

(1888) 05 AHC CK 0004
In the Allahabad High Court

Parbhu Lal

APPELLANT

Vs

Sital Prasad

RESPONDENT

Date of Decision : 18-05-1888

Acts Referred:

Citation : (1888) ILR (All) 535

Hon'ble Judges : Straight, J;Brodhurst, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Straight, J.—This appeal relates to a suit instituted by the plaintiff-respondent against the defendant-appellant upon the following state of facts as disclosed in the plaint. The plaintiff said that he was the absolute proprietor of a 10 biswas zamindari share, out of 20 biswas of mauza Bhartal Madapur, pargana Sambhal, and 118 bighas 1 biswa of resumed muafi land in mauza Isapur, and of 179 bighas 11 biswas resumed muafi land also situate in pargana Sambhal, all of such lands being in the mahal of Narain Das, and their value Rs. 20,000. The plaint goes on to say: " that the plaintiff gets such giddiness of head that his mind is deranged and it lasts for 8 or 9 months at a time, whereby the plaintiff is disabled from distinguishing between good and bad and gain and loss. When he recovers from the disease, he is restored to his proper Senses and can well understand his own gain and loss, and is in as sound a state of mind as any other person."

2. In the 3rd paragraph of the plaint it was stated as follows:

In March 1885, the plaintiff had his usual fit, and in consequence of the disease and derangement of mind, he fell out and became annoyed with his relations. When the defendant and his brothers became aware of this, they took the plaintiff from mauza Bhartal, the place of his residence, to their own house at Sambhal and treated him very kindly and courteously, but they did not allow him to go out of their house, and they even appointed men to prevent him from

going out and talking to any one. As the plaintiff is also in the habit of taking bhang and charas, the defendant cunningly made him indulge in those things very largely, so that his mental derangement increased, and he began to be always under the influence of intoxication and to regard the defendant and his family as his well-wishers. When the defendant and the members of his family were fully satisfied that the plaintiff was always under the effect of intoxication and also in a state of mental derangement, and that he was under their undue influence, they dishonestly and cunningly obtained from him a deed of sale for Rs. 9,500, dated the 5th April 1885, in favour of Sri Ram, defendant's brother, in respect of half of the property mentioned in para. 1 of this plaint, without paying a single farthing as sale consideration. The plaintiff, not being in his proper senses and being under the undue influence of the defendant, executed the sale-deed without knowing whether it was advantageous or prejudicial to him.

3. The 4th paragraph says: " Not content with this, the defendant and the members of his family asked the plaintiff to execute a deed of endowment in respect of the remaining half of the property mentioned in para. 1 of this plaint. The plaintiff, being in a state of mental derangement and under the effect of intoxication and the undue influence of the defendant, executed, without consulting his own interest, a registered deed of endowment, on the 22nd December 1885, as desired by the defendant, to the effect that he had permanently endowed the remaining half of the property for charitable expenses to the temple of Manokamna built by the ancestor of Sital Prasad, adopted son of Lachman Das, resident of Sambhal, appointing the said Sital Prasad, the munsarim (manager) of the temple, as the munsarim of the property; that the munsarim should apply the income of the endowed property to charitable expenses; that after the death of the munsarim one of his heirs who might be fit or who might be named by him should be appointed to the post; and that none from another family than that of the munsarim should be appointed. This passage fully shows the fraud and artifice of the defendant in that he himself became the munsarim and obtained half the property under an illegal deed of endowment and half under an illegal deed of sale."

4. In the 5th paragraph it is stated: " As the plaintiff was under the power of the defendant and his family, and owing to undue influence, insanity and the state of intoxication, used to do whatever they required of him, be, without consulting his own interest, signed the deed of endowment as drawn up at the instance of, and made over to him by the defendant, and owing to the artifice of the defendant, the plaintiff got no opportunity of consulting any other person, as the defendant always took care to prevent the plaintiff from seeing any one, a fact known to all the people of the town of Sambhal. Under the above circumstances both the contracts, namely, the one contained in the deed of sale and that contained in the deed of endowment, are voidable at the will of the plaintiff. The defendant, moreover, got a general power of attorney executed on the part of the plaintiff in favour of Nihaluddin, son of his own general attorney Nazir-ud-din, whom he caused to make on the part of the plaintiff any statement that he thought to be

favourable to himself."

