officers of Government would in ordinary course, if there were any doubt as to the title, refer the parties to the Civil Court.

If the person claiming to have been adopted brings an action to enforce his title, the question will be investigated whether he was validly adopted or not.

Under these circumstances, their Lordships think that there was no ground for this appeal, and they will humbly advise Her Majesty that the judgment of the Judicial Commissioner be affirmed.

Appeal dismissed.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

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PIRTHI PAL KUNWAR v. GUMAN KUNWAR.

JIBUN NISSA AND OTHERS (DEFENDANTS) *v.* ASGAR ALI AND OTHERS (PLAINTIFFS).

*P.C.** 1890 *Mar.* 14.

[On appeal from the High Court at Calcutta.]

Deed, Construction of—Deeds not intended to operate according to their tenor—Nullity of transaction apart from fraud.

Documents, principally a potta and a kobala, executed between a Mahomedan pardanashin lady and one of her relations purported to represent, the one a putni lease from her of her lands, and the other a sale of her house, and ground, from the date of the execution. That she received the consideration was *not proved*, but had it passed it would have been distributed between the two deeds, which formed part of one and the same transaction. From the acts of the parties it was established that her intent was to deprive her heirs, not herself, and that she had no intention to part with the property *in præsenti*, as the deeds represented that she did. *Held*, that, the latter not being intended to operate according to their tenor, the whole transaction was a nullity.

APPEAL from a decree (16th August 1886) of the High Court reversing a decree (16th July 1886) of a Division Bench, affirming a decree (22nd April 1885) of the Second Subordinate Judge of the 24-Pergunnahs District.

The plaintiffs, now respondents, were the nephews of Delrus Banu Begum deceased on 16th January 1883, and were her heirs by Shiah law. The question raised was whether she had defeated the

Present: LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.

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plaintiffs' title by transferring the property belonging to her, and in her possession, consisting of three parcels of revenue-paying land in the 24-Pergunnahs, and of a dwelling-house, to her grandnephew Nawab Mahomed Mehdi, who died on the 28th April 1879, and whose heirs the defendants were. The latter, when sued by the right heirs of Delrus, who was of advanced age, set up the following title. They alleged that Delrus, having long been in litigation with the plaintiffs, especially in the suit *Delrus Banu Begum* v. *Nawab Saiyad Ashgar Ali Khan* (1), for the expenses of which suit she wanted money, was desirous that they should not inherit her estate, but that it should go to Mahomed Mehdi: that, accordingly, on the 3rd August 1876, in consideration of a payment of Rs. 6,000, and a yearly rent of Rs. 617, she executed a putni potta of the three parcels of revenue-paying land in favour of Mahomed Mehdi, receiving from him a corresponding kabuliyat: and that on the next day, the 4th August 1876, she executed to Mahomed Mehdi, for a consideration of Rs. 6,000, a kobala of the dwelling-house, with ground adjoining; taking from him a lease for her life, at an annual rent of Rs. 2,647 of the three parcels granted in putni, and also a lease of the house and ground for her life at a monthly rent of Rs. 25. There was no question as to the making of these instruments, which were all registered; but the plaint alleged that in August 1876 Delrus was incapable of attending to business, and that, if the consideration did pass, which was doubtful, the execution was obtained by undue influence. The plaintiffs also alleged that Delrus did not understand the nature of the transactions, never intending that there should be an actual transfer. They alleged that possession continued as before, and that the rents reserved were never paid.

The Subordinate Judge was of opinion that the consideration was inadequate; yet that, as the act of the owner, to carry out her own objects, the attempted transfer of the putni interest in the land was good against the heirs of Delrus. As to the alleged sale of the house, he held that the want of consideration for the deed of sale was against its operating. He therefore made a decree that the plaintiffs were entitled to obtain possession of the

(1) 15 B. L. R., 167; and on appeal to the Privy Council, *Ashgur Ali* v. *Delrus Banu Begum*, I. L. R., 3 Calc., 324.

house and ground appurtenant, but not of the lands granted in putni to Mahomed Mehdi. On the appeal of both parties, heard by a Division Bench (PETHERAM, C.J., and GHOSE, J.), the Chief Justice expressed an opinion, at which also, on a further appeal under the 15th section of the Letters Patent, the High Court (PRINSEP, WILSON and BEVERLEY, JJ.) arrived; his colleague on the Division Bench differing.

