

(1938) 09 MAD CK 0038
In the Madras High Court

Dubash D.K. Ahmad Ibrahim Sahib

APPELLANT

Vs

A.K.R.M.K. Meyyappa Chettiar and Others

RESPONDENT

Date of Decision : 13-09-1938

Acts Referred:

Contract Act, 1872 — Section 247

Citation : AIR 1940 Mad 285

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This appeal arises out of a suit for the recovery of money due under a mortgage bond (Ex. A) executed in favour of the plaintiff by defendants 1 to 3 on 14th May 1923. Defendants 1 to 3 are the sons of one Khan Bahadur Dubash Khadir who died in November 1912. Defendant 4 was unnecessarily impleaded and his name was subsequently removed from the record. Defendant 5 is the Official Assignee of Rangoon in whom the estate of defendants 1 and 2 had vested during the pendency of the suit when they became insolvents in 1929. The mortgagees are certain Chettiers to each of whom defendants 1 and 2 had become indebted in the course of their business at Eangoon. It was stated that there was some inconvenience in executing separate mortgages in favour of each of them and that they accordingly agreed to take a single mortgage bond in their joint names for the aggregate amount due to them and for the cash advanced on the date of Ex. A. The document proceeds on the footing that defendant 3 was equally liable with defendants 1 and 2 for the amounts due to the mortgagees.

2. The mortgagors admitted execution of Ex. A but they raised various defences to the plaintiff's claim. It is unnecessary to refer to the defences pleaded by defendants 1 and 2 as they have acquiesced in the decree passed by the lower Court against them. Defendant 3 not merely adopted some of the defences raised by defendants 1 and 2 but raised two special pleas of his own which are covered by issues 1 and 4 framed in the case. These defences were to the effect

that he was a minor when he, signed Ex. A and that the document had been obtained from him by undue influence. The lower Court decided these issues against defendant 3 and passed a decree against him as well. Defendant 3 has accordingly preferred this appeal. In the appeal, we are concerned only with the questions raised by issues 1 and 4, as no other point was pressed before us on behalf of the appellant. As we have come to a more definite conclusion in favour of the appellant on issue 4 than on the first, we propose to deal with issue 4 at the outset. The plea of undue influence was thus set forth in paras. 3 and 4 of defendant 3's written statement:

Defendant 3 was not interested in the partnership business of defendants 1 and 2 in Rangoon or the "Lighterage Company" referred to in the plaint nor was he liable for any of the debts of the said partnership or company...

The prior debts mentioned in the deed had no connexion with this defendant and the cash recited to have been paid was not for his benefit. The document was written up in India without the previous consent of this defendant including him as one of its executants and was sent over to defendant 2 in Rangoon. This defendant was then a student in a school in Rangoon and residing with defendant 2. The latter and another Muthuraman Chettiar, one of the agents of the plaintiff, requested this defendant to sign the document and assured him that the document would not be enforced against his share in the immovable properties first and that he was joining in the execution only as surety. Defendant 2 also stated at the time that unless he joined in the execution of the document, defendant 1 and himself would become involved in a terrible financial crisis and would be ruined irretrievably. Defendant 3 had then no knowledge of his rights under the deed of settlement executed by his father nor was he aware of his exact age. Unable to resist the importunities of the brother, defendant 2 and the agent of the plaintiffs, defendant 3 executed the document jointly with his brother, defendant 2, in Rangoon.

3. It seems to have been contended in the lower Court, that these allegations, even if true, would not invalidate the document as against defendant 3, nor amount to a plea of undue influence. This contention was embodied in issue 5. The learned Judge rightly found on issue 5 in the appellant's favour. On issue 4, he held that defendant 2 was in a position to dominate the will of defendant 3 when they executed Ex. A but that the evidence was altogether insufficient for finding that defendant 2 used his position to gain an unfair advantage over him for himself or some other or in other words exercised his influence unduly: see para. 14 of his judgment. It is obvious that in coming to this conclusion the learned Judge was largely influenced by his view as to defendant 3's liability for the debts recited in the suit mortgage bond. The bond purports to be for a sum of Rs. 2,88,750 made up of Rs. 2,62,500 already due and Rs. 26,250 advanced at the time of the execution of Ex. A. It is clear from the plaint and the recitals in the document as well as the evidence of the plaintiff's witnesses that the pre-existing debt of Rs. 2,62,500 was due to the various creditors recited in Ex. A on