5. In the 6th paragraph it is said: " After the completion of all the proceedings by which the defendant illegally obtained the whole property of the plaintiff, he turned the plaintiff out of his house and the plaintiff went away to his own house. After a short period the plaintiff recovered from the disease of giddiness of head and was restored to his proper senses, when he was informed by his relations of all the fraudulent proceedings of the defendant and his family, and he became aware positively that all his property had already been illegally obtained by the defendant by fraud. The plaintiff, having then consulted other competent persons, learnt that the deed of endowment and sale-deed executed by him in a state of insanity were by all means liable to be cancelled. For the present plaintiff, for want of means, sues only for the cancelment of the deed of endowment, and for the cancelment of the sale-deed he will bring a suit afterwards."

6. In the 7th paragraph it is stated: " The plaintiff was paid not a single farthing as consideration of the sale-deed, nor did he receive any benefit by executing the deed of endowment, nor was it executed voluntarily; nay, it was executed while the plaintiff was insane and under the undue influence of the defendant. The defendant obtained half the property from the plaintiff by means of the illegal sale-deed and half by means of the illegal deed of endowment, and there remained no property with the plaintiff. All these proceedings were due to the cunningness and dishonesty of the defendant. The cause of action arose within the jurisdiction of this Court at Bhartal Madapur, pargana Sambhal, on the 15th February 1886, when the plaintiff recovered his proper senses and was informed of the above fact."

Accordingly, upon these statements of the grounds upon which he came into Court, the plaintiff asked the following reliefs, namely:

(a) That the deed of endowment, dated the 22nd December 1885, which the defendant illegally obtained from the plaintiff by undue influence and fraud, while the plaintiff was insane, ill and under the effect of intoxication, may be cancelled and declared invalid and void.

(b) That the defendant may be dispossessed and the plaintiff duly put in absolute possession of the 5 biswas zamindari and malguzari share of mauza Bhartal Madapur, pargana Sambhal, 59 bighas and 10 biswansis of resumed muafi land in mauza Isapur out of the plot of 118 bighas and 1 biswa numbered as below, in the mahal of Chaudhri Tika Singh, and 89 bighas, 15 biswas and 10 biswansis of resumed muafi land out of the plot of 179 bighas and 11 biswas, numbered as below, in mauza Hazrat Nagar Garhi, pargana Sambhal.

(c) That all proper directions for the security of the said reliefs may be given to protect the plaintiff from the fraud and artifices of the defendant, and to enable him to obtain peaceable possession of the property claimed.

7. No doubt the terms of the plaint were exceedingly prolix and discursive, and there is much repetition in it which was unnecessary for the purpose of presenting the case the plaintiff had to make as the basis for the relief he sought. It has been subjected to very severe criticisms at the hands of the learned Counsel for the defendant-appellant, and the learned pleader who is associated with him has boldly asserted that there is really nothing upon the face of it that the defendant was called upon to answer; the allegations were so vague and the charges in it so general, that the defendant had really no obligation cast upon him either to traverse those allegations in his written statement or to appear in the witness-box to contradict them. I disagree with the learned pleader in his contention. It is useless in this country for us to expect that conciseness or certainty in pleading which is required in the English Courts. I have no doubt that the person who framed the plaint in this particular case, from a not unnatural desire to put his client's story in the strongest aspect upon the face of the plaint, imagined the best way to do so was to draw it in the manner it has been drawn, and so introduced a good deal of matter which was not actually capable of proof, which was of no assistance to the Court below, and is certainly of no assistance to us in coming to a conclusion as to the propriety or otherwise of the judgment of the learned Subordinate Judge. I do think however, that eliminating from this plaint a mass of matter which is wholly superfluous, it may be taken to represent this much, that the plaintiff was a person of weak intellect, that he was addicted to the practice of drinking bhang, and smoking ganja, practices not calculated to improve his mental condition; that at the time of the decease of his sister-in-law, Gulab Kuar, he was threatened by his relatives with opposition to his obtaining the estate of his deceased brother, Ram Ratan, to which he was undoubtedly entitled ; that they did oppose him in the mutation proceedings ; and that the defendant, a rich Brahman and proprietor of a temple in Sambhal, took advantage of this and got him to his residence, keeping him there while the mutation proceedings were going on, treating him with kindness and pandering to his passion for drink and narcotic smoking, at the same time providing him with money to carry on the mutation proceedings in which he was being wrongfully resisted; that in the course of doing so he obtained from him in favour of his (the defendant's) brother a sale-deed of part of his property for Rs. 9,500, not a pice of which ever was paid ; and subsequently obtained from him the deed of endowment the subject-matter of the present suit as a gift and for no consideration in favour of his (the defendant's) temple, and having thus served all his ends, and having stripped the plaintiff of the whole of his property, turned him adrift. These are in effect the grounds on which the plaintiff comes into Court to avoid the deed of endowment of the 22nd December 1885, by the execution of which, in conjunction with the earlier conveyance, he had effectually deprived himself of the whole of the property, which he had only succeeded in securing in the early part of the same year.

