ORIGINAL CIVIL.

Before Mr. Justice Russell; and, on appeal, before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Starling.

1901. *November 22.*

JAMSETJI N. TATA (ORIGINAL PLAINTIFF), APPELLANT, *v.* KASHINATH JIVAN MANGLIA (ORIGINAL DEFENDANT 3), RESPONDENT.*

Hindu Law—Minor—Contract by father to sell ancestral property—Specific performance of such contract—Circumstances justifying sale—Debts of father—Burden of proof of justifying circumstances—Transfer of Property Act (IV of 1882), section 34.

By a written agreement dated 9th March, 1900, the first and second defendants (a son and his mother) contracted to sell to the plaintiff certain land which was ancestral property. The plaintiff stated that he subsequently discovered that the first defendant had a minor son, whom he made a defendant in the suit (defendant 3), and he sued all three defendants for specific performance of the agreement, contending that the minor's interest was bound, inasmuch as the property was sold in order to pay family debts.

Held, that no decree could be made against the minor defendant (defendant 3). No doubt, in order to satisfy such of his debts as would be binding on his heirs, a Hindu father can sell the entirety of the family property so as to pass even his son's interest therein, but in this case there was no evidence of debts that justified the sale. It lies on him who seeks to bind the infant to prove justifying circumstances, and this the plaintiff had failed to do.

The principle laid down by section 34 of the Transfer of Property Act (IV of 1882) has no application where the transaction is still incomplete, for it presupposes an actual transfer for consideration.

SUIT by a purchaser for specific performance of an agreement to sell to him certain land.

The suit was filed against three defendants, viz., (1) Jivan Manglia, (2) Thakabai (mother of defendant 1), and (3) the above respondent Kashinath Manglia (defendant 3), who was the son of the first defendant and was a minor at the date of suit. The plaint alleged that by an agreement dated the 9th March, 1900, the first two defendants agreed to sell to him certain land situate at Sewri near Bombay free of incumbrances at eight annas a square yard. It was provided by the said agreement that the property should be measured and the price fixed accordingly;

* Suit No. 678 of 1900; Appeal No. 1142.

that Rs. 150 should be paid by plaintiff as earnest; that defendants should make out a marketable title, &c., &c.

The plaintiff paid the Rs. 150 earnest and got the land measured and found it to be 3,080 square yards.

Subsequently to the date of the above agreement to purchase, the plaintiff discovered that the first defendant had a minor son (defendant 3), who was accordingly made a party to this suit.

The following paragraph of the plaint is material:

8. The plaintiff has since the date of the said agreement ascertained that the first defendant has a son, that is the third defendant, who is a minor, and has in consequence been advised to make the said minor a party defendant to this suit, inasmuch as he is informed that the property contracted to be sold is ancestral property, although the same is being sold by the first and second defendants in order to discharge the family debts.

The plaint prayed as against the first and second defendants for specific performance of their agreement of the 9th March, 1900, on plaintiff paying Rs. 1,350, being the balance of purchase-money, and for a declaration that the said agreement was binding upon the interest, if any, of the third defendant in the said premises.

The suit was not contested by the first and second defendants.

The third defendant (respondent) alleged that the property was ancestral and that he was entitled to a half share of it. He denied that the property was being sold for family debts or necessities and alleged that his father (defendant) had recklessly contracted debts without necessity and for purposes not beneficial to the family, and he contended that the agreement of sale of the 9th March, 1900, was not binding upon his interest in the property.

The following issues were raised at the hearing:

1. Whether the agreement for sale in the plaint mentioned was entered into by the first and second defendants in order to discharge family debts as stated in paragraph 8 of plaint.

2. Whether the agreement for sale is binding on third defendant or on his interest in the property contracted to be sold.

3. Whether the plaintiff is entitled to specific performance as claimed in the plaint.

4. Whether the property in question is not contracted to be sold at a gross under-value.

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5. Whether the first defendant, if he had any debts, contracted these debts either for family necessity or for any moral or religious obligation.

6. Whether the first defendant, if he had any debts, did not contract the same for immoral purposes.

7. Whether the suit as constituted is not bad by reason of misjoinder of causes of action or of parties.

8. Whether the defendants 1 and 2 agreed to sell the piece of land in the agreement mentioned.

Scoll (Acting Advocate General) and *Raikes* for plaintiff.

Davar and *Wadia* for defendant 3.

Defendants 1 and 2 appeared in person.

