
(1935) 04 CAL CK 0011
In the Calcutta High Court

Bibhuti Bhusan Ghose

APPELLANT

Vs

Baikuntha Nath Mondal and Others

RESPONDENT

Date of Decision : 05-04-1935

Acts Referred:

Transfer of Property Act, 1882 — Section 100

Citation : 164 Ind. Cas. 477

Hon'ble Judges : S.N. Guha, J; Charles Bartley, J

Bench : Division Bench

Judgement

1. This is an appeal from a decision and a decree of the Subordinate Judge, 2nd Court, 24-Parganas, dated November, 29, 1930, in a suit "brought by the plaintiff-appellant, for enforcement of an equitable mortgage) in which in addition to prayer incidental to a mortgage suit, it was claimed by the plaintiff in the alternative that should it be found that the plaintiff was not entitled to a mortgage decree, for any reason whatever, a decree might be passed against the defendants Nos. 1, 2 and 6 for the amount claimed in the suit, on declaring the said defendants liable to pay the dues of the plaintiff according to law and contract.

2. The plaintiff's case before the Court, as stated in his plaint, was that on December 2, 1920, the defendants Nos. 1 and 2, father and son, took a loan and executed a promissory note for Rs. 10,003 in his favour at premises No. 13, Esplanade East, Calcutta, and delivered to him, eight mortgage bonds in favour of the defendant No. 1, and two chalans showing deposit of money by the defendant No. 2 in Court, thus creating an equitable mortgage in favour of the plaintiff. The defendants Nos. 3 to 5, the mortgagors in respect of the mortgage bonds delivered to the plaintiff, were aware of the above transaction from the very time of its completion; the defendants Nos. 1 and 2 made payments to the plaintiff on account of interest due on the loan. The defendant No. 1 had on June 26, 1924, conveyed his interest in the mortgage bond hypothecated with the plaintiff to the defendant No. 6, Oriental Bank, Ltd., (hereafter referred to as the

Bank), by a deed of assignment; by the terms of the aforesaid deed, and by the terms of a deed of release and surety bond, executed on September 30, 1926, the Bank was liable to pay the debt due to the plaintiff. On this part of the case, it was asserted by the plaintiff in para. 13 of his plaint, that on April 14, 1927, the defendant No. 6 (the Bank), wrote a letter to the elder brother of the plaintiff, offering to pay a sum of Rs. 10,500 to the plaintiff out of his dues, in full satisfaction of the debt due by the defendant No. 1. The plaintiff did not agree to the proposal made by the Bank for an amicable settlement. According to the averments made in the plaint, three out of the eight mortgage bonds, deposited with the plaintiff by the defendants Nos. 1 and 2, were taken away by the defendant No. 1 from the plaintiff, on some pretext or other; and were not returned to him. Five of the mortgage bonds said to have been deposited with the plaintiff by the defendants Nos. 1 and 2, were produced by the plaintiff in Court. It may " also be mentioned that seven out of the. eight mortgage bonds said to have been de-positd with the plaintiff, are covered by the deed of assignment executed by the defendant No. 1 on January 28, 1924, in favour of the defendant No. 6, the Bank.

3. The plaintiff's claim in suit was resisted by the Bank (defendant No. 6), and by the defendants Nos. 1 and 2. The defendant No. 3 a mortgagor in respect of the several mortgages said to have been deposited with the plaintiff, also filed a written statement, and asserted that the mortgages mentioned by the plaintiff had been paid off, and prayed for dismissal of the plaintiff's suit as against him. The knowledge of the equitable mortgage set up by the plaintiff was denied by the defendant No. 3, and it was claimed that he was not bound by the same. The Bank, denied the equitable mortgage set up by the plaintiff, and asserted that no valid and enforceable equitable mortgage was created by the defendants Nos. 1 and 2 in favour of the plaintiff. It was also claimed that there was no liability so far as the Bank was concerned to the plaintiff, in any manner whatsoever. In regard to the written statement filed by the Bank, it has to be noticed that the statement made by the plaintiff in para. 13 of the plaint, relating to a letter written, by the Bank to the plaintiff's elder brother, on April 14, 1927, was not controverted in any way. A proposal for amicable settlement of the plaintiff's dues from the defendants Nos. 1 and 2 was specifically mentioned in the written statement filed by the Bank, and it was said that the plaintiff at the instigation of his brother, and led away by wrongful greed did not agree to the same. The defendants Nos. 1 and 2 admitted the loan on promissory note, but denied that an equitable mortgage was created on December 2, 1920, y execution of a promissory note and deposit of documents, as alleged by the plaintiff, at No. 13, Esplanade East, in Calcutta. The defendants asserted that the hand-note filed in the suit was executed by them at premises No. 4, Bakul Bagan, 1st Lane, Bhowanipur, outside Calcutta. So far as the delivery of documents was concerned, the defendants Nos. 1 and 2 in their written statement, purported to say that six out of the eight, mentioned by the plaintiff in his plaint, were delivered to the plaintiff; but that there was no such delivery of documents in