8. How then did the defendant, against whom these charges were formulated, meet them? For example, did he deny in terms in his written statement that the

allegation in the plaint, which is repeated twice, namely, that the sale to the defendant's brother Sri Ram, ostensibly for Rs. 9,500, was a sale in respect of which no consideration had passed? Did he deny the assertions of the plaintiff that the defendant got him into his house and kept him there for a long consecutive period of time in 1885? Did he deny the statement that subsequently to the execution of the deed of endowment in 1885, he turned the plaintiff adrift and left him to shift for himself without a pice remaining to him of the property he had only obtained a short time before? There is no denial throughout the whole of the statement of defence of any one of these allegations, and it may be convenient for me here also to remark that the defendant has never presented himself as a witness in the cause to negative the assertions which were made by the plaintiff in his plaint, and which have more or less been proved by him upon his oath.

9. I do not conceal from myself, and my brother Brodhurst is equally agreed with me, that the case is one of very great difficulty. For it is of the most serious public importance that the free and voluntary contracts of persons in favour of others should, in no way, be interfered with or disturbed by the Courts of law, and it is not because a man chooses to make an ill-considered or foolish contract, that therefore the Courts of law are to step in and relieve him of the consequences of his act. Neither Courts of law nor Courts of equity have ever attempted, nor will they ever attempt, to set aside such transactions. But what the Courts in this country will do, is to see that, where one person is so situated as to be under the control and influence of another, such other does not unduly or unfairly exercise that influence and control over such person for his own advantage or benefit, or for the advantage or benefit of some religious object in which he is interested, and will call upon him to give clear and cogent proof that the transaction complained of was such a one as the law would support and recognise. No doubt there is one class of cases in which there being no fiduciary or quasi fiduciary relation between the parties, Courts of equity have interfered with contracts into which the persons claiming relief have entered upon various grounds. But in such cases they have required that the parties seeking that relief should themselves establish their title to relief. On the other hand, where a fiduciary or quasi fiduciary relation had existed, Courts of equity have always placed the burden of sustaining the transaction upon the party benefited by it, requiring him to show that it was of an unobjectionable character and one which it ought not to disturb. The matter before us is not that of a guardian and a ward, or of an attorney and client, or of a father and son, or of any of the more commonly recognized relations which involve such consequences. But these are not exhaustive and on this head I may conveniently refer to a passage from the notes to *Huguenin v. Baseley* 2 WT 4 LC 592: " In *Dent v. Bennett* 4 MCr 262 where a gift obtained by a medical attendant from his patient was set aside by Lord Cottenham, it was argued upon the authority of the civil law and some reported cases, that medical attendants were, upon questions of this kind, within that class of persons whose acts, when dealing with their patients, ought to be

watched with great jealousy. " Undoubtedly " observed Lord Cottenham, "they are; but I will not narrow the rule, or run the risk of in any degree fettering the exercise of the beneficial jurisdiction of the Court by any enumeration of the description of persons against whom it ought to be most freely exercised." So at another place it is observed: " The principle upon which Courts of equity set aside such donations has been so accurately stated by Sir Samuel Romilly, in his argument, that Lord Cottenham, in the case of *Dent v. Bennett* 4 MCr 262 fully adopted it. " The relief," observes his Lordship, as Sir Samuel Romilly says in his celebrated reply in *Huguenin v. Baseley* 2 WT LC 592 (from the hearing of which I received so much pleasure that the recollection of it has not been diminished by the lapse of more than thirty years), "the relief stands upon a general principle, applying to all the variety of relations in which dominion may be exercised by one person over another."