account of loans borrowed from them by defendants 1 and 2 in connexion with the business carried on by them under the name of "D. K. Kasim & Sons" and "D. K. Kasim and Sons & Co." It also appears from Ex. A itself that the contemporaneous advance of Rs. 26,250 was also borrowed for the purposes of the business. The contention on behalf of defendant 3 was that he had no interest in this business nor any liability for debts incurred in connexion with the same. If the learned Judge had come to the conclusion that defendant 3 was not liable for any portion of this debt, his approach to the consideration of the question of undue influence would have been wholly different because it would be a case in which defendant 3 would have made himself and his properties liable as security for a large amount for which he was not liable at the time.

4. The question of defendant 3's liability for the pre-existing debt is discussed by the learned Subordinate Judge in para. 16 of his judgment; and relying apparently on the decision in *Abdul Rahim v. Abdul Hakim* (1931) 18 AIR Mad. 553., he came to the conclusion that the two businesses above referred to had been carried on by defendants 1 and 2 as a "family trade" for the benefit not only of themselves but also of defendant 3 and that defendant 3 was accordingly liable for the debt. This conclusion seems to us erroneous and founded upon a misreading of the decision in *Abdul Rahim v. Abdul Hakim* (1931) 18 AIR Mad. 553. As the question of the antecedent liability of defendant 3 for the debts recited in Ex. A has a material bearing upon the decision of the question raised by issue 4 we proceed to deal with that question.

5. The nature of the business carried on by defendants 1 and 2 and the question of defendant 3's interest in the same or liability for the debts incurred in that connexion have to be determined in the light of the following facts. Dubash Khadir had for many years carried on business in Rangoon both as a lighterman and as a dealer in coloured cloths (kylies) used by Mahomedans and Burmans. From humble beginnings he seems to have made large profits in that trade and acquired extensive immovable properties in the Madura district and elsewhere. He had married four wives: and had children by three of them. In September 1912, i.e., about two months before his death, he executed three deeds of settlement, one in favour of the children by each of the wives, and Ex. 3-A is the settlement deed in favour of defendants 1 to 3 and their mother and sisters. Under that deed, he settled certain properties on the three sons to be enjoyed by each of them in equal shares. He imposed, restrictions on their power of alienation and provided that after their death the property should be taken by the male children of these sons. As defendant 3 was then aged about seven, he appointed defendants 1 and 2 trustees, managers and guardians to look after his interest in the properties settled on him, to collect the income and, after incurring necessary expenses, deposit the balance in the Madras Bank or in the National Bank, so that the same might be handed over to him after he attained majority. By para. 10 of the said deed (which is not correctly translated on the record) he directed that each of the said three sons must be respectively responsible for the profit or loss arising out of any trade that may be carried on

by him (by each son) and that neither the uterine brothers nor the sons of the other wives shall have any claim or concern in regard to such profit or loss.

6. It has been suggested on behalf of the plaintiffs that the business done by defendants 1 and 2 were merely a continuation of the business done by Dubash Khadir during his lifetime. Defendant 2 however states that there was a break in the business for about a year and that it was only towards the end of 1913 that he and defendant 1 began doing business in Rangoon, though it was on the same lines as the father's business. It does not seem to us very material whether the businesses were conducted without a break or there was a break as alleged by defendant 2. The parties are not governed by the Hindu law and the principles laid down in cases relating to a family business conducted by the manager on behalf of the joint family will not be applicable to them. Whether the business which defendants 1 and 2 did was the same as their father's or not, can make no difference in the determination of the question of the liability of defendant 3 for debts incurred in connexion with such business. The decision in *Abdul Rahim v. Abdul Hakim* (1931) 18 AIR Mad. 553. laid down that if the major members in a Mahomedan family made profits by carrying on a business utilizing therein the share of a minor member in the common assets it was open to the minor to claim a share in the profits thus made. In that very case, the learned Judges took care to point out that the principles governing a joint family business under the Hindu law would not apply to such a case and that the managers of such a business in a Mahomedan family would not have the right of imposing any liability on the minor members of the family.

