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rightly be decided in accordance with the ruling of the Full Bench in that case. The amount due under the decree was a sum of Rs. 2,370-7-3. The mortgage deed shows that a further sum of Rs. 59-8-9 is alleged to have been paid in cash, and the bond is passed for the sum of Rs. 2,430, carrying interest at the rate of 14 annas per cent. per mensem. It seems to us, therefore, that this case is practically on all fours with the Full Bench case, and, therefore, we should follow that decision in holding that the agreement in this case does fall within the purview of paragraph 2 of section 257A, and that it is, therefore, void.

For these reasons we affirm the decree of the Court below, and reject the appeal with costs.

Decree confirmed.

ORIGINAL CIVIL.

Before Mr. Justice Russel.

1902.

November 27.

BOMANJI JAMSETJI MISTRI AND BAI NAWAJBAI, A MINOR, BY HER FATHER AND NEXT FRIEND, THE SAID BOMANJI MISTRI (PLAINTIFFS),
v. NUSSERWANJI RUSTOMJI MISTRI (DEFENDANT).*

Practice—Costs, security for—Civil Procedure Code (XIV of 1882), section 380—Two plaintiffs, father and daughter—Suit for damages for breach of promise to marry.

A Parsi father and daughter (plaintiffs 1 and 2) sued for Rs. 10,000 as damages for the defendant's breach of his promise to marry the daughter (plaintiff 2). The defendant alleged that the suit was really a suit for the benefit of the father, who sought to make money out of his daughter's betrothal: that he (the father) was an undischarged insolvent and not in a position to pay costs if he lost the suit, and that the second plaintiff (the daughter) had no property in India. The defendant took out a summons under section 380 of the Civil Procedure Code, requiring the plaintiffs to give security for costs. The Court ordered that security for costs should be given.

In Chambers. Summons taken out by defendant under section 380 of the Civil Procedure Code (XIV of 1882) calling on plaintiffs to give security for costs.

* Suit No. 390 of 1902.

The first plaintiff was the father of the second plaintiff, who was a minor and sued by her father and next friend (the first plaintiff).

The plaintiff claimed Rs. 10,000 as damages for the defendant's breach of his promise to marry the second plaintiff. It alleged that in 1899 the defendant requested the first plaintiff to give him the second plaintiff in marriage, and that, on the first plaintiff's agreeing to do so, the second plaintiff was betrothed to the defendant on the 3rd January, 1900. Subsequently the defendant broke off his engagement and in January, 1902, married another girl. The plaintiff continued :

8. By reason of the defendant's wilful breach of his contract to marry the second defendant both the plaintiffs have suffered much, both in mind and body, and their reputation has been considerably lowered amongst their friends and relatives. The plaintiffs have sustained damages by reason of the defendant's breach of his contract, which they assess at Rs. 10,000. The first plaintiff says that having regard to what has happened he will find it now very difficult to find a suitable husband in a good family for his daughter unless he is able to provide a handsome dowry for her. He says that he has no desire to profit by his daughter's misfortune, but is desirous of securing an adequate sum by way of damages from the defendant in order to provide a dowry for his daughter, and is willing that such sum as the Court may award as damages should enure for the benefit of the second plaintiff alone.

The plaintiff prayed for Rs. 10,000 as damages and for the return of certain presents made to the defendant at the betrothal.

In his written statement the defendant pleaded that it was the first plaintiff who in November, 1900, broke off the engagement and refused to permit the marriage to take place.

On the 29th September, 1902, the defendant took out this summons under section 380 of the Civil Procedure Code (XIV of 1882) calling on the plaintiffs to show cause why security for costs should not be given. In support of the summons it was alleged that, having regard to the statements in the 8th paragraph of the plaint, it was clear that, although filed ostensibly by the first plaintiff for himself and his daughter, this suit was really a suit on behalf of the first plaintiff (the father) alone ; that the first plaintiff was an undischarged insolvent and was not in a position to pay the costs of the defendant if the suit was

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dismissed, and that the second plaintiff (the daughter) was not possessed of any immoveable property or any property in India.