10. No useful purpose would be served by my travelling at length through the many authorities that are referred to in the notes to *Huguenin v. Baseley* 2 WTLC 592 though I may in this connection conveniently refer to what is said in Story's *Equity Jurisprudence* on the same subject. In para. 234 of his " *Equity Jurisprudence*," edited by Gregsby, it is observed: " For it has been well remarked, that although there is no direct proof that a man is non compos, or delirious, yet, if he is a man of weak understanding, and is harassed and uneasy at the time, or if the deed is executed by him in extremis, or when he is a paralytic, it cannot be supposed that he had a mind adequate to the business which he was about, and he might be very easily imposed upon." In paragraph 237 of the same book it is remarked, quoting from a judgment of Lord Wynford: " "But those who from imbecility of mind, are incapable of taking care of themselves are under the special protection of the law. The strongest mind cannot always contend with deceit and falsehood. A bargain, therefore, into which a weak one is drawn, under the influence of either of this, ought not to be held valid, for the law requires that good faith should be observed in all transactions between man and man." And addressing himself to the case before him, he added, "If this conveyance could be impeached on the ground of the imbecility of F only, a sufficient case has not been made out to render it invalid; for the imbecility must be such as would justify a jury, under a commission of lunacy, in putting his property and person under the protection of the chancellor. But a degree of weakness of intellect, far below that which would justify such a proceeding, coupled with other circumstances, to show that the weakness, such as it was, had been taken advantage of, will be sufficient to set aside any important deed." " Summing up the doctrine, Story remarks in para. 238 and says: "The doctrine, therefore, may be laid down as generally true "that the acts and contracts of persons who are of weak understandings, and who are thereby liable to imposition, will be held void in Courts of equity, if the nature of the act or contract justify the conclusion that the party has not exercised a deliberate judgment, but that he has been imposed upon, circumvented, or overcome by cunning or artifice, or undue influence." (But the simple fact that the intellectual

capacity of one party to contract is below that of the average of mankind, does not alone furnish sufficient ground for setting aside the contract.) The rule of the common law seems to have gone further in cases of wills (for, it is said, that perhaps it can hardly be extended to deeds without circumstances of fraud or imposition); since the common law requires that a person, to dispose of his property by will, should be of sound and disposing memory, which imports that the testator should have understanding to dispose of his estate with judgment and discretion; and this is to be collected from his words, actions and behaviour at the time, and not merely from his being able to give a plain answer to a common question. But, as fraud in regard to the making of wills of real estate belongs in a peculiar manner to Courts of law, and fraud in regard to personal estate to the ecclesiastical Courts, although sometimes relievable in equity, that part of the subject seems more proper to be discussed in a different treatise." And there is another passage in para. 239 in which it is said: " On this account Courts of equity watch with extreme jealousy all contracts made by a party while under imprisonment; and if there is the slightest ground to suspect oppression or imposition in such cases, they will set the contracts aside. Circumstances also of extreme necessity and distress of the party, although not accompanied by any direct restraint or duress, may, in like manner, so entirely overcome his free agency as to justify the Court in setting aside a contract made by him, on account of some oppression, or fraudulent advantage, or imposition, attendant upon it."

11. Now I might quote endless passages from the judgments of learned judges upon this particular subject and from legal works which have been referred to, notably Pollock on Contracts, at pages 282 and 578, but it is unnecessary for me to do so, because I have shown, I think sufficiently, what the principle is and what the rule by which, when the question arises, cases of this kind are to be governed. They have been recognized in India in the Contract Act, which provides that every person is capable of contracting, who is of the age to contract, and who contracts of his own free consent, which means when his consent has not been obtained or caused by (1) coercion, as defined in Section 15, or (2) undue influence as defined in Section 16, etc.

Now the expression " undue influence " is defined in Section 16 as follows:

(1) When a person in whom confidence, is reposed by another, or who holds a real or apparent authority over that, other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other which, but for such confidence or authority, he could not have obtained.

