

that the plaintiff failed to prove that the consideration had passed.

The plaintiff appeals specially, and urges that as the defendant admitted the execution of the bond in which the payment of the consideration was recited, the burden of proving that consideration had not been paid was on the defendant. On the other hand, the special respondent urges, that an admission made in a written statement must be taken as a whole, that is to say, it cannot be accepted as an admission of his execution of the bond; if the plea is rejected, that there was no consideration at all, and it is urged that in this view the burden of proof still lies on the plaintiff.

We are of opinion that when the defendant in his bond stated that the money had been received by him, and when he in his written statement admitted that the bond was executed by him, it was upon him to prove that the facts stated by him in the bond, were really different from what they were recited to be. This is an ordinary rule of law, and according to it, we think, the decision of the lower appellate Court, which threw the entire burden of proof on the plaintiff, when it ought to have been on defendant, ought to be reversed.

We, accordingly, reverse it, decree the special appeal with costs, and affirm the judgment of the first Court.

Before Mr. Justice Phear and Mr. Justice Hobhouse,

R. A. PUSHONG *v.* MUNIA HALWANI.*

Contract with Persons in position of Confidence or Trust—Legal Adviser and Client—Mookhtear—Presumption—Onus Probanda.

A contract of sale or conveyance entered into by any one with a person who stands relatively to him in a position of confidence or trust, is liable to be called in question by the vendor, and to be set aside at his instance, if it be found that the other party made an unfair use of his advantages. This rule of equity applies strongly in a case where any person, acting as an attorney, or as a legal adviser, enters into a contract with his client in respect of the subject of litigation or advice. Undue influence is presumed to have been exerted until the contrary is proved, and the purchaser is bound to show that all the terms and conditions of the contract are fair, adequate, and reasonable.

* Special Appeal, No. 163 of 1863, from a decree of the Judge of 24 Pergunahs, affirming a decree of the Sudder Ameen of that district.

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v.
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THIS was a suit instituted in the Court of the Sudder Ameen of the 24-Pergunnas, to recover possession of a house and premises, which belonged to the plaintiff's deceased brother, Narko Halwai, and of which, the plaintiff alleged, the defendant had taken possession by realizing the rent from the occupant.

The defendant, R. A. Pushong, stated, that Munia Halwani, the plaintiff, on the death of her brother, applied to the defendant, who was a mooktear practising at Barrackpore, to assist her in obtaining a certificate under Act XXVII. of 1860, and in getting possession of the property, to which other persons laid claim on the strength of a will which, it was alleged, that the brother had made ; and by way of remuneration for the defendant's services, the plaintiff executed an agreement on the 9th December 1864, by which she bound herself to give him one-fourth of all the property which she might recover, if he, as her mooktear, enabled her to get such certificate. After this agreement was entered into, the plaintiff, who was a very poor woman, being unable to defray all the expenses, executed another agreement in supercession of the previous one, by which she bound herself to give him one-half of the property which she might recover, and if he carried on such suit, and did such other acts as might be found necessary to that end, and if he advanced the requisite funds ; and it was further agreed, that he was to have all the costs which might be realized. The defendant admitted having, in satisfaction of this agreement, taken possession of the property, and having realized the rent of the house from January 1865, after having obtained, for the plaintiff, the certificate under Act XXVII. of 1860, and possession of the estate.

The Sudder Ameen found that the ikrarnama was inadmissible as evidence, it having been written on stamped paper of the value of one rupee ; that there was no consideration ; and that the ikrarnama, which was not registered, was a forgery. He gave the plaintiff a decree for rupees 120, the amount realized by the defendant as the rent of the house for two years.

On appeal, the Judge upheld the decision of the Sudder Ameen, on the grounds that the ikrarnama had an insufficient stamp, and, consequently, was not admissible as evidence ; and that even if it were admissible, the contract would be void for want of an

equitable consideration. He, however, did not agree with the
Sudder Ameen in holding that the ikrarnama was a forgery.

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The defendant now preferred a special appeal to the High
Court.

Mr. *Allan* and Baboo *Ananda Gopal Palit* for appellant.

Baboo *Upendra Chandra Bose* for respondent.

