAZI HASSAN v. SAGUN BALKRISHNA.

hereditary, to the children of the vazifadár (p. 367). The judgment of the Allahabad High Court in *Jawahra* v. *Akbar Husain* seems to be in conformity with the provisions of the Mahomedan law. As has been clearly pointed out from the *Radd-ul-Muhtar* and the *Fatawa-i-Kazi Khan*, every Mahomedan who derives any benefit from an admitted wakf, is entitled to maintain an action against the mutawalli to establish his title thereto, or against a trespasser to recover any portion of the wakf property which has been misappropriated, without joining any other person who may participate with him in the benefit (p. 450). When the mutawalli has in breach of his trust conveyed the property to another, the beneficiaries are entitled to sue the mutawalli or to sue him in conjunction with the assignee to recover the property (p. 454)."

The decision of the Calcutta High Court in *Jan Ali* v. *Ram Nath*[1] was cited on the other side. The decisions of this Court in *Lakshmandas* v. *Ganpatrav*[2], *Thackersey* v. *Hurbhum*[3], *Shri Dhundiraj* v. *Ganesh*[4], *Miya Vali Ulla* v. *Sayed Bava*[5], *Sayad Mahamad* v. *Venkaji*[6], *Sitaram* v. *Lakhmidasji*[7], *Balkrishna Babaji* v. *Balkrishnabhat*[8], were also alluded to. The result of the authorities seems satisfactorily to establish the right of the plaintiffs to bring a suit to have the alienations made by their father and cousins set aside and the wakf property restored to the service of the mosque. They are not merely beneficiaries, but are members of the family of the mutawallis and the persons on whom on the death of the present mutawallis the office of mutawalli would fall by descent, if indeed it has not already fallen as alleged in the plaint by abandonment and resignation. This, however, has not been inquired into. It will be necessary to do so in order to ascertain to what relief the plaintiffs are actually entitled. At present this much only can be said about the suit. The plaintiffs, as beneficiaries and members of the family and next heirs, are entitled to sue the mutawallis and their assignees to have the alienations set aside and the wakf property restored to the wakf. If they are also the holders of the office of mutawalli, they can obtain the possession of the wakf property themselves to be by them applied to the purposes of the wakf.

(1) (1881) 8 Cal., 32.
(2) (1884) 8 Bom., 365.
(3) (1883-84) 8 Bom., 433.
(4) (1893) 18 Bom., 721.
(5) (1896) 22 Bom., 496.
(6) P. J., 1885, p. 75.
(7) P. J., 1892, p. 142.
(8) P. J., 1898, p. 316.

We reverse the decrees of the lower Courts and remand the suit to the Court of first instance for trial on the merits in reference to the above remarks. We make all costs costs in the cause.

RANADE, J.:—In this case, the question at issue relates to a point of Mahomedan law involving the proper procedure to be followed in a suit about a wakf endowment. The appellants-plaintiffs brought the original suit against their father (defendant No. 3) and cousins (defendants Nos. 4, 5), and their mortgagees and purchasers (defendants Nos. 1, 2), as also the tenants of the latter (defendants Nos. 6, 7), to recover possession of certain lands at Masure. The plaintiffs' case was that these lands were granted in inám to the Kazi family to which the plaintiffs and defendants Nos. 3, 4, 5 belonged, and that the inám was granted to defray the expenses connected with the service of a certain mosque. An eight annas share of the land belonged to one Kazi Abdul Rajak, who was not a party to the suit, and the other half was in the enjoyment of the defendants Nos. 3, 4, 5, who used to perform service at the mosque. These Kazi defendants latterly ceased to perform service at the mosque, which service since 1891 was performed by the appellants. The lands belonging to the eight annas share had been mortgaged by the defendants Nos. 3, 4, 5 with their creditors (defendants Nos. 1, 2), and defendant No. 3's interest was subsequently sold and purchased by the said mortgagees. These mortgagees and purchasers ceased to make any payments for the service of the mosque, and they had let the lands to defendants Nos. 6, 7. The appellants claim that as the lands were granted in inám for mosque service, and as the service was not performed by defendants Nos. 3, 4, 5, they (the appellants who performed the service) were entitled to recover possession of this land, and they accordingly brought the suit to recover the eight annas share of the lands from the defendants.