Calcutta, as could create an equitable mortgage in favour of the plaintiff, as alleged by him.

4. The case of the defendants Nos. 1 and 2 was that there was no valid and enforceable equitable mortgage created by them in favour of the plaintiff, and that the plaintiff was not entitled to a mortgage decree, as prayed for by him in the suit.

5. On the pleadings of the parties four distinct issues were raised for trial so far as the merits of the case were concerned. The second and the fourth were to the following effect: Was a Valid, legal and enforceable equitable mortgage created by the defendants Nos. 1 and 2 in favour of the plaintiff ? Could the plaintiff get a mortgages decree ? The third issue was this: "Is the defendant No. 6 liable for the plaintiff's claim?" The first issue relates to the question of limitation; and we are not concerned with the same in the appeal, as it was not contended on behalf of the defendants-respondents that the plaintiff's claim was barred by limitation.

6. In support of the appeal by the plaintiff directed against the decision of the, learned Judge in the Court below, passing a decree for the amount claimed in the suit, against defendants Nos. 1 and 2 only, and dismissing the plaintiff's claim for a mortgage decree, as also his claim against defendant No. 6, three principal questions were submitted for our consideration and it was urged:

I. That the transaction of December 2, 1920, created a valid equitable mortgage in favour of the plaintiff-appellant.

II. That assuming against the plaintiffs that a valid equitable mortgage Was not created in favour of the plaintiff, on the admission of the defendants Nos. land 2, and on the deed of assignment dated January 26, 1924, and the deed of release and surety bond, dated September 30, 1926, there was a charge in favour of the plaintiff, as contemplated by Section 100 of; the Transfer of Property Act, and enforceable as such, in the present suit.

III. That on the materials on the record, regard being had to the terms of the deed of assignment, the deed of release and surety bond mentioned above, and regard being had to the acceptance of those terms by the defendant No. 6, the plaintiff was entitled to claim a decree against defendant No. 6, for the satisfaction of the loan advanced on the promissory note executed by the defendants Nos. 1 and 2, on December 2, 1920.

7. We proceed to deal with these questions in the order mentioned above.

I

8. The decision of the question whether the transaction of December 2, 1920,. amounted to the creation of an equitable; mortgage as contemplated by law, depends, on documentary as well as oral evidence. The documentary evidence, consisting mainly of the promissory note executed by. the defendants Nos. 1 and

2 on that date, and two affidavits, sworn on December 7, 1920, do not, in our judgment, support the case for the plaintiff. The other documents in which hypothecation by the defendant No. 1 and charge created by him: in favour of the plaintiff are mentioned, do not also go to establish that the transaction of December 2, 1920, was an equitable mortgage, valid and operative under the law. The oral evidence coming from the side of the plaintiff on this part of the case, is to say the least, far from convincing; and do not, in our judgment, establish the case of an equitable mortgage as asserted by the plaintiff in the suit. On a very careful consideration of the "materials on the record) we are unable to hold that the Judge in the Court below is wrong in his decision that no valid equitable mortgage was created in favour of the plaintiff on December 2, 1920, as alleged in the plaint.