RUSSELL, J. :—This suit was filed on the 22nd September, 1900, by the plaintiff against the first defendant and his mother, the second defendant, praying for specific performance of an agreement (Exhibit B) dated the 9th day of March, 1900, and as against the third defendant, the minor son, praying "that it may be declared that the said agreement of sale is binding upon the interest, if any, of the third defendant in the said premises."

The following issues were framed [His Lordship stated the issues and continued :]

Mr. Davar for the third defendant argued that there was a misjoinder of causes of action and relied upon *Luckumsey* v. *Fazulla*,(1) but that case, to my mind, is clearly distinguishable, as I do not think the third defendant herein can be described as a "stranger" to the contract, and it has been held that the principle in that case, as also in *De Hoghton* v. *Money*,(2) is only applicable when from the plaintiff's case it appears that the third party, not a party to the contract, has a distinct interest from that of the other parties to the contract: see *Mokund Lall* v. *Chotay Lall*.(3) Here it is obvious that the interest of the third defendant is not distinct from that of his father. I therefore hold that there is no misjoinder of causes of action.

I may next dispose of the case set up by the defendants 1 and 2, that the property they agreed to sell is not the property in the said Exhibit B mentioned, but another property altogether. I do not believe their evidence on the point in any particular.

(1) (1880) 5 Bom. 177. (2) (1866) L. R. 2 Ch. 164.
(3) (1884) 10 Cal. 1061.

Before dealing with the law of the case I proceed to set out the facts shortly. The property in question abuts on the Sewri Road and is about 3,000 square yards in area, and originally belonged, together with various other properties at Sewri to the father of the first defendant. By the agreement (Exhibit B) the first two defendants agreed *inter alia* to sell it to the plaintiff at 8 annas per square yard, and Rs. 150 was paid as earnest-money by the plaintiff's agent to the defendants 1 and 2. This land was bought by the first defendant's father in 1886 for Rs. 1,900 when it was low-lying ground. He subsequently filled in the greater portion of it and it has been used as a garden for growing flowers. A certain amount of evidence was given to show what the annual rent of the land was, but as no evidence of any value was given to show what are the reasonable deductions to be made therefrom, I cannot come to any conclusion as to what the net annual rental is. The negotiations for the purchase by the plaintiff (who personally had nothing to do with the matter) were begun by the two brokers Manek and Balloo, and Mr. Saklatwalla, the plaintiff's agent in that behalf, who says he got general orders from the plaintiff to buy up land at Sewri at prices between 4 and 8 annas per square yard. Although the broker Manek says he was not aware of the existence of the first defendant's wife and minor son at the time when the contract was entered into, I believe he did know of their existence, as he is distantly related to the first defendant; the other broker admits that he knew of the existence of the minor. Saklatwalla admits that he made no inquiry whatever as to the existence of the minor son. All these three persons having seen the bill (Exhibit No. 1) had notice that the land was ancestral property in the hands of the first defendant.

The first defendant, upon the evidence, I find, is a man of drunken and utterly improvident habits. Nearly if not all the immoveable property left by his father has been attached under decrees against him in Small Causes Court suits on promissory notes signed by him (see the evidence of the Small Causes Court bailiff and the exhibits put in thereunder). Some of the properties so attached have been sold at various under-values. It is admitted by Mr. Raikes that it is not proved that any of the money raised

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by the first defendant was wanted to discharge family debts. I further find that this property was agreed to be sold at a considerable under-value. As I have said, it was bought in 1886 for Rs. 1,900. It is in a very good situation. Two witnesses have expressed their willingness to buy it at a considerable increase if they can get it unincumbered. Another witness deposed to a contract already executed for the sale of the land at Re. 1 per square yard. But this contract may very well be a bogus contract made for the purposes of the suit. What weighs with me, however, is that there is a difference of Rs. 400 between the price in the contract and that at which the property was bought in 1886 by first defendant's father, and admittedly the property has been improved by being partly raised from its former level, and I am of opinion that the contract was made at a very considerable under-value.

What, then, is the law applicable to this state of facts? Is such a sale binding on the minor or not? All the authorities under the Hindu Law were fully discussed before me by counsel on either side. Mr. Raikes' argument may be thus condensed: that the father of a Hindu minor has powers greater than those of the manager of a Hindu family; that inasmuch as the son of a Hindu father is bound to pay his father's debts, as soon as the indebtedness of the father is proved the sale is justifiable. But before I deal with this proposition it seems to me there are certain other general considerations which I must first have regard to.

