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MACKINTOSH
v.
WINGROVE.

Or, on the other hand, however extortionate the bargain might have been, if the defendant thoroughly understood and consented to it, there would have been no ground for equitable interference.

It was only the concurrence of the two elements—an unequitable bargain and ignorance of the unfair nature of the transaction on the part of the defendant—which justified the Court in modifying the decree.

In this case the Judge finds, as a fact, that the defendant was perfectly aware of the contract which she made, and consequently the principle of *Mackintosh v. Hunt* (1) does not apply. If people with their eyes open choose wilfully and knowingly to enter into unconscionable bargains, the law has no right to protect them.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Markby.

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June 7 & 17.

ALLUMUDDY v. BRAHAM AND ANOTHER.*

Married Women's Property Act (III of 1874), ss. 4, 7, 8—Domicile—Decree against separate Property of Wife.

Act III of 1874 (The Married Women's Property Act) applies to persons having an English domicile. Accordingly the separate property of a married woman (whose husband's domicile is English) is alone bound by all debts, obligations, and engagements incurred by her in the management of a business carried on by her alone, and execution of any decree obtained against her in respect of such business should be limited to her separate property.

The principle that the wife is impliedly carrying on business as the agent of the husband is excluded by the provisions of Act III of 1874.

REFERENCE to the High Court by the Second Judge of the Calcutta Court of Small Causes, under s. 55 of Act IX of 1850.

The plaintiff, a *durzee*, sued the defendants, who were husband and wife, to recover wages due to him for work and labour done. It appeared that the defendants were British subjects, married in the year 1854, having an English domicile.

(1) I. L. R., 2 Calc., 202.

* Reference, No. 3 of 1878, from the Calcutta Court of Small Causes.

The husband described himself as an iron-monger and broker, but the wife carried on business as a milliner separately from her husband, under the name of Madame Greenwood, the business having been started with money advanced to her by the husband in 1864, the latter, however, having no interest or concern in the business. It was further admitted that the plaintiff was engaged by the wife for the purposes of her millinery business.

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The learned Judge found that the millinery business was the separate property of the wife, under s. 4 of Act III of 1874; and that, under ss. 7 and 8 and the proviso to s. 8, the husband was in no way liable on the contract made between his wife and the plaintiff, assuming that the case fell under Act III of 1874, and therefore gave judgment against the wife alone, to be satisfied by execution against her separate property. The Court, however, entertained doubts whether Act III of 1874 applied to persons having an English domicile on the following grounds. The language of the preamble and s. 2 of the Act might possibly be taken to confine its operation to the case of persons falling under s. 4 of the Indian Succession Act. This section had been held in the case of *Miller v. Administrator-General of Bengal* (1) not to apply in respect of the moveable property of persons not having an Indian domicile. In view of these doubts the Court made the decree contingent on the opinion of the High Court as to whether judgment ought to have been given against the husband as well as against the wife.

Neither party was represented before the High Court.

The opinion of the High Court was delivered by

GARTH, C. J.—It being found, as a fact, that the millinery business was carried on by the wife alone, and that the husband had no concern in it, we think it clear that the Judge was right in giving a decree against the wife alone. The husband could only be made liable in such a case upon the principle that the wife was impliedly carrying on the business

(1) I. L. R., 1 Calc., 412.

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 BRAHAM. as his agent; and we consider that any such implication is excluded by the provisions of the Act and the facts as found in the case.

We also think that the decree should be executed only against the wife's separate property; and that the form of it should be limited accordingly.

FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Kemp, Mr. Justice Jackson, Mr. Justice Markby, and Mr. Justice Ainslie.

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 23; § May
 13. ASSAMATHEN NESSA BIBEE, WIDOW OF MEER ASRUFF ALLY
 (DEFENDANT) v. ROY LUTCHMEEPUT SINGH (PLAINTIFF).
Mahomedan Law — Descent — Heir — Representatives — Deceased Debtor — Decree by consent — Parties — Sale in Execution — Act VIII of 1859, s. 203 — Act X of 1877, s. 252.

A, a Mahomedan, died possessed of immoveable property, and leaving a widow, a daughter, and a sister, *B*, his heiresses according to Mahomedan law. *B* was entitled to a one-sixth share of an undivided moiety of a certain portion of the property which was situated in Calcutta. After *A*'s death, the *L* Bank sued his daughter and her husband and two of her husband's brothers in a Mofussil Court to realize certain mortgage securities executed by *A* to the Bank, and obtained a decree by consent. Neither the widow, nor *B*, who was then absent from the country, were parties to this suit. The Bank, in execution of their decree, caused certain property of *A*, including the undivided moiety of the Calcutta property, to be sold by the Sheriff of Calcutta. The defendant became the purchaser at this sale and obtained possession of the property. The certificate of sale stated that what was sold was "the right, title, and interest of *A*, deceased, the ancestor, and of "the defendants (naming them), the representatives, in a moiety of a piece of "land situate, &c." *B* afterwards sold and assigned her share in (among other properties) the above-mentioned undivided moiety of the Calcutta property to the plaintiff, who now sued the purchaser at the execution-sale to recover the subject of his purchase.

Held by GARTH, C. J., KEMP and JACKSON, JJ. (MARKBY and AINSLIE, JJ., dissenting) that the decree and the execution founded upon it did not affect the share of *B* in the estate of *A*, and consequently that the property in question did not pass to the defendant under the sale made by the Sheriff.

Per GARTH, C. J.—A decree by consent against one heir of a deceased debtor cannot, under the Mahomedan law, legally bind the other heirs.