II

9. The second branch of the arguments advanced in support of the appeal related to the creation of a charge in favour of the plaintiff by operation of law, as contemplated by Section 100 of the Transfer of Property Act. There can be no doubt that a charge may be created orally, although if it is created by an instrument in writing, it must be registered, unless made by a will or the amount secured is less than one hundred rupees. Reliance was mainly placed in this part of the case, on the deposition of the defendant No. 1 as a witness in this case, as also upon the deed of assignment dated January 26, 1924, and the deed of release and surety bond, dated September 30, 1926; and reference was made to the decision of this Court in the case of Imperial Bank of India Vs. Bengal National Bank Ltd., , and to the decision of their Lordships of the Judicial Committee in the case of AIR 1931 245 (Privy Council) , in support of the position that a valid charge enforceable in law was created by act of parties concerned. In our judgment, the statements of the defendant No. 1 in his evidence before the Court bearing upon the question of repayment of the loan on the promissory note executed on December 2, 1920, and the terms of assignment to the Bank in 1926, of the mortgage-bond executed by defendants Nos. 1 to 3 in favour of defendant No. 1, and the terms of the deed of release and surety bond referred to above, do not amount to a creation of a charge as contemplated by Section 100 of the Transfer of Property Act. In the two documents mentioned above, the loan on promissory note is mentioned; but the defendant No. 1 does not support to create any charge in favour of the plaintiff by the terms contained in these documents. These taken along with the other materials on the record to which reference was made in support of the appeal do not justify the application of the rule of law applied in the two cases referred to above, in the matter of creation of a valid charge, enforceable in law. It is not, therefore, possible to hold in the case before us, that a charge was created by the defendant No. 1 in favour of the plaintiff-appellant enforceable against the properties covered by the mortgages assigned to the Bank by the defendant No. 1, on January 26, 1924. It has to be mentioned in this connection that the question as to the creation of a charge in favour of the plaintiff as contemplated

by Section 100 of the Transfer of Property Act was not indicated in the plaint nor was the question raised before the Court below.

III

10. The third issue in the suit related to the liability, if any, of the defendant No. 6, so far as the plaintiffs' claim before the Court was concerned. In this connection it has to be noticed that the defendant No. 1 had always the intention to satisfy the loan on the promissory note, taken by him from the plaintiff, on December 2, 1920, and to make arrangements in that behalf. As stated in his own deposition before the Court, he made over some documents to the plaintiff's brother (the documents were the mortgage-bonds executed by the defendants Nos. 1 to 3 in favour of the defendant No. 1), so that payments might be made towards the satisfaction of the debt on the promissory note executed by the defendants Nos. 1 and 2 in favour of the plaintiff. The intention was that the loan will be satisfied on realisation of the money due on the mortgage-bonds made over to the plaintiff-when the mortgage-bonds were assigned to the Bank, defendant No. 6, in the year 1924 that intention was predominant in the mind of the defendant No. 1, and it was stated by the defendant No. 1 in the deed of assignment dated January 26, 1924, executed by him in favour of the Bank, defendant No. 6, that out of the mortgage-bonds mentioned in Schedule (ka) below, the mortgage-bonds Nos. 1 to 7 have been hypothecated to Gonesh Chandra Ghose and others for his loan of Rs. 10,000 on the basis of a hand-note, and it was stated also that subject to the charge aforesaid, the mortgage-deeds Nos. 1 to 7 were sold by the defendant No. 1 to the Bank, defendant No. 6; some other mortgage-deeds mentioned in Schedule (ka) to the deed of assignment were sold to the Bank, free from all incumbrances. The deed of assignment executed in the year 1924, was followed by a release and surety bond, executed by the defendant No. 1, in favour of the Bank, defendant No. 6, on September 30, 1923. The recitals contained in the deed of assignment were repeated so far as the loan of Rs. 10,000 on the hand-note was concerned. The mortgage-bonds Nos. 1 to 7 in Schedule (ka) to the deed of assignment were specifically mentioned; and it was stated that the Bank had agreed to pay the defendant No. 1, the surplus money which will remain after the satisfaction of the debt on the hand-note due to Gonesh Ghose, out of the money which would be realised by the Bank on the basis of the mortgage-deeds mentioned in Schedule (ka), to the deed of assignment. It is necessary to mention in this connection that "Gonesh Chandra Ghose and others" and "Gonesh Ghose" mentioned above stand for Bibhuti Bhusan Ghose in whose favour the hand-note was executed by the defendants Nos. 1 and 2 on December 2, 1920. There is no question that the documents referred to above were valid and operative, and have been acted upon by the parties concerned. The evidence in the case shows that the Bank has realised money from the mortgagors defendants Nos. 3 to 5, on the basis of the deed of assignment dated January 26, 1924, in terms of a kistbandi executed by the mortgagors in favour of the Bank, defendant No. 6. The Bank also sued the mortgagors defendants Nos. 3 to 5 for enforcement of a

