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March 2.
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Procedure Code, as also of the reasons of the Session Judge for not permitting summonses to any of the persons named to be issued on the trial.

The record must be called for, but it is not necessary to require an English translation of more of it than the deposition of the 5th witness for the prosecution.

[Note.—Upon the further hearing of the case, the High Court directed the evidence of one of the persons named in the list presented by the prisoner to be taken and returned to the Court, and upon a consideration of the whole case the conviction was affirmed.]

Appellate Jurisdiction (a)

Special Appeal No. 6 of 1868.

GNA'NABHA'I.....*Special Appellant.*

C. SRI'NIVA'SA PILLAI.....*Special Respondent.*

A voluntary transfer of property by way of gift, if made *bonâ fide*, and not with the intention of defrauding creditors, is valid as against creditors.

The Hindu and English Law on the subject discussed.

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THIS was a Special Appeal against the decree of R. Davidson, the Officiating Civil Judge of Tanjore, in Regular Appeal No. 255 of 1866, reversing the decree of the Principal Sadr Amin's Court in Original Suit No. 5 of 1865.

Srinivâsa Châriyâr, for the Special Appellant, the second defendant,

Sanjiva Row, for the Special Respondent, the plaintiff.

The Court delivered the following

JUDGMENT:—This is a suit by a judgment creditor to invalidate a voluntary transfer of certain Government securities of the value of rupees 25,000 made by the judgment debtor to his wife (the 2nd defendant,) and to establish the plaintiff's right to take such securities in execution. The material facts found by both the Lower Courts are that the plaintiff obtained a decree in a suit brought in 1859 for the amount of a simple money bond executed by the 1st defendant in May 1858, and that

(a) Present: Scotland, C. J. and Collett, J.

about a year after the execution of the bond, and a few months before the institution of the suit, the securities in question were transferred by endorsement to the 2nd defendant without any legal consideration or notice to third persons, and she had since drawn the interest due thereon. It is also found by the Original Court that the transfer was a *bond fide* transaction; but it does not appear distinctly what conclusion the Lower Appellate Court came to on this point, although several circumstances are alluded to in the judgment of the Court which bear very materially upon it. The Civil Judge considered the fact of the transfer having been made after the 1st defendant had incurred the debt to the plaintiff without notice or provision for payment of that debt, enough to render it a fraud on the plaintiff, and on that ground he has reversed the decree of the Original Court and passed a decree in the plaintiff's favor.

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We are of opinion that this decision of the Civil Court is not maintainable. Assuming that the Court will find as the Original Court has done (for a distinct finding on the point must be required) that the transfer was a *bond fide* disposition of the securities to the 2nd defendant, and not a mere blind or really with the intention to defraud the plaintiff of the amount of his debt, it is, we think, as valid against the plaintiff as against the 1st defendant, the donor. According to the Hindu Law, the possessor of property, whether movable or immovable, may make as effectual a transfer of his right and interest by a gift as by a sale or other disposition. It makes no distinction that we know of in favor of creditors between a voluntary transfer and one for a valuable consideration. In truth the Hindu Law does not, we believe, contain any special prohibitory provision relating to the protection of creditors generally. There are several texts forbidding gifts to such an extent as to deprive a man of the means of fulfilling his sacred obligation to provide maintenance for the members of his family. These are to be found collected in *Colebrooke's Digest, Chap. 4*, and some of them are relied upon in the Pundits' opinion quoted in argument from 2 *Maek H. L.* 248. But whatever may be their effect, they are in reason inapplicable to the gift in

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question, for its very object and effect, if real, was to secure the money for the benefit of the donor's wife and family if they had any.

The transfer of the securities then is not of any less validity in law as against the plaintiff by reason of its being a voluntary gift, and in order to vitiate it, fraud must be shewn as is necessary when it is sought to invalidate a transaction in which a valuable consideration has passed between the parties. Now nothing definite appears to be propounded by the Authorities on Hindu Law in regard to the effect of particular acts or intents as proof of fraud. The primary text of *Menu* (*Chap. 8, Cl. 165*), is perfectly general: "When the Judge discovers a fraudulent pledge or sale, a fraudulent gift and acceptance, or in whatever other case he detects fraud, let him annul the whole transaction," and the passages cited in the course of the argument from the *Vyavahāra Mayūkha, Chap. 4, Section 10, Cl. 6*, the *Smṛuti Chandrika by Kristna-swāmi Iyer, Chap. 9, Sec. 1, Cl. 11*, and *Elberling's Treatise, Sec. 363, p. 122*, are also in general terms. We may look therefore to the English decisions relating to conveyances fraudulent as against creditors, and be guided in the consideration of this case by the principles they lay down.