In the first place, then, this is a suit for specific performance, and the jurisdiction to decree such is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal: Specific Relief Act I of 1877, section 22. Ought I then to use my discretion in favour of the plaintiff? The serious fact that operates on my mind against my so using my discretion in the present case is the low price for the property which appears in the contract B. Looking at this I am of opinion that there exist circumstances under which the contract was made such as to give the plaintiff an unfair

advantage over the defendant No. 3, though there may be no fraud or misrepresentation on the plaintiff's part: see section 22, Specific Relief Act, clause I.

According to English Law, as also under the Contract Act, an infant is legally incapable of entering into a binding contract for the sale or purchase of property, and the Courts in England in general have no authority to sell or lease his estate except under the statutory powers given by the Partition Acts, the Settled Estates Acts, &c., and for certain special purposes (see Dart's Vendors and Purchasers, Vol. II, 1306 - 1315) or in a mortgagee's or creditor's action for payment of the ancestor's debts when it is for the infant's benefit to direct a sale (see *Field* v. *Moore*,(1) Simpson on Infants, 354-506); and, the infant being unable to sell, his contract of sale cannot be enforced by or against him (*Flight* v. *Bolland*,(2) *Calvert* v. *Godfrey*,(3) *Hargrave* v. *Hargrave*(4)).

In a very recent case, on a reference from chambers by the learned Chief Justice of this Court, it was held by three Judges that on the application of a Hindu father for leave to sell his own and his minor's property at a very advantageous price the Court might and did grant it, but expressed its opinion that the power should be only exercised after the most careful exercise of its discretion, on its being thoroughly satisfied that the sale was for the infant's benefit (*Re Manilal Hurgovan*(5)). In the present case it is impossible to find that the sale is for the third defendant's benefit.

I now proceed to look at the case from the point of view of the Hindu Law. The first point that strikes me is that in effecting the contract of sale the minor was left out in the cold altogether, if I may use the expression. No inquiry whatever was made even as to his existence, although the circumstances were such as to affect the plaintiff through his agents with notice thereof. The remarks of their Lordships of the Privy Council in the leading case of *Hunooman Persaud* v. *Babooee*(6) are apposite. As Mr. Mayne says (section 320), "that was the

(1) (1855) 7 DeG. M. and G. 691.
(2) (1828) 4 Russ. 298.
(3) (1843) 6 Beav. 97 at p. 109.
(4) (1850) 12 Beav. 408.
(5) (1900) 25 Bom. 353.
(6) (1856) 6 Moo. Ind. Ap. 393.

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case of a mother managing as guardian for an infant heir. Of course, a father, and head of the family, might have greater powers, but could not have less, and it has been repeatedly held that the principles laid down in that judgment apply equally to fathers, or other joint owners, when managing property governed by the Mitakshara law." (See the cases cited by Mr. Mayne in the note to the section.) "Their Lordships of the Privy Council said (page 423) :

> The power of the manager for an infant heir to charge an estate not his own is, under the Hindu Law, a limited and qualified power. It can only be exercised rightly in case of need or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make in order to benefit the estate, the *bonâ fide* lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it in the particular instance is the thing to be regarded. But, of course, if that danger arises, or has arisen, from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong to support a charge in his own favour against the heir, grounded on a necessity which his wrong has helped to cause; therefore, the lender in this case, unless he is shown to have acted *malâ fide*, will not be affected, though it be shown that with better management the estate might have been kept free from debt. Their Lordships think that the lender is bound to enquire into the necessities for the loan and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the manager in the particular instance is acting for the benefit of the estate. But they think that if he does so enquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and they do not think that under such circumstances he is bound to see to the application of the money. It is obvious that money to be secured on any estate is likely to be obtained upon easier terms than a loan which rests on a mere personal security, and that therefore the mere creation of a charge securing a proper debt cannot be viewed as improvident management. The purposes for which a loan is wanted are often future as respects the actual application, and a lender can rarely have, unless he enters on the management, the means of controlling and directing the actual application. Their Lordships do not think that a *bonâ fide* creditor should suffer when he has acted honestly and with due caution, but is himself deceived."