mortgage evidenced by a document which according to the defendant No. 1 was made over to the plaintiff, but which was subsequently taken away from him, and was not returned. The plaintiff stated in his plaint, that on April 14, 1927, the Bank offered to pay him Rs. 10,500 in full satisfaction of his debt on the hand-note executed by the defendants Nos. 1 and 2, on December 2, 1920. This statement in the plaint was not controverted by the Bank, defendant No. 6, nor was any evidence given in Court on the side of the Bank bearing directly on the matter. The letter Ex. V (1) in the case, dated April 14, 1927, was from one J. Roy Choudhury, and was addressed to the brother of the plaintiff, to whom a draft agreement was sent, containing recitals that the Bank agreed to pay the sum of Rs. 10,500 by yearly instalments, on account of two transactions, one of which the loan on the hand-note executed by the defendants Nos. 1 and 2 in favour of the plaintiff. It was distinctly stated in the draft agreement sent with the letter, that "the documents placed with the addressee by the defendant No. 1 as security for loan were to remain with the plaintiffs brother as before", and that the bonds will be returned to the Bank one by one as the amounts are paid off gradually. This letter was received by the plaintiff on April 14, 1927; and the only way in which the effect of the same was sought to be avoided by the Bank was by suggesting that the letter was not written by any one authorized by Bank. It was, however, abundantly clear from evidence led on the side of the plaintiff, taken the same along with an order recorded by the Judge in the Court below, on November 6, 1930, that J. Roy Choudhury by whom the letter was written (sending a draft agreement), was an officer of the Bank receiving an allowance of Rs. 40 per mensem, and that this duty was to look after the affairs of the Bank, in the morning. On the above materials the conclusion is inevitable that the intention of the defendant No. 1 to satisfy the debt due to the plaintiff was given effect to in the best possible manner; and the arrangement that the defendant No. 1 made for the clearance of the debt was accepted by the Bank, by way of recitals contained in the two registered documents, the deed of assignment of the year 1924, and the release and surety bond of the year 1927, referred to above. The letter of April 14, 1927, from an officer of the Bank to the brother of the plaintiff, forwarding a draft agreement, reiterated the arrangement made by the defendant No. 1 with the Bank for the satisfaction of his debt due to the plaintiff and clearly indicated the acceptance of the same by the Bank. It was accordingly urged in support of the appeal, that in view of the fact that liability was annexed to the assignment in favour of the Bank by the defendant No. 1, and that the Bank took the assignment subject to such liability the Bank was liable to discharge the liability. It was contended that the Bank was bound by the statement of the defendant No. 1, and the Bank having taken a benefit under the deed of assignment, could not be allowed to repudiate the liability attached to the assignment. It was argued further that the dues of the plaintiff-appellant were to be satisfied by the Bank on the basis of the contract of parties, the defendant No. 1 and the Bank. The plaintiff's case in the plaint, his case before the Court below as indicated by the third issue raised in the suit, was that a decree should be passed against the Bank, defendant No. 6. On this part of the