On the appeal under the Letters Patent the High Court's judgment was delivered by Prinsep, J., who was of opinion that the putni transaction was not separable from the matter of the kobala, and who, after going through the evidence, gave this decision:—

"The conclusion at which we arrive is, that the old lady, Delrus Banu Begum, executed the putni without knowing or being told the correct nature of the transaction, the manner in which it affected her rights, or the sacrifice which she was making; but that the knowledge which she should have acquired was kept from her by Mehdi and his dependents; that she never actually received the full amount of the consideration; that it is not proved that she relinquished any portion of it; that as the primary object of the transaction was to obtain at least Rs. 12,000, there is every reason to believe that if she had known that the full consideration had not been paid, she would not have executed the deeds; and consequently that the putni was executed under undue influence and in fraud. But this transaction may also be regarded from another point of view, viz., that no effect was given, or intended to be given, to the transaction, that it was a mere sham and therefore inoperative."

Wilson, J., concurring and also doubting whether any consideration had been proved to have passed, added:—

"What, then, is the consequence? I have already shown that, in my opinion, apart from any actual fraud, from the nature of the relation between the parties, the inadequacy of the price and the absence of any independent advice, the transaction cannot stand. Further, I think that if this transaction were really intended to be what it is represented to be on paper, there was, in addition, a gross actual fraud. Of the consideration of Rs. 12,000 which the old lady is alleged to have received, certainly half she never got, and very probably nothing.

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"On the other hand, it is equally possible that things may not have been at all so bad as they look from that point of view. I think they were not so, and my reason is this. I do not think there was ever any intention on the part of any party to that transaction that it should have any such operation as the deeds represent. As I have said, I think the lady intended to deprive her nephews of their inheritance if she could, and she wanted money. I cannot see anywhere any satisfactory evidence that she intended to deprive herself then and there of her house absolutely, and of the whole almost of her valuable interests in the zemindari properties, in favour of Medhi. A very important piece of evidence on that subject is the deposition of Gunga Churn. He tells us what was her intention at the time. He says, 'I know the plaintiffs in this case. She was on terms of enmity with them since the wakf case, and she told me repeatedly, "They are my *jain mokhalef* (bitter enemies)."' Further on, 'I asked her, that having regard to the income of the property, I see the putni is granted for a very low amount. On this she said, "I have two reasons for granting this putni. First, I require funds for the Privy Council case, and no one wants to purchase the property on account of the pendency of that suit, and they have all along been my enemies. They are my heirs after my death, and it is my intention that they may not get my estate. Mahomed Medhi is my grandson, and I like him, and it is for this reason also that I make the grant for a reduced value." At the time of the execution of that deed there was a decree in execution against Delrus Banu Begum. At that time she required money to pay off that debt also.' That shows an intention to deprive her heirs, not an intention to deprive herself. Then, when we compare this with what happened afterwards, and find that this deed was never in any part of it acted upon, but that all subsequent transactions proceeded on the footing of the property being hers, and not on the footing of what appeared on the face of the document, I think the proper inference is, that the lady never had any real intention to part *in præsenti* with the property in the manner the defendants represent, just as I think that there is no satisfactory evidence to show that she ever received any proper consideration. It follows, therefore, that the whole transaction must be regarded as a nullity.