The principal defendants (Nos. 1, 2) contended that the lands were not held for mosque service, and their income was not enjoyed as such. The defendants Nos. 3, 4, 5 held the lands as private property, and the lands had come into the possession of defendants Nos. 1, 2 by assignment under mortgage and purchase. It was further objected that the appellants had no right

1899.

KAJI HASSAN v. SAGUN ALKRISHNA.

to bring the suit while their father was alive, or to recover possession of the lands which had come into the hands of defendants Nos. 1 and 2 as mortgagees and purchasers from the owners thereof.

The Court of first instance laid down seven issues, but it did not decide the principal points raised by the pleadings. It did not decide the first issue as to the point whether the land was service inám granted to the mosque, or whether it was the private property of the defendants Nos. 3, 4, 5. It also did not decide the question whether defendants Nos. 1, 2 had or had not obtained a valid title to the lands in dispute as mortgagees or purchasers. The question of limitation was also not formally disposed of. The claim of the plaintiffs-appellants was held not maintainable on the ground that their father was still alive, and had not transferred his rights to his sons, the plaintiffs. It was held that, as long as defendants Nos. 3, 4, 5 had not been removed from their office in the mosque, appellants were not entitled to claim possession in the suit as now framed. The Subordinate Judge was of opinion that the proper course to follow was that laid down by section 539 of the Civil Procedure Code.

The lower appellate Court took the same view as regards the procedure, though as regards the tenure of the lands it was of opinion that the lands in dispute were partly an endowment of the mosque, though the lands were not absolutely dedicated to it, and defendants Nos. 3, 4, 5 had a beneficial interest in the same. It dismissed the suit on the ground that the suit was not properly framed, and that the proper course to follow was to secure the removal of the misconducting trustees, defendants Nos. 3, 4, 5.

The chief point for consideration in second appeal is whether the present suit was maintainable, in whole or in part, under the Mahomedan law of wakf, and whether the appellants were prevented from bringing the suit by reason of their father being alive. It appears to me that, if the suit is treated solely as one for the possession of the lands, it is defective, and not properly maintainable in its present form. As a suit for the partition of a half share in the lands, such a suit could not be maintained, as

the owner of the eight annas share is admittedly not a party to it, and even in respect of the other eight annas share, only four annas really belong to the appellants and their father, while the other four annas belong to defendants Nos. 4, 5. The lower appellate Court has found that the lands are only partly endowed property, and that the Kazi defendants Nos. 3, 4, 5 have also beneficial interest therein. To the extent of this beneficial interest, alienation might be permissible—*Futtoo Bibee* v. *Bhurrut Lall*[1]. If the present suit is considered in this light, it is obvious that it was improperly framed and defective in its character. Point 10 in the memorandum of appeal shows clearly that the appellants are themselves conscious of this defect in the form of the suit, and they suggested that they should be allowed to amend the plaint.

Reading the plaint and pleadings carefully, it appears to me that the principal object of the suit was really to secure a declaration that the lands were the inám property of the mosque, and as such not liable to alienation for the private debts of the mutawalli defendants Nos. 3, 4, 5. This is the principal ground of action and the main object of the suit. The defendants Nos. 3, 4, 5 have in fact not even been made respondents in this appeal. The only parties to it are the defendants Nos. 1, 2, who are Hindu creditors of the Kazi defendants, and their tenants. These same Kazi defendants did not also contest the claim in the original Court.

The dispute is thus really confined to the mortgagees and purchasers and their tenants, who are all outsiders, and not members of the appellants' family. The plaint expressly recites that defendants Nos. 1, 2 had no right to retain possession of the property, or recover the income thereof. If this declaration can be claimed by the appellants, their inability to seek the other reliefs would not defeat the main object of the suit. Section 539 will not come in the way of such a declaration.

The question for consideration is thus limited to the inquiry whether the appellants-plaintiffs can bring the suit to secure

(1) (1868) 10 Cal. W. R., 299.

1899.