(2) When a person whose mind is enfeebled by old age, illness or mental or bodily distress, is so treated as to make him consent to that, to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

12. Now those two classes of what is described as undue influence in Section 16

seem thoroughly to cover the ground which is recognized by the principles enunciated in the notes to *Huguenin v. Baseley* 2 WhTLC 592 and to the doctrine promulgated in Story's Equity Jurisprudence, to which I have referred. It has not been denied, and, indeed Mr. Ross would not have contended for so unsustainable a proposition, that assuming there was a relationship such as that which is contemplated in Clause (1), Section 16 of the Contract Act, or such a quasi relationship, once established, the onus would not rest upon the party who held that position towards the person who sought to avoid the deed to prove that the transaction it embodied was a fair and proper one. But by way of illustration it will not be out of place to refer to the well-known case of *Lyon v. Home* LR 6 Eq 655 as showing to what extent a Court of equity has pushed this principle. In passing, I need only say one word with regard to the case of *Selby v. Jackson* LJ 13 Eq 249 quoted by Mr. Ross. Mr. Ross referred to it as an authority for the position that though a man may be subject to temporary fits of insanity, that during his lucid intervals he is not incapable of making a legal and binding contract. No one doubts this and I did not require the authority of *Selby v. Jackson* to inform me of it. The only remark I have to make about that case, is that apart from the finding of fact that the plaintiff was of sound mind when he made the contract, both the Master of the Rolls and the Lord Chancellor in appeal were very clearly of opinion, that the person who was seeking to avoid the contract itself was very greatly benefited by it. Reverting to the case before us, I then have to see whether, looking to the respective positions of the plaintiff and the defendant and to the facts relating to the deed of gift as a whole, the transaction is one that should be allowed to stand. I shall not repeat at length the allegations that are made by the plaintiff in his plaint and the mode in which they were met by the defendant, but it does seem to me that, taking them in conjunction with the proof on the record, there was evidence to show that when Gulab Kuar died leaving this property behind her, it by some means or another became known to the defendant that the plaintiff was the person who was entitled to that property, but that he was opposed by his wealthy relatives; that he was helpless to resist them, being entirely without means, having up to her death subsisted on his sister-in-law's charity ; that he was a poor Brahman and therefore likely to be extremely susceptible to the influence of the defendant; that knowing all this the defendant got the plaintiff to his house and kept him there, and that during the time the quarrels were going on between him and his relatives, he did find him with money, how much does not appear, though it could not have been any very large sum, for the purpose of instructing pleaders to look after his interest in the mutation proceedings. That the defendant was not purely disinterested in his action is obvious from the admitted fact, that on the 5th April 1885, a deed of sale was executed by the plaintiff in favour of the defendant's brother of half of the property to which he was entitled for Rs. 9,500. Whether the consideration was or was not paid is not clear, though, on the one hand, we have the plaintiff's assertion that it was not, while the defendant on the other has neither asserted nor proved that it was. I cannot help under such circumstances feeling that it was not; more particularly as it can hardly be

suggested that so large a sum of money was expended over the mutation proceedings, which commenced in March 1885, and finally came to an end by the decision of the Collector on appeal on the 24th September 1885. Proceedings of that kind would at the outside only involve an expenditure of a few hundred rupees, and, indeed, the defendant does not suggest that any large sum was advanced for the purpose. The matter therefore stands thus, that the defendant, a well-to-do Brahman, with no special claim on him to do so, was entertaining the plaintiff in his house under the circumstances described, and that first in the month of April 1885, a deed of sale of half of his property, and afterwards in December of the same year a deed of gift of the remaining half, is obtained from him, with the result that he is left as poor as he was when he first came into the defendant's hands.

13. Looking at all the facts, I am constrained to the conclusion that there was such a relation in the course of the year 1885 between the plaintiff and the defendant as casts upon the latter the obligation of satisfying us that the transaction of December 1885, was an honest and bona fide transaction and one that we ought to sustain.