Mr. Mayne (section 321) goes on: "The case before the Privy Council was one of mortgage and not of sale. But it is evident that the same principles would apply in either case." In *Suraj Bunsi Koer* v. *Sheo Proshad*,[1] the Privy Council say: "The rights

(1) (1878-9) L. R. 6 Ind. Ap. 88 at p. 103.

of the coparceners in an undivided Hindu family governed by the law of the Mitakshara, which consists of a father and his sons, do not differ from those of coparceners in a family which consists of undivided brothers, except so far as they are affected by the peculiar obligation of paying their father's debts which the Hindu Law impresses upon sons, and the fact that the father is in all cases naturally, and in the case of infant sons necessarily, the manager of the joint family estate." At page 609 of West and Bühler (3rd Edition) it is said: "The joint family is usually represented in external transactions by a managing member or members. The managership naturally belongs to a father during his life and capacity for affairs, and then to the eldest brother qualified." And at page 639: "It appears, therefore, that the father, as manager, stands substantially in the same position as any other manager. The care of the family, the preservation of the common estate, and the payment of debts are more especially incumbent on him."

In the present case I ask myself these questions: (*a*) Is the contract B for the benefit of the estate? I say "No," as it is at a considerable under-value. (*b*) Did the plaintiff, through his agents, satisfy himself as well as he could with reference to the parties with whom he was dealing, that the first defendant was acting in the particular instance for the benefit of the estate? I say "No," as he took no thought whatever for or of the third defendant. (c) Was the plaintiff through his agents guilty of any misconduct? I say "Yes," as he ignored the existence of the minor.

Or I may adopt a series of questions which were formulated by this Court. In *Trimbak Anant* v. *Gopalshet*,[1] the High Court remanded the following question for determination to the lower Court: "Did the plaintiff, after reasonable inquiry, believe in good faith that the defendant Gopal was entitled to act, and was *bonâ fide* acting, as representative and manager of the undivided family at the time and for the purposes of the borrowing and mortgage in the plaint mentioned? And if so, did the plaintiff, after reasonable inquiry, believe in good faith that the money borrowed by the defendant Gopal was *bonâ fide* borrowed for, and

(1) (1863) 1 B. H. C. R. 27 at p. 30 (A. C. J.)

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intended by the latter to be expended upon, some common family necessity, or common benefit and use of the undivided family, or any and what portion for the particular benefit and advantage of the minor Mahadu?" In the present case both these questions would have to be answered in the negative.

Moreover, it has been held in this Court that adequacy of price is an important point to be considered in determining the question whether a sale of a minor's property by his guardian was for the minor's benefit: *Dagdu* v. *Shekh Saheb*.[1]

Lastly, it appears according to Hindu Law that "sons are not compellable to pay sums due by their father for spirituous liquors, &c." (see Mayne, section 279, and the authorities there quoted). In the present case I hold it to be proved that the first defendant is a man of drunken habits and addicted to spirituous liquors: that he has previously squandered sums of money raised without any appreciable reason. In fact, nothing has been shown as to what became of the moneys borrowed by him. He turned his wife and infant son out of his house. The circumstances are peculiarly such as ought to have put the plaintiff at all events upon inquiry, but no such inquiry was made, and it would be to violate the principles which ought to govern this Court's discretion were it to hold the contract B binding on the third defendant on his share in the property.

I accordingly find on the issues as follows:—1, in the negative; 2, in the negative; 3, not as regards the third defendant; 4, in the affirmative omitting the word "gross"; 5, in the affirmative; 6, in the negative; 7, in the affirmative.

I accordingly pass a decree for the plaintiff against the defendants 1 and 2 in terms of paragraph (*a*) of the plaint, but the figure at the end thereof to be altered from Rs. 1,390 to Rs. 620. I direct the defendants 1 and 2 to pay the plaintiff's costs in so far as these costs have not been incurred by the plaintiff having sued the third defendant. I dismiss the plaintiff's suit against the third defendant, and direct the plaintiff to pay the costs of the third defendant throughout.

The plaintiff appealed.

(1) (1864) 2 B. H. C. R. 348.

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Scott (Acting Advocate General) and *Padshah* for appellant (plaintiff) :—It is not shown that the sale was effected in order to defray debts improperly contracted by the minor's father (defendant): *Khalilul Rahman* v. *Gobind Pershad*,(1) *Fakir Chand* v. *Moti Chand*,(2) *Mokund Lall* v. *Chotay Lall*,(3) *Chintamanrav* v. *Kashinath*.(4)