7. The same principle was also laid down by a Division Bench of the Allahabad High Court in *Shukrulla and Others Vs. Mt. Zuhra Bibi and Others*, . The learned Subordinate Judge appears to have thought that because the minor member was held entitled to the benefit of the business, the business could be held to have been carried on, on his behalf even in the sense of holding him liable for the debts of the business. This ignores the limitation pointed out in; the cases above referred to. Whether under the Mahomedan law or on general principles defining the relations between a ward and a guardian, a guardian as such has no power to carry on business on behalf of his ward, especially if the business is one which may involve the minor's estate in speculation or loss. The deed of settlement Ex. 3-A contained definite provisions as to the extent of the powers of defendants 1 and 2 in their management of defendant 3's estate and Clause 10 which has been set out above is inconsistent with the assumption that defendants 1 and 2 were authorized to carry on business on behalf of defendant 3. Even in the case of Hindus it has been held that except in the case of an ancestral business, which stands on a footing of its own, the guardian of a minor has no authority to carry on business on behalf of his ward or enter into partnership on his behalf : see *Venkatasuryanarayana v. Ramayya* (1921) 8 AIR Mad. 98. The minor's option to claim a share in the profits made by his guardian by the use of his assets rests on the principle defining the liabilities of trustees, executors, executors de son tort and de facto guardians. But as pointed out by the Judicial Committee in

Imambandi v. Haji Mustaddi (1918) 5 AIR P.C. 11, it is one thing to say that such conduct on the part of the guardian will impose certain disabilities upon him and confer certain benefits on the ward but a very different thing to suggest that the ward will be bound by the transactions of the guardian or the liabilities sought to be imposed upon the estate. We are therefore unable to hold that in the ordinary course defendant 3 would have been liable to the plaintiffs for the debts whose repayment was sought to be secured by the execution of Ex. A.

8. From the evidence of P.W. 1 and P.W. 5 it is clear that all the pre-existing liability provided for in Ex. A had come into existence by 1921, i.e., at a time when even according to the plaintiff's case defendant 3 was a minor. No attempt has been made to bring the case u/s 247, Contract Act, so as to attract the provisions of Section 248 with reference to the erstwhile minor's duty to repudiate his liability within a reasonable time after attaining majority. The plaintiff's witnesses admit that their books will not show defendant 3 as one of the parties liable to them. The books of the business which are said to have been handed over to the Official Assignee on the insolvency of defendants 1 and 2 have not been placed before the Court with a view to prove that there is anything in them to indicate that defendant 3 had been admitted to the benefits of the partnership within the meaning of Section 247, even assuming that this Section would be applicable to, the case. The respondent's learned Counsel relied on the admissions of defendant 3 in the witness box that he was living with defendants 1 and 2 and that they were bearing the expenses of his food and clothing and paying his school fees. In this context there is a further statement to the following effect:

I did not know when I was studying there whether or not I had a share in the business. It was with its assets that our expenses were being defrayed.

9. From these admissions, the learned Counsel argues that defendant 3 must be held to have had an interest in the business. We do not think that that contention is well founded. Even if defendant 3 has no independent means of his own, the mere fact of defendants 1 and 2 feeding him or supporting him out of the income of their business will not make him a partner in their business nor make him liable for its debts. But in the present case the position was that defendants 1 and 2 were managers on behalf of defendant 3 of property of considerable value under the terms of Ex. 3-a. It has not been suggested that the income from those properties would not have been more than sufficient to meet the expenses of defendant 3. It would not make any difference in law whether in such circumstances defendants 1 and 2 maintained defendant 3 out of the income from his own properties or out of the moneys which they found convenient to draw from their business. He must be taken to have been maintained out of his own resources whatever might be the method adopted by defendants 1 and 2 in maintaining him.