case, the question arises whether the plaintiff could get the benefit of a contract between the defendant No. 1 and the Bank, defendant No. (5. The authority of decisions so far as this Court is concerned, is in favour of the plaintiff (see *Debnarayan Dutt v. Chunilal Ghose* 41 C 137 : 20 Ind. Cas. 630 : AIR 1914 Cal. 129 : 17 CWN 1143 : 18 CLJ 603, *Khirod Behari Dutt Vs. Man Gobinda and Ors*, and the decision in the case of *Dwarikanath v. Priyanath Malik* 22 CWN 279 : 36 Ind. Cas. 792 : AIR 1918 Cal. 941 : 27 CLJ 483 which is based on the principle underlying the decision in *Debnarayan Datt's* case 41 C 137 : 20 Ind. Cas. 630 : AIR 1914 Cal. 129 : 17 CWN 1143 : 18 CLJ 603 , lays down that a stranger to a contract, which was to his benefit, was entitled to enforce the agreement, even though the arrangement to his benefit was not communicated to him by the parties ,to the contract-, and was brought to his notice by a mere accident. In the case before us, the plaintiff was in consonance with the decision in *Dwarikanath's* case 22 CWN 279 : 36 Ind. Cas. 792 : AIR 1918 Cal. 941 : 27 CLJ 483, referred to above, entitled in law, to enforce the contract between the defendant No. 1 and the Bank defendant No. 6, contained in the deed of assignment, and the deed of release and surety bond, apart from the position that the Bank defendant No. 6 accepted liability in the matter of satisfaction of the debt due to the plaintiff on the promissory note executed by the defendants Nos. 1 and 2, on December 2, 1920, by sending through an officer, a draft agreement evidencing such acceptance. The decisions of this Court find ample support, in the matter of the plaintiff's right to take advantage of an agreement to which he was no party, from the rule laid down by their Lordships of the Judicial Committee in the case of *Muhammad Khan v. Hussaini Begum* 37 IA 152 : 7 Ind. Cas. 237 : 32 A 410 : 14 CWN 865 : 7 ALJ 871 : (1910) MWN 313 : 8 MLT 147 : 12 CLJ 205 : 12 BLR 638 : 20 MLJ 614 that a person who was no party to a document evidencing an agreement which was to his benefit, was clearly entitled to proceed to enforce his claim under the document; and that rule has never been departed from, up till now. On the side of the defendant No. 6 respondent it was urged that the plaintiff as a stranger to the contract could not under the terms of the deed of assignment and the deed of release and surety bond, be held entitled to get a decree against defendant No. 6, for satisfaction of the debt due by the defendant No. 1 on the hand-note executed in favour of the plaintiff on December 2, 1920; and it was also contended that the letter of April 14, 1927, could not fix any liability on the defendant No. 6. In our judgment, the terms of the two documents referred to above, and the latter forwarding a draft agreement, fix liability on the Bank defendant No. 6, so far as satisfaction of the debt due to the plaintiff, by the defendant No. 1 was concerned. The effect of the letter of April 14, 1927, cannot be avoided by the defendant No. 6; and was not sought to be avoided by the Bank in the written statement filed in Court. The question of the legal position created by the materials on the record has been considered above. On the side of the defendant No. 6, respondent, reliance was placed on the decision of, their Lordships of the Judicial Committee of the Privy Council in *Jamna Das v. Ram Autar Pande* 39 IA 7 : 13 Ind. Cas. 304 : 16 CWN 97 : 11 MLT 6 : 9 ALJ 37 : (1912) MWN 32 : 15 CLJ 68 : 14 B LR 1 : 21 MLJ

1158 : 34 A 63 , and in *Naku Prasad Singh v. Kamta Prasad Singh* 26 CWN 771 : 95 Ind. Cas. 970 : 3 PLT 637 : AIR 1923 PC 54 and on the judgment of the Patna High Court in the case of *Achuta Ram v. Jai-nandan Tewary* 5 Pat. 468 : 96 Ind. Cas. 287 : AIR 1923 Pat. 474 : 7 PLT 721 : (1926) Pat. 327 based on the decisions of the Judicial Committee mentioned above, where it was held that when a mortgagor executed a mortgage in favour of the plaintiff, and subsequently sold the property to a third party who in the recitals of the sale-deed, agreed to pay off the mortgage, the plaintiff (mortgagee) could not avail himself of the stipulation made between the purchaser and the mortgagor and that the purchaser was not liable to pay the debt. In this connection stress was laid on these passages contained in the decision of the Judicial Committee in *Jamna Das's* case 39 IA 7 : 13 Ind. Cas. 304 : 16 CWN 97 : 11 MLT 6 : 9 ALJ 37 : (1912) MWN 32 : 15 CLJ 68 : 14 BLR 1 : 21 MLJ 1158 : 34 A 63 referred to above.

He was no party to the sale. The purchaser entered into no contract with him, and the purchaser is not personally bound to pay this mortgage debt.