"But another view of the case has been put before us by Baboo Mohesh Chunder Chowdhry. He contended, that even if it be held that the transaction was not intended to have present operation in the full sense of the term, it was at least clear that the lady had a strong desire to benefit Medhi after her death, and so we were asked to give effect to the transaction as one by which she was to retain the whole benefit for her life, and Medhi was to take it after her death. Now, in order to give effect to this contention, it must be held, that although, under the terms of the deeds, Medhi was to have a vested interest from the dates of their execution, in fact he was not to have it till after the death of Delrus. There are several objections to this view: First, it would directly contradict the deeds; secondly, it would conflict with the case put forward by the defendants themselves in their pleadings and evidence; and thirdly, under the authority of the decisions of the Privy Council on this subject, it would seem that there are very strong reasons for saying that it would conflict with the rules of Mahomedan law (1). I therefore concur in the conclusion arrived at by my learned colleague."

Mr. *R. V. Doyne*, for the appellant, argued that as to the putni grant, and the consideration for it, the first Court was right in dealing with it as separate from the questions arising as to the sale of the house. There was no reason on the evidence for supposing that Delrus did not execute all the documents with full knowledge of their effect; or that she was deceived. She wished to benefit Mahomed Medhi. No particulars of fraud were either proved, or alleged, and in the absence of fraud, the inadequacy of the consideration would not invalidate the transaction, so far as to prevent its being carried out, according to the intention of Delrus upon her death in 1879. This, at all events, applied to the putni.

Mr. *J. D. Mayne* and Mr. *C. W. Arathoon*, for the respondents, were not called upon.

Their Lordships' judgment was delivered by

SIR R. COUCH.—The respondents in this appeal brought a suit against the appellants, in which they alleged that Delrus Banu Begum died possessed of considerable property, and that they were,

(1) *Abdul Wahid Khan* v. *Nuran Bibi*, L. R., 12 I. A., 91; also reported in I. L. R., 11 Calc., 597, and see cases cited at p. 602 of that report.

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according to the Shiah law, of which sect the family were members, her heirs, and as such were entitled to the estate left by her. The defence depended upon a transaction which took place on the 3rd and 4th of August 1876.

In order to explain that transaction it may be stated that Mahomed Mehdi, the principal party to it, was the grandson of a brother of Delrus Begum. The nature of it was that Delrus Begum, who was said to be wishing to raise money, sent for Mehdi, and on his coming an agreement was made by which he was to pay her Rs. 12,000, and to receive in return a putni of her estate, with the exception of the house in which she lived, and about 20 bighas of land. He was also to have a kobala or deed of sale of the house and premises, and the Rs. 12,000 were equally distributed between the putni and the kobala. It is apparent from the evidence that this was one transaction. The putni was executed on the 3rd of August 1876, and the kobala on the following day. The putni states that out of 268 bighas of land in holding No. 186, Delrus Begum had her dwelling-house and 20 bighas of land; and that she had issued a notification for letting out in putni the 248 bighas, and that Mehdi, having applied to take the land in putni, she granted him a putni on receipt of a bonus of Rs. 6,000 at a determined and fixed annual rental of Rs. 647-14-10 gundahs in respect of her proprietary right in the 248 bighas. It provides that out of that rental he is to pay the annual Government revenue of Rs. 347-14-10 gundahs, and to pay to her Rs. 300 per annum as profits for her proprietary right.

By the kobala Delrus Begum sold to Mehdi for Rs. 6,000 her rights in about 20 bighas of land belonging to her dwelling-house, together with the pucca buildings and garden with trees, &c.

On the same date, the 4th of August, Mehdi executed an ijara by which he granted to Delrus Begum all his rights in the land included in the putni and kobala, at a rent of Rs. 2,647 14 annas 10 pie. This is the amount of rent Delrus Begum was to receive under the putni, with Rs. 2,000 in addition, and it provided that if Delrus Begum failed to pay the rent due on account of any instalment on the first day of the succeeding month, she should be liable to pay interest for the overdue instalment at the rate of 1 per cent. per mensem, and if she failed to pay the rents due on account of three

successive instalments, her ijara rights were to cease on the first of the fourth month, and she says:—"I shall not make any default in the payment of any instalment; and if any land be taken by Government, I will not get the compensation thereof—that is, any portion of the value of it."