10. The main contention of the learned Counsel for the respondent in this connexion was that whatever might have been the position during defendant 3's

minority, he must be taken to have become a partner in the business and liable for its debts by his own choice after he attained majority. If, as we have pointed out above, no basis had been laid for the application of Section 248, Contract Act, we see nothing in the evidence to support the above contention. Even according to the respondent's contention, defendant 3 would have attained majority only about the beginning of 1923. The mere fact that whether in ignorance or even wilfully defendant 2 or defendant 3 has on occasions stated that defendant 3 was interested in the business will not suffice to prove defendant 3's connexion with the business or his liability for its debts. (After discussing the facts, his Lordship proceeded.) Apart from the facts thus spoken to by the witnesses, the broad probabilities of the case are clearly in favour of the defendant's version. Defendants 1 and 2 were admittedly heavily indebted to the plaintiffs who were acting in concert in taking Ex. A. They had not been able to pay their dues for nearly two years, that is subsequent to 1921 and the defendants had set an inconvenient precedent by executing Ex. X, in favour of one creditor. It was therefore only natural that other creditors who were being put off for two years would have insisted on security being given and it is nothing strange that in spite of their knowledge of Ex. 3, they preferred to take defendant 3's share also as security for what it was worth, hoping that all might go well.

11. From the point of view of defendants 1 and 2, the position was that they were anxious to stave off disaster to their business and whatever might be the degree of pressure exercised by them on defendant 3 there can be little doubt that it was at their insistence, whether we call it pressure or importunity, that defendant 3 must have been induced to join in Ex. A and thereby make himself liable for a debt which was not in any degree binding upon him. He was a student at the time and could have had no information either as to his own assets or as to the nature or extent of the liability he was undertaking because he could have no knowledge as to the ability of defendants 1 and 2 by themselves to pay off the debts. If, as stated by him, he was told that his interest would be proceeded against only in the last resort, even then, he, had no means of knowing what the chances of his being proceeded against were and if so to what extent, as that would depend upon the exact position of defendants 1 and 2 in the business. It is not pretended that he ever had the management of his own affairs or that he had at any time been away from the control of defendants 1 and 2. Even at the time of Ex. A he was admittedly living with defendant 2 and looked after by him. Assuming for the present purpose, that he had attained majority four months before the execution of Ex. A, it is impossible to assume that he had any knowledge of the complicated affairs of the business or was sufficiently prudent to know his own interest in the matter. The mere fact that he knew that the transaction was a mortgage of his share or at one stage he expressed hesitation or unwillingness to hypothecate his share does not amount to sufficient knowledge of the nature and effects of the transaction in the sense in which that expression is used in the relevant authorities. It has not been suggested that he

had independent advice from any quarter or that he had even an opportunity of consulting anybody except defendant 2 "before he executed Ex. A.

12. Such being the situation of the parties at the time when defendant 3 executed Ex. A, there can be very little doubt on the authorities that Ex. A cannot be held to be binding on defendant 3 or his interest in the properties. It is not necessary to refer to the authorities at any length; they have been collected in the notes to Huguenin and Basley in *White and Tudor's Leading Cases*. They have also been referred to at some length in *Narayan Doss v. Bucharaj* (1928) 15 AIR Mad. 6 and *Rama Pattar and Bros v. Manikkam* (1935) 22 AIR Mad. 726. It is, not necessary in a case like the present that defendant 3 should prove by direct evidence that defendants 1 and 2 exercised undue influence on him. Defendants 2 and 3 who undoubtedly are competent to speak to this matter have given their version of what happened at the time and in our opinion that evidence corroborated by that of D.W. 2 is substantially true, except as to the portion relating to the assurance given by the Chetties. The exercise of undue influence might in the circumstances be fairly presumed, in view of the relationship of the parties and the nature of the transaction. Under Ex. A, defendant 3 has made himself and his property liable as security for a heavy debt for which he was not in law liable at all. That this transaction must have been entered into by him at the instance and for the benefit of defendants 1 and 2 who till recently had been his guardians and under whose influence he was admittedly living at the time can scarcely be doubted. It was contended by the learned Counsel for the respondents that it is one thing to prove the existence of the relationship making undue influence possible but it is another thing to ask the Court to hold that undue influence has been exercised. But as observed by Lord Macnaghten in *Narayan Dos v. Bucharaj* (1928) 15 AIR Mad. 6

It may well be argued that when there is evidence of overpowering influence and the transaction brought about is immoderate and irrational, proof of undue influence is complete.

13. The same principle is clearly implied in Clause 3 of Section 16, Contract Act, which provides:

Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie on the person in a position to dominate the will of the other.