In an affidavit filed by the first plaintiff he stated that his daughter (the second plaintiff) had no property of her own out of which security could be given.

Davar for the plaintiffs showed cause :—No security ought to be ordered in this case. Section 380 has no application here. There are two plaintiffs, one is a male and the other a female. The former sues in his own right for a return of the presents given to the defendant on betrothal. The latter sues for damages for breach of contract of marriage. No point is taken in the written statement as to misjoinder of parties or of causes of action. The fact that the male plaintiff is an undischarged insolvent or in poverty is no reason for requiring security for costs: *Fellows v. Barrett*⁽¹⁾; *Rhodes v. Dawson*⁽²⁾; *Cowell v. Taylor*⁽³⁾; Annual Practice (1903), page 902; *Cook v. Whellock*.⁽⁴⁾

The second plaintiff is a minor and sues by her next friend. Even if she were the sole plaintiff the section should not be enforced against her, being a minor: *Bai Porebai v. Devji Meghji*⁽⁵⁾; *Degumbari Debi v. Aushootosh*⁽⁶⁾; *In the goods of Premchand*.⁽⁷⁾ It cannot be said that this suit is improper or vexatious, so that there is no ground for exercising against the plaintiffs the discretion given by the section.

Scott (Advocate General) for the defendant in support of the summons :—Having regard to the circumstances of this case the order asked for should be made. The matter is in the discretion of the Judge: *Bai Porebai v. Devji Meghji*.⁽⁵⁾ Here a father, who has no means whatsoever, is seeking to benefit by a claim made on behalf of his daughter. I rely upon the judgment of Bowen, L.J., in *Cowell v. Taylor*⁽³⁾ where he says (page 38) "that, in order to prevent abuse, if an insolvent sues as nominal plaintiff for the benefit of somebody else, he must give security."

(1) (1836) 1 Keen 119.

(2) (1886) 16 Q. B. D. 548.

(3) (1885) 31 Ch. D. 34.

(4) (1890) 24 Q. B. D. 658.

(5) (1898) 23 Bom. 100.

(6) (1890) 17 Cal. 610.

(7) (1894) 21 Cal. 832.

(8) (1885) 31 Ch. D. at p. 38.

RUSSELL, J.:—I must make the summons absolute. Looking at the form of the plaint, I think the Advocate General's argument is well founded, that the first plaintiff is trying to make money out of his daughter's engagement. It appears to me that the first plaintiff is added merely to get over the difficulty as to security, if possible. The present case is clearly distinguishable from *Bai Porebai v. Devji Meghji*⁽¹⁾ and falls within the *dictum* of Bowen, L.J., in *Cowell v. Taylor*.⁽²⁾

The section vests a discretion in me, and, in my opinion, I must exercise it in favour of the defendant. I therefore order that the summons be made absolute. Plaintiff to deposit Rs. 400 as security within two months. In default, suit to be dismissed with costs. If the deposit be made, costs to be costs in the cause.

Attorneys for the plaintiffs—*Messrs. Mulla and Mulla.*

Attorneys for the defendant—*Messrs. Smetham, Byrne and Noble.*

(1) (1898) 23 Bom. 100.

(2) (1885) 31 Ch. D. at p. 38.

ORIGINAL CIVIL.

Before Mr. Justice Chandavarkar.

DE SILVA, PLAINTIFF, *v.* DE SILVA AND DEVKARAN
NANJI, DEFENDANTS.*

1902.
September 12.

Administrator—Sale of immoveable property by administrator of deceased person—Title—Succession Act (X of 1865), sections 179 and 269—Administrator of trustee—Title of assignee of administrator as against cestui que trust—Priority.

One Anna De Silva, a Christian inhabitant of Bombay, died intestate in May, 1893, leaving her surviving a minor son (the plaintiff), her husband (defendant 1) and a daughter who died in infancy. Previously to her death the deceased purported to purchase certain leasehold property situate in Bombay, the sale-deed of which was duly executed in her name. In August, 1893, her husband (defendant 1), being called upon to make good a large sum of money for which he was responsible as cashier of Messrs. Graham & Co. of Bombay, handed over

* Suit No. 209 of 1902.