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BONOMALI BAJADUR v. KOYLASH CHUNDER MOJOOMDAR.

kurpha tenant is not transferable without the consent of the occupancy ryot.

We think, therefore, that the judgment of all the Courts must be reversed, and the plaintiff's suit dismissed with all costs.

JACKSON, J.—I would only add that I never heard before that the question as to the possibility of selling a *kurpha* tenant's right could be raised, and it appears to me to be contrary to the nature of things that such a thing could happen.

The Subordinate Judge speaks of an admission by the defendant that his *kurpha* tenant had a right of occupancy; but if he did make such an admission, he admitted what the law forbids, because s. 6 of Beng. Act VIII of 1869 says that, under such circumstances, a right of occupancy cannot arise, and where a right of occupancy cannot rise *à fortiori*, there can be no transferable right.

ORIGINAL CIVIL.

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

MACKINTOSH *v.* WINGROVE.*

1878
June 7 & 17.

Promissory Note—Interest deducted in advance from the sum lent—Inadequacy of Consideration—Grossly exorbitant Interest—Equitable Relief.

The Court will afford no protection to persons who wilfully and knowingly enter into extortionate and unreasonable bargains.

It is only where a person has entered into an extortionate bargain, and it is shown that he was in ignorance of the unfair nature of the transaction, that the Court is justified in interfering.

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

This was a suit brought to recover the sum of Rs. 82 as principal and interest due on the following promissory note:

Calcutta, 23rd June 1874.

Rs. 20.

On the 13th November 1874 we jointly and severally promise to pay to Mr. H. Mackintosh, or order, the sum of Rs. 20

* Reference, No. 5 of 1878, from the Calcutta Court of Small Causes.

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for value received in cash in hand, paid on signing and delivering this note. Should we neglect or fail to pay the amount on due date, then only shall it carry interest from due date of payment at the defaulting rate of 10 per cent. per mensem.

(Sd.) J. WINGROVE.
„ RACHEL WINGROVE.
„ C. BARNARD.

The suit was abandoned as against John Wingrove and C. Barnard, the plaintiff electing to proceed against Rachel Wingrove, who was a *feme sole*.

It appeared that, pending negociations for the loan, the plaintiff explained to the defendant that his practice was to deduct interest at the time of the advance out of any monies lent by him on promissory notes, from the date of the note to the due date of payment, and that this was agreed to by the defendant. And, accordingly, on the 23rd June 1874, the above note was drawn up; the plaintiff, according to the understanding between himself and the defendant, deducting from the Rs. 20 advanced the sum of 3 rupees 2 annas as interest from the date of the note to the due date, the defendant therefore receiving only the sum of 16 rupees 14 annas, and not Rs. 20 as stated in the note.

At the hearing, the defendant admitted she had paid nothing to the plaintiff in respect of principal; but had paid a sum of Rs. 10 as interest on the principal, and this latter payment was not denied. But she contended on the authority of *Mackintosh* v. *Hunt* (1), that she was liable only to pay the principal sum of Rs. 20, plus interest at the rate of interest allowed by the Courts,—*viz.*, 12 per cent. per annum,—from the due date of the note to date of suit, on the ground that the note did not state truly the transaction between the parties, and that the rate of interest was exorbitant, and the consideration grossly inadequate.

The plaintiff, however, contended that the defendant being fully aware of the real nature of the transaction was not entitled to the equitable relief claimed; the case of *Mackintosh* v. *Hunt* having been decided mainly on the ground that Hunt

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

was unaware of the real nature of the transaction, having signed the note without having read it.

The learned Judge was of opinion that the main ground relied on by the High Court in coming to a decision in the case of *Mackintosh* v. *Hunt* (1) was, that the promissory note did not truly state the transaction between the parties; and, therefore, on that ground, and on the grounds that the rate of interest was grossly exorbitant and the consideration grossly inadequate, coupled with the fact that the defendant had already paid Rs. 10 as interest, and that interest at 12 per cent. per annum from the due date of the note to the date of suit would be less than Rs. 10, gave judgment in favor of the plaintiff for Rs. 20 only, contingent on the opinion of the High Court, whether the defendant was entitled to the equitable relief claimed.

The parties were not represented by counsel in the High Court.

The opinion of the High Court was as follows:

GARTH, C. J.—The learned Judge has somewhat misconceived the true principle of the decision in *Mackintosh* v. *Hunt* (1).

The equitable defence which formed the ground of the High Court's judgment in that case was founded upon two considerations, neither of which would have been sufficient without the other, namely:

1*st*.—That the bargain made by Mackintosh with the defendant Hunt was grossly extortionate, and calculated to deceive an unwary young man as to its real character; and

2*ndly*.—That although the other maker of the note, Norender Dutt, might have understood the nature of the transaction, it appeared that the defendant Hunt had never even read the note, and was not aware of its true meaning.

If there had been nothing unfair or unreasonable in the contract itself, and the defendant had reaped the benefit of it, the fact of his not understanding its nature would have been no valid answer to the claim.

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

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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 *Machintosh* 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.

1878
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.