14. It was next urged on behalf of the respondents that whatever might have happened as between defendants 2 and 3 the creditors should not be held to be affected by it as they were not parties to the exercise of any undue influence. This contention ignores the principle of Section 89, Trusts Act, and the cases illustrating the application of that principle to varying circumstances. As observed in *Velu Pillai and Others Vs. Secretary of State and Others*, , the result of the

authorities is that if it is shown that two parties stood in such a situation as to give rise to confidence between them and the third party who derives the benefit was aware of the existence of this relation, the) third party is not entitled to retain the benefit unless he shows that the party conferring the benefit was a free agent and had independent and disinterested advice. It is not necessary for the party impeaching the transaction to prove that he was deceived by the person who put himself in loco parentis towards him; nor is it necessary for him to make out that the third party connived at any actual fraud. If it is shown that the third party was aware of the existence of the confidential or fiduciary relation, he is under the same disability as the party who occupied the position of confidence. Dealing with a case in which the creditor had notice of all the relevant facts, Lawrence, L.J., observed in *Lancashire Loans Ltd. v. Black* (1934) 1 K.B. 380 that the creditor would be in no better position than the mother (the debtor in that case) would have been in, had the daughter assigned her reversion directly to her instead of to the respondents for her benefit. We have already pointed out that the present is not merely a case in which the plaintiffs had knowledge of the relation between defendant 3 and his elder brothers but the suggestion that defendant 3's interest should also be given as security is likely to have proceeded from the plaintiffs. P.W. 1 who represented the plaintiffs at the time that Ex. A was signed by defendant 3 must have been aware and must have informed the plaintiffs of what happened at the time that defendant 3 signed Ex. A. Reliance was placed by the learned Counsel for the respondents on *Thornber v. Sheard* (1850) 12 Beav 589 as supporting his contention. That case has not been understood as laying down any different principle from that laid down in the other cases on the point; it must only be taken that the Master of the Rolls declined to draw the inference of undue influence from the circumstances disclosed by the evidence. In particular, he relied on the fact that the daughter had for a long time been expressing her intention to arrange for the discharge of the debt due by her father and that at the time when the transaction in question was entered into by her, there was no pressure by the creditors even on the father nor even a request to and much less anything in the nature of pressure or importunity on the daughter by the father or by the creditor.

15. We accordingly dissent from the conclusion Of the learned Subordinate Judge on issue 4 and find on it in favour of defendant 3. The result is that defendant 3 and his interest in the mortgaged properties must be held not to be bound by Ex. A. We must however observe that this exoneration will apply only to the properties which defendant 3 obtained under the settlement deed, Ex. III-A. The mortgage deed" Ex. A comprises not merely these properties but other properties subsequently-acquired by defendants 1 and 2 including properties in Rangoon which must presumably have been acquired out of the profits of the business. Consistently with defendant 3's case that he had no connexion with the business he cannot claim any interest in the properties acquired by defendants 1 and 2 out of moneys derived from the business. There is no doubt a statement in the evidence of defendant 2 that the properties acquired

subsequent to the date of Ex. III-A were acquired with the income of the villages and that those properties had been purchased by them for the benefit of themselves and defendant 3. This statement presumably refers to items 4, 6 and 7 of the mortgage deed. Admittedly, no reference has been made to defendant 3 in the sale deeds relating to these items, nor have any accounts been placed before the Court to establish beyond doubt that all or any of these items were acquired with funds which can be held to belong to defendant 3. We are, therefore, unable to act on this vague uncorroborated statement of defendant 2. Item 5 is unquestionably connected with the Rangoon business and defendant 3 cannot claim any share therein. Our decree will therefore exonerate defendant 3's interest only in items 1, 2 and 3 in the schedule to the mortgage deed.

16. It was lastly urged by the learned Counsel for the respondents that this rescission of Ex. A so far as defendant 3 was concerned must be made conditional upon repayment of the sum of Rs. 26,250 advanced in cash on the date of Ex. A. We do not think that the circumstances of the case entitle the plaintiffs to invoke Section 64, Contract Act. As we have already observed, this cash amount was advanced to defendants 1 and 2 for the purpose of their business and it has not been shown that defendant 3 derived any benefit from the advance. We are not setting aside Ex. A in toto; the security stands so far as defendants 1 and 2 and their interests in the mortgaged properties are concerned.