11. There is no doubt that the judgment of the Patna High Court is in conformity with the decision of the Judicial Committee in *Jamna Bus's* case 39 IA 7 : 13 Ind. Cas. 304 : 16 CWN 97 : 11 MLT 6 : 9 ALJ 37 : (1912) MWN 32 : 15 CLJ 68 : 14 B. LR 1 : 21 MLJ 1158 : 34 A 63 (PC), but the observations of the Judicial Committee quoted above Were made in case in which the purchaser of an equity of redemption had by an agreement with his vendor (the mortgagor) retained the amount of the mortgage debt out of the price due; and it was held in that case that the purchaser of an equity of redemption could not be held personally liable to the mortgagee as ""he was not a person % from whom, in the words of the 90th section of the Transfer of Property Act, the balance is legally recoverable". It is to be noticed that the learned Judges of the Patna High Court in *Achuta Ram's* case 5 Pat. 468 : 96 Ind. Cas. 287 : AIR 1923 Pat. 474 : 7 PLT 721 : (1926) Pat. 327 , gave effect to the rule laid down by the Judicial Committee referred to above, in a case of a purchaser from a mortgagor, and no exception could possibly be taken to that; but it is difficult to see why it was necessary for the learned Judges to distinguish the rule of general application laid down by the Judicial Committee in *Muhammad Khan's* case 37 IA 152 : 7 Ind. Cas. 237 : 32 A 410 : 14 CWN 865 : 7 ALJ 871 : (1910) MWN 313 : 8 MLT 147 : 12 CLJ 205 : 12 B.LR 638 : 20 MLJ 614 , and by this Court in *Dibnarayan Butt's* case 41 C 137 : 20 Ind. Cas. 630 : AIR 1914 Cal. 129 : 17 CWN 1143 : 18 CLJ 603 and dissent from the decision of this Court in *Dwarikanath's* case 22 CWN 279 : 36 Ind. Cas. 792 : AIR 1918 Cal. 941 : 27 CLJ 483 . It may be noticed in this connection that the rule of law laid down by the Judicial Committee in *Jamna Das's* case 39 IA 7 : 13 Ind. Cas. 304 : 16 CWN 97 : 11 MLT 6 : 9 ALJ 37 : (1912) MWN 32 : 15 CLJ 68 : 14 B LR 1 : 21 MLJ 1158 : 34 A 63 (PC), founded upon the provisions of Section 90 of the Transfer of Property Act (now Order XXXIV, Rule 6 of the Code of Civil Procedure) has been repeatedly followed by this Court in determining the rights of parties, in cases

where the question of a personal decree being passed was raised; and it was held in consonance with the decisions of the Judicial Committee, that no personal decree could be made against the purchaser of a portion of the equity of redemption, seeing that he in no way represented the mortgagor personally (see Dalipnarayan Singh v. Chait Narain Singh 16 CLJ 394 : 17 Ind. Cas. 927 , Tarapada Marwari v. Brojo Gopal Mukerji 17 CLJ 120 : 18 Ind Cas. 717. It is worthy of notice that Sir Ashutosh Mookerjee, J., who delivered the judgment of the Court in the two above cases, was one of the learned Judges deciding Bebnarayan Dutt's case 41 C 137 : 20 Ind. Cas. 630 : AIR 1914 Cal. 129 : 17 CWN 1143 : 18 CLJ 603 , and Dwarikanath's case 22 CWN 279 : 36 Ind. Cas. 792 : AIR 1918 Cal. 941 : 27 CLJ 483. In our judgment the decisions of the Judicial Committee in Jamna Das's case 39 IA 7 : 13 Ind. Cas. 304 : 16 CWN 97 : 11 MLT 6 : 9 ALJ 37 : (1912) MWN 32 : 15 CLJ 68 : 14 BLR 1 : 21 MLJ 1158 : 34 A 63 (PC) and in Naku Prasad Singh's case 26 CWN 771 : 95 Ind. Cas. 970 : 3 PLT 637 : AIR 1923 PC 54 (PC) referred to above, have no application to the case before us, more specially as the Bank, defendant No. 6, now seeking to repudiate liability, had through an officer of the Bank, accepted the same, on April 14, 1927, a position from which the Bank cannot be permitted to resile.

12. The question of consideration next on this part of the case is whether the plaintiff could be held entitled to get a decree against the Bank, defendant No. 6, in the present litigation. All the necessary parties were before the Court below, and are before us. Neither justice nor equity and good conscience require us to force the plaintiff into further unnecessary litigation, for fixing liability on the Bank, defendant No. 6.

13. The result of the conclusions. we have arrived at, as mentioned above, is that the decision of the Court below so say as dismissed the plaintiff's prayer for a decree against the Bank, defendant No. 6, must be set aside, and we direct accordingly. The Bank, defendant No. 6, is held liable for the claim for realisation of the plaintiff's dues under the promissory or hand-note, dated December 2, 1920, as made in prayer (Uma) of the plaint in the suit in which this appeal has arisen. The plaintiff-appellant in this Court is entitled, on the facts and in the circumstances of the case, to get his costs in the litigation, including the costs in this appeal, from the Bank, defendant No. 6. As between the plaintiff and the defendants other than the defendant No. 6, the parties will bear their own costs throughout.

14. The appeal is allowed in part; the decision and the decree of the Court are modified in the manner mentioned in this judgment.

F.A. No. 104 of 1931.

15. This appeal was not pressed. The appeal is dismissed; there is no order as to costs in this appeal.