The judgment of the Court was delivered by

PHEAR, J.—No more unconscionable case than this certainly has it been my lot to meet with since I have sat upon the Bench of this Court. There can be no doubt that the lower appellate Court is entirely right in its conclusions, but it might very well have founded its decision upon higher ground than that upon which it has felt it sufficient to place it.

The defendant is resisting a claim to possession of a certain house which is made by a lady who was admittedly his client in the matter of certain proceedings in the lower Courts, wherein he had undertaken to do his best as a mooktear, and as a person skilled in the practise of the Courts, to recover for her the property of which this forms a portion. It seems that the proceedings, which he took as her agent, were successful, and that he got possession on her behalf; but he now seeks to keep that possession adversely to her, and to retain the house for himself. He justifies this conduct, on his part, by saying that he is entitled to hold the property as his own under a contract which he entered into with the plaintiff, preliminary to his undertaking the conduct of her affairs. But as he has met with one insuperable difficulty in making out this case, namely, that if the contract gave him, as he says it did, the right to possession which he sets up, then the document which he tenders as the written evidence of the contract is not admissible under the stamp which it bears. Consequently, there is nothing before the Court which can be looked at as evidence of his alleged right, and this of itself is sufficient to defeat the claim which it puts forward.

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Assuming, however, that the contract was proved, we learn from the defendant's own admission that it was entered into with the lady at a time when he undertook to be her legal adviser or manager. It lay at the very initiation of a fiduciary relationship between himself and her. Now it is always held in Courts of equity that a contract of sale or conveyance entered into by any one with a person who stands relatively to him in a position of confidence or trust, is liable to be called in question by the vendor, and to be set aside at his instance if it be found that the other party made an unfair use of his advantages. So also, when the seller labors under such disabilities, or is so situated as to be peculiarly liable to be imposed upon; and bargains with widowed or single purda women fall within this class, see *Rup Narayan Singh v. Gangadhar Prasad* (1). But especially in a case, where any person, acting as an attorney or as a skilled legal adviser, enters into a contract of purchase with his client in respect of the subject of litigation or advice, is the contract liable to be questioned by the other side at any time, and when it is questioned, every presumption is made against its being just. Undue influence is presumed to have been exerted until the contrary is proved; and it is incumbent upon the purchaser, if he relies upon the contract, to show that all its terms and conditions are fair, adequate, and reasonable. Failing that, his claim under the contract and his rights under it must go.

Upon the facts of this case, although in strictness, perhaps the defendant was not actually the attorney or adviser of the plaintiff at the very moment when he made the bargain with her, still it is clear that he was so situated relative to her as to possess all the influence and advantages which belong to that relationship, and which are the foundation of the plaintiff's equity. And even, if the transaction in question does not fall exactly under the last special head, which I have mentioned, it is clear that it is within the operation of the general rule. But, moreover, looking at the conditions of the contract which the defendant in this case thought it consistent with his duty as a mooktear of a Civil Court, and as legal adviser of the plaintiff,

(1) 9 W. R., p. 297.

to enter into with her, I do not hesitate to say that they are such as, upon the face of them, exhibit the operation of undue influence and pressure. Such terms would clearly never have been come to, if the contracting parties had stood upon equal ground. In truth, if the description given by the Judge of the nature of this contract be correct, the transaction goes as near an act of fraud as anything can, without subjecting the perpetrator to the risk of being tried at the bar of a Criminal Court. It seems to me that the defendant's conduct falls but little short of an attempt at stealing the property of the plaintiff, and I feel it impossible to say that a contract of this kind can be for a moment maintained when the party on the other side questions it.

We think, as I have already said, that the decision of the lower appellate Court is entirely right for the reason given by the Judge, and we have also felt ourselves bound to express our opinion that it might well have been placed upon other and higher grounds than those upon which the Judge has placed it, namely, on the grounds which I have just alluded to. We, therefore, dismiss this appeal with costs.

And inasmuch as we learn from the judgment of the Judge, that the defendant in this case has been in the habit of practising as a mooktear of a Court, over which we have jurisdiction, we think it is our duty to direct that Court to hold an enquiry into the circumstances under which this contract was made and entered into, with the view to its forming a judgment as to the propriety of allowing this gentleman to practise as a mooktear and a pleader before it for the future, as it seems to us, if any confidence can be placed in the representations of the Judge of the lower appellate Court, the defendant is not a person to whose hands the interest of suitors ought to be entrusted.

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