1863. *July* 25. *S. A No* 168 *of* 1863.

without saying that in no case can an equitable remedy be given, it is quite clear that this is not a case for the exercise of such a discretion. The case is simply one of the plaintiff choosing to alter his mind ; he has shown no equity whatever, and without giving any opinion whatever as to the validity or effect of the deed, it is quite clear that the decrees setting it aside must be reversed with costs.

Appeal allowed.

NOTE :—See as to Hindu gifts, *Vyavahara Mayukha*, chap. IX : 2 Coleb. Dig, 94, 95, 96.

APPELLATE JURISDICTION (*a*)

Regular Appeal No. 4 *of* 1863.

RÁMAGOPÁL .....*Appellant.*

MAJETI MALLIKKARJANUDU ..... *Respondent.*

Questions as to set-off will be dealt with in this Court upon the principles of English Courts of Equity or of the Roman Law of Compensation, and no weight will be given to objections derived from the peculiar language of the statutes of set-off.

1863. *August* 1. *R. A. No.* 4 *of* 1863.

THIS was a Regular Appeal from the decision of C. R. Pelly, the Acting Civil Judge of Masulipatam, in Original Suit No. 3 of 1862.

The suit was brought by the plaintiff for rupees 2,060-0-8, the balance due upon an account stated.

The defendant pleaded that he was entitled to set-off the amount of a hundi which he had paid. The hundi was in the following terms :

"*Every thing must be safe in Masulipatam.*

From Setnumin Sitaram, residing at Husen, Sagaram, to Majeti Mallikkarjanudu, at Masulipatam.

I have drawn a hundi on you for rupees 1,000 (the moiety thereof being rupees 500.) The person that paid the said money, is Muhammad Vazir Sandagar. The payment should be made within 15 days from 8th Vaisakha Sudda to Name Shahajugu, *i. e.* to the person who bring this.

It is written that the above sum should be debited in the accounts of Khata Saligram Sadasivabhattu at Jaggaiyapet.

8th Vaisakha Suddha of Guzarati Samvatyear 1918.

(*a*) Present : Frere and Holloway, JJ.

As soon as you see this hundi, you should write an answer.

1000

Rupees one thousand should be paid by four instalments of 250 rupees each forming one-fourth (of thousand rupees) "

The plaintiff admitted that he would have been responsible for the amount if the defendant had not negligently omitted to enquire into the payee's solvency. And the Civil Judge decided that the defendant was entitled to set-off this amount, because the defendant was not, as the plaintiff contended, bound to make such enquiry.

The defendant specially appealed.

Mayne, for the appellant, the defendant, objected that the hundi did contain an implied provision for enquiry into the payee's solvency. He also contended that whether this were so or not, the amount was not pleadable as a set-off.

The Acting Advocate General (*Norton*), for the defendant, was not called upon.

The Court delivered the following

JUDGMENT :—The document clearly contains no such condition as Mr. Mayne supposes. It is a perfectly unrestricted order to pay. Upon these papers it is difficult precisely to understand the circumstances of the parties to this hundi, or whether the amount of the bill would be, at English law, pleadable as a set-off. It is very probable that it would not be so. In this Court, however, should the question arise, we should deal with it rather upon the principles of English Courts of Equity or of the Roman law as to compensation from which those doctrines are derived(*a*). We should certainly give no weight to objections derived from the peculiar language of the statutes of set-off—language that has produced results of the most grotesque and mischievous character which recent legislation has partially remedied.

Here we must take the case as the parties themselves put it by their pleadings and their conduct of the cause. It is quite clear that the plaintiffs admitted that he would

(*a*) Freeman *v.* Lomas, 9, Hare 1, 13 Mack, Syst. Jur. Rom. 749.

1863. *August* 1. *R. A. No* 4 *of* 1863.

have been responsible for the amount due if the defendant had not negligently omitted an enquiry which he was bound to have made. It is quite clear therefore that the parties dealt upon the principle of setting off against one another demands of a varied character, and the plaintiff having wholly failed to establish the negligence which he has set up, the decree of the Court below is clearly right and this appeal must be dismissed with costs.

Appeal dismissed.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 75 *of* 1863.

TÁNDAVARÁYA MUDALI.....*Appellant.*

VALLI AMMÁL.....*Respondent.*

A debt incurred by the head of a Hindu family residing together is under ordinary circumstances presumed to be a family debt.

But when one of the members is a minor, the creditor seeking to enforce his claim against the family property must show that the debt was contracted *bona fide* and for the benefit of the family.

Hunoomanpersaud Panday v. *Mussumat Babooee Munraj Koonweree* (6, Moo. I. A. Ca., 393) followed.

1863. *August* 6. *S. A. No.*75 *of* 1862.

THIS was a Special Appeal from the decision of R. R. Cotton, the Civil Judge of Madura, in Appeal Suit No. 69 of 1862, reversing the decree of the District Munsif of Dindigul, in Original Suit No. 956 of 1860. This suit was brought to recover certain lands, the property of an undivided Hindu family, which had been mortgaged to the plaintiff by the first defendant, who was the elder brother of the second defendant and the managing member of the family. At the date of the mortgage the second defendant was a minor. No evidence was given by the plaintiff, that the mortgage had been made for the benefit of the family.

Mayne, for the appellant, the third defendant contended that under the circumstances the burden of proof that the debt was for the benefit of the family lay on the plaintiff, and cited *Hunoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree* (*b*).

(*a*) Present : Phillips and Frere, JJ.

(*b*) 6 Moore I. A. Cases, 393.