Setalvad with *Davar* for respondent (defendant 3) cited *De Hoghton* v. *Money*,(5) *Luckumsey* v. *Fazulla*,(6) *Gurusami* v. *Ganapathi*,(7) *Subramanya* v. *Sadashiva*,(8) *Girdharee Lall's case*,(9) *Suraj Bunsi Koer* v. *Sheo Proshad Singh*,(10) *Nanomi Babuasin* v. *Modun Mohun*,(11) *Bhagbut* v. *Girja Koer*,(12) *Simbhunath* v. *Golab Singh*.(13)

JENKINS, C.J. :—By an agreement of the 9th of March, 1900, the first and second defendants agreed to sell, and the plaintiff to buy, certain premises at Sewri at the price of eight annas per square yard, and this suit has been brought for the purpose of obtaining specific performance of this agreement, and also a declaration that the agreement for sale is binding upon the interest, if any, of the third defendant in the premises. Mr. Justice Russell has granted a decree for specific performance against the first two defendants, but he has refused the prayer for a declaration against the third defendant. From this refusal the plaintiff has appealed.

The third defendant is a minor, and is no party to the contract; and the ground on which the declaration is sought against him is that he is the first defendant's son, that the premises are ancestral property, and that they are being sold to discharge the family debts.

The question, therefore, is whether we ought in this suit to make a declaration which will conclusively bind the minor in relation to this sale. For the appellant it is said we should,

(1) (1892) 20 Cal. 328 at p. 337.
(2) (1883) 7 Bom. 438.
(3) (1884) 10 Cal. 1061.
(4) (1889) 14 Bom. 320 p. 327.
(5) (1866) L. R. 2 Ch. 164.
(6) (1880) 5 Bom. 177.
(7) (1882) 5 Mad. 337.
(8) (1884) 8 Mad. 75.
(9) (1874) L. R. 1 Ind. Ap. 321.
(10) (1878-9) L. R. 6 Ind. Ap. 88.
(11) (1886) L. R. 13 Ind. Ap. 1 at p. 15.
(12) (1887) L. R. 15 Ind. Ap. 99 at p. 105.
(13) (1888) L. R. 14 Ind. Ap. 77.

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because he has made out a case which would have supported a completed sale though challenged by the minor. To this it is answered that the test proposed is not apposite. The actual purchase price is Rs. 1,540 and the plaintiff contends that he has proved that there were debts to the amount of Rs. 2,000 unconnected with any immoral purpose. For the defendant it is said that even if that had been so at the time of the contract—a point that is not admitted—those debts have since been discharged, and no longer exist, and that in any case the necessity for the sale has not been proved.

The cases have now established that to satisfy such of his debts as would be binding on his son, a Hindu father can sell the entirety of the family property so as to pass even his son's interest therein, while section 34 of the Transfer of Property Act provides that—

"where any person, authorized only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall as between the transferee on the one part and other persons (if any) affected by the transaction on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith."

This statutory provision is substantially a statement of the principle deducible from the cases on this point. But this principle obviously has no application where the transaction is still incomplete; for it presupposes an actual transfer for consideration. Here there has been no transfer, nor has the consideration for the transfer been performed. Therefore, the declaration sought in this suit against the infant defendant must be supported on some other basis. But the only basis suggested is the analogy of this very rule; for it is argued that as the completed transaction would have been supported and sanctioned against the infant son, so ought the incomplete transaction to be enforced against him. True, there is a superficial resemblance between the two positions, yet it is but superficial: the essential basis of the rule is absent. The duty to discharge the father's debts justifies the acquisition of the money required for that purpose even though it be by sale of the ancestral immoveable land. But the existence, or a

reasonable belief by the purchaser in the existence of those debts is a necessary condition. Now it is quite clear that the plaintiff's agents—by whom alone the negotiations were conducted—made no inquiry as to the existence of justifying debts. With the knowledge they possessed there was no reason why they should; for, as the plaint alleges, it was not until after the agreement that the third defendant's existence was ascertained. There can, therefore, be no ground for saying that the plaintiff used reasonable care to ascertain the existence of debts justifying a sale.

We, therefore, have to see whether there now are debts that call for, or at any rate justify, the conversion of the ancestral immoveable property into money. On the evidence before us I am not satisfied of this, and it follows as a necessary consequence that in my opinion the declaration should not be made. The principles on which a Court should decree specific performance of a contract against a minor are clearly indicated in *Jugul Kishori* v. *Ananda Lal*[1] (*cf.* also *Krishnasami* v. *Sundarappayyar*[2] and *Khairunnessa Bibi* v. *Loke Nath Pal*[3]). Without expressing any opinion as to what is laid down in the concluding paragraph of page 550 of 22 Calc., I subscribe entirely to the view expressed at page 551 that "no Court would, even if it could, make a decree for the specific performance of a contract affecting an infant, unless the contract was shown to be for this infant's benefit." It lies on him who seeks to bind the infant to prove the justifying circumstances, and that the plaintiff in this case has failed to do. In my opinion, therefore, on this ground and without expressing any opinion on the other point raised, the refusal by Russell, J., of the declaration sought against the infant must be confirmed.