It is clearly a settled rule, as is pointed out in the judgment in the recent case before this Court, *Sankappa v. Ramayya* 3, *Madras High Court Reports* 231, that the mere intention to hinder or defeat the realization of a debt by execution is not a fraud against the creditor which affects a transfer of property for a valuable consideration in other respects *bonâ fide*, and that no doubt is a sound rule which may be applied generally to similar cases here. The law, however, is not the same in regard to voluntary transfers. They operate to reduce the means of the debtors by whom they are made, and the rule is that when they are shown to have that effect to such an extent as to justify the inference of an intention to hinder, delay, or defraud creditors, they are *mala fide* and void. The *bonâ fides* of the particular transaction is the point for consideration, but it

turns on the evidence in each case as to the motive and intention of the debtor in regard to his creditors.

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Now this rule may also, we think, be fitly made applicable to voluntary transactions between natives; but it is necessary to guard against a too limited application of the terms delay and hinder; against its being supposed that the mere prevention of proceedings on the part of a creditor against the particular property which is the subject of the voluntary gift is sufficient to make it void. In the use of those terms, the rule follows the language of the 1st Section of the Statute 13, Elizabeth Cap. 5 (of no force as respects transactions between Hindus) which provides that the intent to "delay, hinder, or defraud" creditors shall vitiate theseveral transactions mentioned in the Section, and at one time much difference of judicial opinion existed as to the application of the rule. The more recent decisions, however, have settled the principle of its application. Their effect appears to be, that a voluntary disposition of property may be valid, although the person making it is at the time in debt, and that in each case the validity or invalidity of the transaction depends upon the question, whether the circumstances connected with the debtor's state of indebtedness support the presumption that he had the intent to deprive the objecting creditor of the means of recovering his debt—in effect the presumption of fraud.—*Holmes, v. Penny* 26, *Law Journal, Chan.* 179, *Thompson v. Webster* 28 *Law Journal, Chan.* 702, and see 2, *Spence's Chancery* 837 note. There must appear to be intentional fraud in the hindrance or delay that is caused to the creditor. Otherwise, a voluntary transfer of particular property in the ordinary course of business which causes some delay to a creditor in proceeding to recover his debt (a not uncommon occurrence) might be vitiated as fraudulent, although the debtor had sufficient other means available to the creditor.

This principle of fraud in accordance with the general Hindu Law is, in our judgment, the proper principle applicable to the present case and all cases of a similar nature. In the case of a transfer for valuable consideration, creditors who can only look to the property as available in execu-

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tion cannot object to the transfer as fraudulent, if it has been made and accepted *bond fide*, that is, with the honest intention of passing the property, if the transaction has been real and not a fictitious contrivance to deceive as to the right of property. So again in the case of a voluntary transfer, the *bond fides* of it with reference to the intention of the debtor is the point for consideration. In every such case we think the proper question to be considered is whether the circumstances in evidence taken together lead reasonably to the conclusion that the real motive and intention of the transaction was to deprive the creditor of the means of obtaining payment of his debt from the debtor's property generally. If so, the disposition is fraudulent and void to the extent of the debt due to the creditor by whom it is impeached.

No general rule can be laid down as to the nature or extent of the evidence which should be acted upon. Being a question of intention, each case must necessarily be decided on the particular evidence offered in it as to the acts of the parties and the position in which they stood to each other, the amount of the debt, the means possessed by the debtor, and the other circumstances shewn to be connected with the transaction.

On this view of the rule of law, it is obvious that the ground on which the Civil Court has decided the case is not alone sufficient to invalidate the transfer in question, and for the reasons given that Court must be required to return a finding on the issue:—Was the transfer of the securities really made with the fraudulent motive and intention of depriving the plaintiff of the means of recovering his debt from the 1st defendant's property generally?

It is accordingly hereby ordered that the foregoing issue be, and the same hereby is, referred to the Lower Appellate Court for trial upon the evidence already recorded in the suit, the finding thereon together with the evidence to be returned to this Court within six weeks from the date of receiving this order.