ALLAHABAD HIGH COURT

Chhedi Lal

Vs

Babu Nandan

(Verma, J.)

03.03.1944

JUDGMENT

Verma, J.

1. This is an appeal by the plaintiff in a. suit for redemption. A decree for redemption has been, passed in the appellant's favor but he objects to the amount which he has been ordered to pay. On 15th January 1906 a deed of usufructuary mortgage was executed' by two brothers, Sahdeo Singh and Bahadur Singh, in. favor of one Mt. Subhagi and it was stated in the deed that the amount advanced by the mortgagee to the mortgagors was Rs. 1200. The property mortgaged was described in the deed as a "kachcha built tiled shop-with compound...situate in mohalla Maidagin...Benares city." Sometime later, one of the mortgagors Bahadur Singh, died and his successors-in-interest are. his sons who are defendants 8 to 11 in the present suit.. On 30th November 1936, Sahdeo Singh and the sons of Bahadur Singh sold the mortgaged property to the present plaintiff-appellant, Chhedi Lal. The mortgagee, Mt. Subhagi, is dead and her successors-in-interest are defendants 1 to 6. The surviving mortgagor, Sahdeo Singh, is defendant 7. The plaintiff's case was that the mortgagee did not advance to the mortgagors Rs. 400 out of the mortgage money mentioned in the deed and that thus the principal mortgage money was only Rs. 800 and not Rs. 1200. He alleged in para. 10 of the plaint that the mortgagee, Mt. Subhagi, had appropriated the timber of a nib tree and the materials of the house that had been mortgaged to her and that the value of the timber and the materials was Rs. 500. He did not, however, allege in the plaint that this amount, or any other amount, should be deducted from the sum of Rs. 800 which, according to him, was the principal amount advanced by the mortgagee. On the contrary,, he stated in para. 10 of the plaint that the mortgage was redeemable on the payment of the sum of Rs. 80O and prayed in para. 14 that a decree for redemption be passed in his favor subject to the payment by him of that sum. Paragraph 5 of the plaint was as follows: Without the knowledge, information and consent of the mortgagors, Jagar Nath Sahu, the husband of Mt. Subhagi, mortgagee, got the following conditions incorporated in the-mortgage deed, dated 15th January 1906, sought to be redeemed : We further declare that if the mortgagee constructs any building on the mortgaged property by demolition of the mortgaged property, or otherwise, we the

executants or our heirs shall pay the entire mortgage money with costs of construction, according to the account produced by the-mortgagee, at the time of redemption of the mortgaged property and then the mortgaged property shall be redeemed. We the executants shall continue to pay the present tax or ground-rent or any other tax which may be imposed in future. If we, the executants, fail to pay the tax and ground-rent, the mortgagee shall continue to pay it. The mortgaged1 property shall be redeemed on our payment of the entire-tax and ground-rent paid by the mortgagee, together with interest, at the time of redemption (of the mortgage)' Paragraph 6 was as follows : "The above condition' was neither binding on the mortgagors, nor is binding on the plaintiff. The condition relating to construction is inequitable and very hard. For this reason also, it was neither binding on the mortgagors nor is (it) binding on the plaintiff." It will be noticed that it was not pleaded in so many words that the stipulation quoted in para. 5 of the plaint amounted to a clog on the equity of redemption. It appears, however, that the point was raised at the trial and issue 3 was framed on the point which; was as follows: "Whether the conditions in the deed dated 15th January 1906, about construction, repairs, payment of taxes and parjot amount to a clog on the equity of redemption and are not binding?" The plaintiff further alleged in the plaint that the mortgagee, Mt. Subhagi, after taking possession of the property mortgaged, had the buildings existing at that time demolished and had constructed in place thereof a new house "without any right and title." It was also alleged that the mortgagee had spent Rs. 2000 on the construction of the new house but that she was not entitled to claim that sum of money from the mortgagors.

2. The suit was contested by defendants 1 to 4 only. It is stated in the judgment of the trial Court that these defendants had alleged before that Court that defendants 5 and 6 had transferred their interest in the mortgage to the contesting defendants. Neither defendants 5 and 6 nor defendants 7 to 11 appeared in either of the Courts below nor has any of them appeared in this Court. Various pleas were raised by defendants 1 to 4, who alone will be referred to in this judgment as the mortgagees, or the defendants, or the respondents. They alleged that the transaction of 15th January 1906, was in reality a sale and was put in the garb of a mortgage with the object of avoiding the payment of zare chaharum to the zamindar. They further alleged that the mortgagee, Mt. Subhagi by virtue of the authority given to her by the express covenant embodied in the deed -- which, as shown above, was quoted in para. 5 of the plainthad erected a pucca building in place of the kachcha tiled shop which had been mortgaged to her, that she had spent at least Rs. 10,000 in the construction, that the building which had been mortgaged had been in a very bad and dilapidated condition and that the mortgagee's action in putting up the pucca building in place of the kachcha structure that had stood there had been in good faith. It was pleaded that the plaintiff could not, in any event, obtain redemption without paying the sum of Rs. 10,000 to the mortgagees defendants on account of the cost of this pucca building. They further claimed certain sums of money on account of municipal taxes, ground-rent, annual repairs and the expense incurred in obtaining water and drain connexions from the Municipal Board.