KAZI HASSAN v. SAGUN BALKRISHNA.

such a declaration. I am of opinion that such a suit is maintainable. In *Reasut Ali* v. *Abbott*[1], where the son of a deceased mutawalli sued to recover possession of endowed property, and the defence was that the property was all along shared among the heirs of the grantee, such a suit was held maintainable for the determination of the question really at issue between the parties. The *peeruttur* in that case closely resembles the wakf in the present suit, and it was held that even if all the profits were not devoted to the *peer*, the land was none the less a wakf. The next case is still more in point—*Syud Asheerooddeen* v. *Sreemutty Drobo Moyee*[2]. In that case the mutawalli whose endowment land had been sold in execution of a decree against himself, brought the suit to set aside the sale, and his suit was held maintainable on the ground that the trust was not altered by the misconduct of any particular mutawalli. In these cases no objection was raised on the ground of section 539, as that section did not apply where outsiders obtain possession, and the claim is made to oust them from their possession. In a leading Allahabad case—*Zafaryab Ali* v. *Bakhtawar Singh* [3]—the right of Mahomedan worshippers to set aside a mortgage and sale of certain lands attached to a mosque was upheld, and section 539 was held not to apply even when the Mahomedans based their right solely on the ground that they frequented the mosque, and used the buildings. This same view was upheld in a later case, *Jawahra* v. *Akbar Husain*[4], and the Allahabad Judges dissented from the opinion expressed in a Calcutta case—*Jan Ali* v. *Ram Nath*[5], where it was held that section 539 governed such a suit. In this Presidency, in *Lakshmandas* v. *Ganpatrav*[6] a Hindu donor gave a land in gift to a Mahomedan darga, which was managed by a Mahomedan servant of the darga. The land was sold in execution of a decree against the manager, and the original grantor brought the suit to have the sale set aside. The suit was held to be maintainable, and one which did not fall under section 539, as the object of the suit was to recover property from outsiders.

(1) (1869) 12 Cal. W. R., 132.
(2) (1876) 25 Cal. W. R., 557.
(3) (1883) 5 All., 497.
(4) (1884) 7 All., 178.
(5) (1881) 8 Cal., 32.
(6) (1884) 8 Bom., 365.

It will be seen from these cases that when the object is to set aside an alienation made to a stranger, a suit by the worshippers of a mosque or temple can be maintained, and it does not fall within the provisions of section 539, Civil Procedure Code. This section is applicable only when there is an alleged breach of trust created for a public, charitable or religious purpose, and the direction of the Court is necessary for the administration of the trust—*Miya Vali Ulla* v. *Sayed Bava*[1]. As against strangers, like defendants Nos. 1, 2 in the present case, section 539 does not apply—*Shri Dhundiraj* v. *Ganesh*[2]; *Strinivasa Ayyangar* v. *Strinivasa Swami*[3]; *Vishvanath* v. *Rambhat*[4]; *Radhabai* v. *Chimnaji*[5]. Of course a person to be entitled to bring a suit in respect of a wakf property must have a beneficiary interest. As the wakf in this case was given partly for service and partly for maintenance, in which latter right the appellants have an interest along with the defendants Nos. 3, 4, 5, they are beneficiaries, and are not such utter strangers as those noticed in *Vajid Ali Shah* v. *Dianat-ul-lah Beg*[6]. The appellants have thus a legal character, and are entitled to sue under section 42 of the Specific Relief Act. As far as the appellants seek a declaration against strangers, they are entitled to sue, and section 539 does not come in their way. I would, therefore, hold that the suit is maintainable for the declaratory relief which is their principal cause of action, and which is included in the relief prayed for. The relief about possession might also be claimed under certain circumstances if it is proved that they have succeeded to the office of the mutawalli and were rendering service at the mosque.

I would, therefore, reverse the decree and remand the case for decision on the merits after amending the plaint, if necessary, on the lines laid down above.

Decree reversed and case remanded.

(1) (1896) 22 Bom., 496.
(2) (1893) 18 Bom., 721.
(3) (1892) 16 Mad., 31.
(4) (1890) 15 Bom., 148.
(5) (1878) 3 Bom., 27.
(6) (1885) 8 All., 31.