There were two questions raised by the defence—first as to the putni, and next as to the kobala. The case has been before five Judges of the High Court, and the Judge of the 24-Pergunnahs, and all those Judges came to the conclusion, with regard to the kobala, that it was not intended to be a real transaction. It has not been contested by Mr. Doyne, who has argued the case with great care and ability, and has called their Lordships' attention to every portion of the evidence which might assist the case of his clients, that this is a true finding.

That is very important with reference to the putni, because it was evidently one transaction, and it would be very difficult, if not impossible, to come to the conclusion that if that part of the transaction was altogether an unreal one, and that it was never intended that it should operate as a sale, the other part, that is the putni, was intended to be a real transaction. The consideration is said to have been Rs. 12,000; but it is obvious that at least Rs. 6,000 were never paid, and were not intended to be paid, or to have any effect as purchasing the property. With regard to the putni, the case was presented in the High Court as being a case of a fraud practised upon Delrus Begum; and it seems to have been treated in that way by some of the learned Judges. Their Lordships see no ground for thinking that any fraud was practised upon the lady. The defect in the transaction is that the intention on her part was not that which is apparent on the face of the deeds—in fact, that the deeds do not represent really what was intended. The evidence has been very fully examined, and it is not necessary to say more than that their Lordships, after the full argument which has been addressed to them on behalf of the appellants, have come to the conclusion that, as regards the result of the case, they agree in the judgment which has been given by the learned Judges of the High Court on the appeal from the two Judges who differed in opinion. They agree in that result for the reasons which were given by Mr. Justice Wilson towards the conclusion of his judgment,

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namely, that the deeds were not intended to operate according to their tenor.

Their Lordships will therefore humbly advise Her Majesty to affirm the decree of the High Court of the 16th August 1886, and to dismiss the appeal; and the appellants will pay the costs of it.

Appeal dismissed.

Solicitors for the appellants: Messrs. *Barrow & Rogers.*

Solicitors for the respondents: Messrs. *T. L. Wilson & Co.*

C. B.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Rampini.

1889 *June* 12.

BIRJMOHUN LAL AND OTHERS (PLAINTIFFS) *v.* RUDRA PERKASH MISSER (DEFENDANT).*

Minor—Age of majority—Guardian and Manager—Limitation—Agent duly authorised—Act XL of 1858, *ss.* 4, 7, 12—*Majority Act* (*IX of* 1875), *s.* 3—*Court of Wards' Act* (*Bengal Act IX of* 1879), *ss.* 7—11, 20, 65—*Limitation Act* (*XV of* 1877), *s.* 20.

In a suit to recover money due upon certain promissory notes executed between the 14th December 1885 and the 16th March 1886, the defendant pleaded (*inter alia*) minority, and alleged that by an order of the Civil Court the Collector had been appointed his guardian and manager of his estate under Act XL of 1858; that on the 6th December, when he was nineteen years of age, his estate had been released by the Court of Wards and was made over to his father on the 17th December; that on the 30th December the District Judge held that he was still a minor, and appointed a manager of his estate, and that the District Judge's order had been upheld on appeal by the High Court.

Held, that there was no evidence that a guardian of the person or property of the defendant had ever been appointed within the meaning of section 3 of the Indian Majority Act (IX of 1875), and as the defendant was not under the jurisdiction of the Court of Wards at the time of execution of the promissory notes, he was then no longer a minor, but *sui juris* and competent to enter into a binding contract.

Held, that the Collector is not a Court of Justice within the meaning of section 3 of the Majority Act. A Collector appointed under section 12 of

*Appeal from original decree No. 134 of 1889, against the decree of Baboo Girish Chunder Chatterji, Subordinate Judge of Monghyr, dated the 26th of April 1889.

(1) I. L. R., 12 Calc., 612.