17. Proceeding next to the question of minority raised by issue 1, we may observe at the outset that the onus undoubtedly rests upon defendant 3 to prove that he had not attained majority on the date of Ex. A.P.W. 1 who was the only witness on the plaintiff's side who had seen defendant 3 about the time of the execution of Ex. A states that when defendant 3 signed Ex. A, he was 19 or 20 years old. The other witnesses examined by the plaintiffs merely deny that there was any representation to them at the time of Ex. A that defendant 3 was a minor. Ex. III-A, which may be taken as fairly reliable so far as it goes, states that in September 1912 defendant 3 was aged seven. The learned Counsel for the appellant asks us to read it as intended to state that defendant 3 was then in his seventh year and had only completed six. It is true that it is often the practice in this country to give a man's age not with reference to the completed year but with reference to the year that is actually running. But it is not possible definitely to state whether the father intended to state in Ex. 3-A the completed year or the year which the boy was running. On the other hand, even if it is to be taken that what was stated there was the completed year, it would not necessarily follow that defendant 3 must have attained majority prior to Ex. A ; because if he had been born at any time between May and September 1906, it would be correct to describe him as seven years old in September 1912. The utmost that can be claimed is that if thus understood, the statement of age in Ex.3-A is inconsistent with defendant 3's case that he attained majority only in January 1924. The margin of difference being, in any view, very small, we have to see whether there are any materials with reference to which the date of his

birth may be definitely fixed. We agree with the learned Judge that Ex. 9 series are of little value; and if the matter stood on the oral evidence alone on the defendant's side, it will not be safe to act upon that evidence having regard to the fact that the two witnesses who have spoken to the date of defendant 3's birth, namely D. Ws. 3 and 4, can scarcely be regarded as disinterested. Strong reliance has accordingly been placed by the learned Counsel for the appellant on Exs. 1, 2 and 4.

18. Exhibit 4 is an extract from the birth register relating to the village where Dubash Khadir was living and it appears from the entry in it so far as it is now readable that the birth of a child to Dubash Khadir was reported on 22nd February 1906. As rightly pointed out by the learned Subordinate Judge, the relation of this entry to any particular child of Dubash Khadir can only be established by other evidence and for this purpose defendant 3 relies on Exs. 1 and 2, one a day book and the other a ledger said to have been kept by Dubash Rhadir. In Ex. 1 there is an entry against date 19th February 1906 of a sum of Rs. 23-0-3 having been spent for sweetmeats purchased for distribution on the occasion of the naming of the male child born to Syed Ibrahim's mother. If Ex. 1 is genuine and reliable, there can be no doubt that this entry can relate only to defendant 3 because the mother's name is also there given, the child is referred to as a male child and the evidence establishes beyond doubt that defendant 3 was the last male child, indeed the last child born to this lady. Defendant 2 explains that it is the practice in his community to name a child on the 40th day after its birth and that he was accordingly of opinion that defendant 3 must have been born on 12th January 1906. He also explains that it is only about the time of the naming ceremony that the birth would have been reported and that is the reason why the birth register extract refers to this birth only in February 1906 and not in January. We do not see much justification for the criticism of the learned Judge in para. 26 of his judgment that the 22nd February will not exactly be the 40th day if the birth was on 12th January. It seems to us immaterial whether it was the 12th January or the 11th or the 13th January; nor do we see any force in the criticism that defendant 2's statement as to the custom of the naming ceremony taking place on the 40th day after birth or as to distribution of sweetmeats to children about that time is unreliable. This must be a matter of common knowledge in the community and though there was an interval of nearly six weeks between the date of defendant 2's examination and the date of the plaintiffs closing their case, nobody has come forward to deny that such a custom exists amongst Mahomedans. The question for determination is whether Ex. 1 is genuine and whether Ex. 4 relates to defendant 3 or to any other child of Dubash Khadir. (After discussing the facts, his Lordship proceeded.) This being the state of the evidence on the question of the minority of defendant 3 on the date of the execution of Ex. A, we are free to say that we should have felt much greater hesitation than the learned Subordinate Judge in recording a negative finding on the first issue. But, as we have found in favour of defendant 3 on the fourth issue, we do not think it necessary to record a definite finding on the first

issue. In the result, the appeal is allowed and the decree of the lower Court modified to the extent above indicated. The appellant will be entitled to his costs here and in the Court below, to be paid by the plaintiffs-respondents. As the appeal has been filed in forma pauperis the court-fee payable on the memorandum of appeal will be paid by the plaintiffs-respondents.