14. It is quite clear, as has been said in the authorities to which I have referred, that the more well-understood relations of guardian and ward, attorney and client, and so forth, are not exhaustive of the relations in respect of which an obligation rests on the party, who seeks to benefit by the transaction, of showing that it was a voluntary bond fide and honest one. Nor can it, in my opinion, be seriously suggested that, because the defendant was not the person in whose favour the gift was made, in the sense that the property was endowed to the temple and did not pass to him personally, therefore the case is to be regarded in a different light. That fact does not appear to me to alter the character of the transaction in the least. A priest, who takes advantage of his position and unduly uses his influence with another, whom he knows to be susceptible of such influence, for the purpose of inducing that other to make a gift or donation in favour of a religious society or institution, is bound, if that gift or donation is afterwards impeached, to show that it was a perfectly bond fide and proper transaction. Applying a like principle to the present case, and that a rich Brahman like the defendant would have great influence over a poor Brahman in the position of the plaintiff is abundantly obvious, what has the defendant proved? I have already said that he has never ventured into the witness-box, nor has his brother, the vendee, under the sale-deed of April 1885. He has put forward evidence to show that in the mutation proceedings the plaintiff took an intelligent part. Is there anything very surprising in that? The man wanted to get his property, and it would have been an extraordinary thing had he not shown himself interested in those proceedings. Much stress was laid by Mr. Ross upon the fact that the cause of action was originally stated in the plaint as having arisen on the 15th February 1886, but that the plaintiff came in afterwards and applied to alter the day, because he knew he would be met with the circumstance that on the 17th February he went to the mutation department for the purpose of

causing mutation of names in favour of the defendant. I confess I am at a loss to see what is the force of this. If a man under the influence of another enters into a transaction of this kind, of course he will do all that is necessary to carry it out so long as the influence was upon him. It was never suggested that before the plaintiff was turned out of the defendant's house he sought to repudiate the deed of gift; on the contrary, his case is this, that it was not until he realized the way in which the defendant had treated him, he came to understand how he had been stripped of his property. I can only say that upon a review of all stances of this case my firm conviction is that the defendant did the plaintiff, and did take undue advantage of him and his position of dependence to obtain from him the deed of gift. The transaction is, to say the least of it, a most suspicious one, and its suspicious character is significantly enhanced by the circumstance that the defendant never dared to go into the witness-box to show how it was that the property was sold to his brother, how it was that the deed of endowment came about, and to explain all the other circumstances, the outcome of which was that the plaintiff was left absolutely without a pice worth of property or even the means of bare subsistence.

15. The case is one that has caused me very anxious thought and serious consideration, and if I have come to an erroneous conclusion, it is not for want of having looked at it in all its aspects. The learned Subordinate Judge who tried this case, though portions of his judgment are somewhat obscure, appears to me to have travelled along pretty much the same line of thought that I have in dealing with the matter, and I have read his judgment several times. Having seen the plaintiff in the box he says of him: " I think that this man is not a man of ordinary intellect; he is a weak man, and can be easily induced ; the defendant is a wealthy and well-to-do Brahman of a temple in the city ; he got hold of this man, and he took him to his house. The man was much frightened at the attitude of his relatives with regard to the property of his brother, and that alarm was not lessened but rather stimulated by the defendant. The defendant supplied him with money for the purposes of mutation proceedings and be preserved control over him. He induced him to think that if he did not put his property out of the reach of his relatives, they would do him some harm, and the consequence was chat half of it was sold and the other half of if Went into the endowment.". That is the finding of the Subordinate Judge upon it, and he has held that, looking to the respective positions of these two men, namely, the well-to-do Brahman and the temple owner on the one hand, and the impecunious Brahman the plaintiff on the other, there is no doubt that influence was brought to bear on him, and that under the influence he made the sale-deed and the deed of endowment. This appears to me to be the view of the learned Subordinate Judge, and I cannot lose sight of the fact that he had the opportunity of seeing the plaintiff in the witness-box, and he has told us what be thinks about him, and what effect his appearance and demeanour had upon his mind. I cannot but conclude, from what the Subordinate Judge (who is a Subordinate Judge of many long years of experience, and for whose Opinion I

entertain a very high respect) says, that this plaintiff was a man not up to the ordinary standard of intelligence and easily influenced by persons of Stronger will. I think the transaction he seeks to avoid was in itself of so hopelessly improvident a character, that coupled with the other facts in the case it was on the defendant to satisfy us by his oath in the witness-box that it ought to be sustained. He has not done so, nor does the evidence of his witness Harchand improve the matter, for it only shows that the draft of this particular deed of gift had been prepared by the defendant, and that during the whole time of its being written out the plaintiff was sitting at the elbow of the defendant. I am not prepared to say that the decision of the Subordinate Judge was an erroneous decision, and I therefore dismiss the appeal with costs.

Brodhurst, J.

16. I concur.