The Advocate General, however, says that if he cannot get this declaration he does not desire specific performance, and, therefore, the Rs. 150 paid as earnest-money should be returned. But this relief can only be granted in a proceeding to which the first and second defendants are parties, and for some reason they have not been made parties to this appeal, so even if we wished, we

(1) (1895) 22 Cal. 545. (2) (1894) 18 Mad. 415.
(3) (1899) 27 Cal. 276.

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cannot order the repayment of this sum. The appellant must pay all Court fees relating to the appeal, but otherwise there will be no order as to costs.

STARLING, J.:—The first and second defendants are son and mother. The respondent is an infant son of the first defendant. The first two defendants on the 9th March, 1900, agreed to sell to the plaintiff a piece of land at Sewri for the purpose of paying off debts due by the first defendant, alleging that they were entitled to enter into such contract and to convey the land. The contract was not completed, and in the course of the business it appeared that the respondent, as the son of the first defendant, claimed to be interested in the land, and disputed the right of the other defendants to sell the whole of the interest in the land. On this the plaintiff filed the present suit for specific performance as against the first two defendants, and asked a declaration against the respondent that the contract bound his interest in the land.

The first question to be decided is whether a prayer for those two forms of relief can be joined in one suit. In my opinion the case of *Cox* v. *Barker* (1) decided by Bacon, V.C., and affirmed on appeal by the Lords Justices, shows that all the relief prayed for herein can be granted in one suit.

The next point is whether this Court ought to make a declaration that the contract sued on is binding on the interest of the respondent. In my opinion there is *primâ facie* evidence that the first defendant was indebted in such a manner that, if he had conveyed the land in question in this suit to the plaintiff and received from him the purchase-money, the sale would have been binding on the respondent; but that would not be sufficient to justify the Court in declaring that the contract was binding on the infant. To justify the Court in making such a declaration, I am of opinion that there should be evidence that there were, and still are at the date of the suit, certain debts to be paid off, and that it was and is the intention of the vendor to apply the purchase-money in paying such debts. If the present defendants were desirous of loyally carrying out their contract, there would

(1) (1876) 3 Ch. D. 356.

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have been no difficulty in evidence being laid before the Court showing those facts; but the first defendant has opposed a decree for specific performance being passed against him and no such facts have been proved in evidence: consequently there is nothing to show that the enforcement of the contract would under the present circumstances be beneficial to the infant. Consequently I am of opinion that this Court, in the exercise of its discretion, should not make the declaration asked for.

Decree confirmed.

Attorneys for plaintiff—*Messrs. Payne, Gilbert, Sayani and Moos.*

Attorney for defendant—*Mr. D. D. Romer.*

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

VINAYAK ATMARAM AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* THE COLLECTOR OF BOMBAY (ORIGINAL DEFENDANT), RESPONDENT.*

1901. *December* 4.

Land Revenue—Assessment—Enhancement of assessment—Bombay City Land Revenue Act (Bom. Act II of 1876), sections 8 and 9—Settlement of assessment—Meaning of "settlement"—Notice of enhancement—No necessity of notice to owner of property before assessment.

In the year 1884 the plaintiff acquired certain waste land from the Collector of Bombay, who granted it on the plaintiff's agreement to pay ground rent at one pie per square yard per annum. In the year 1899 the Collector enhanced the assessment or ground rent on the land to eight pies per square yard. The plaintiff protested against the enhancement and brought the present suit against the Collector, contending that the enhancement was illegal, first, because he had acquired the land on a permanent tenure at a fixed assessment and, secondly because there had been no "settlement" with him as required by Bombay Act II of 1876, inasmuch as he had received no prior notice from the Collector of the intention to enhance the assessment.

Held, (1) that there was no evidence in the case to show that the assessment had been permanently fixed;

(2) that the words "settlement of assessment" in section 9 of the Bombay City Land Revenue Act (Bom. Act II of 1876) do not by themselves imply the

* Appeal No. 9 of 1901. Revenue Suit No. 16 of 1899.