3. The Munsif held that the deed in question was a mortgage deed and not a sale deed, as alleged

by the defendants. He next held that the allegation of the plaintiff that the mortgagee had advanced only Rs. 800 to the mortgagors was not correct and that the mortgage money shown in the deed, viz., Rs. 1200 was correct. On issue 3 he expressed the opinion that the covenant relied upon by the defendants and challenged by the plaintiff should not be "strictly enforced, but the defendants are entitled to claim the value of the lasting improvements and accessions to the property in suit after allowing for the price of the materials which they removed from the mortgaged property." He held that the matter was governed by Sections 63A and 72, T.P. Act. He also expressed the opinion that the pucca building erected by the mortgagee could be treated as an accession within the meaning of Section 63, T.P. Act. He then found that the cost of the pucca building was Rs. 8125. To this he added the sum of Rs. 1200, the principal mortgage money. With regard to the other items claimed by the defendants, he held that they were entitled only to a sum of Rs. 165 on account of the ground-rent that they and Mt. Subhagi had paid. He, however, deducted Rs. 90 out of this sum of Rs. 165 because he held that the mortgagee had appropriated the timber of a nib tree and the materials of the old house which he valued at Rs. 15 and Rs. 75 respectively. Thus the total amount which he found to be payable to the defendants by the plaintiff was Rs. 1200 + Rs. 8125 + Rs. 75, i. e., Rs. 9400. It will be noticed that the Munsif deducted what he considered to be the value of the timber of the nib tree and of the materials of the house from the amount found payable to the defendants although the plaintiff had not, as already stated, claimed any such deduction.

4. The plaintiff preferred an appeal and the defendants filed cross-objections. The learned District Judge found, upon a consideration of the evidence adduced, that the allegation made in para. 5 of the plaint was not correct and that the mortgagors had, at the time of the execution of the deed in question, agreed to all the covenants that had been embodied therein. Finding further that the covenants were binding on the mortgagors and their transferee, the plaintiff, he held that the defendants were entitled to the amount spent by them in the erection of the pucca building which now stands upon the site of the old kachcha building, and agreed with the Munsif that this amount was Rs. 8125. He also agreed with the Munsif in holding that the mortgage money was Rs. 1200 as was stated in the deed. He did not however agree with the decision of the Munsif that the plaintiff was entitled to any deduction on account of the nib tree and the materials. The contention of the defendants that they were entitled to the taxes which they had paid and to interest thereon was also accepted. The learned Judge, therefore, dismissed the plaintiff's appeal and allowed the defendants' cross-objections in part. The result was that the amount which the plaintiff was ordered to pay to the defendants for the redemption of the mortgage was raised from Rs. 9400 to Rs. 10,729-7-6. The plaintiff has filed this second appeal and the only contention raised is that, accepting the findings of fact recorded by the Court below, the covenant quoted above amounted to a clog on the equity of redemption and that the suit for redemption should have been decreed subject to the payment of Rs. 1200 only. Elaborate arguments have been addressed to us by Sir Tej Bahadur Sapru for the plaintiff-appellant and by Mr. C. Section Saran for the defendants-respondents and a number of rulings, English as well as Indian, has been cited. It is common ground that almost immediately after the execution of the deed in question the

mortgagee pulled down the kachcha building that stood on the plot and proceeded to erect a substantial pucca building. There has been some discussion at the bar as to whether the building which the mortgagee erected in place of the one that had stood there at the time of the execution of the mortgage is an 'accession' or an 'improvement.' If it is an accession, then the matter is governed by Section 63, T.P. Act, but if it is an improvement the section which applies is Section 63A. It appears to us that the building in question cannot properly be said to be an 'accession' within the meaning of Section 63 of the Act. It is not an addition to the building which had existed, but is an entirely new building substituted for it. Sir Tej Bahadur Sapru has contended that this building cannot be treated as an accession. We agree with that contention. Mr. Saran has not contended to the contrary. The question then arises whether this case is governed by Section 63A, T.P. Act. That section was introduced by the Amending Act 20 of 1929, and is as follows:

63A.--(1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in Sub-section (2), be liable to pay the costs thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent, per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor. It will be noticed that the section does not say anything about improvements made with the consent of the mortgagor. In our judgment the section can be applicable only in those cases where there is no contract between the parties with regard to improvements made by the mortgagee during the continuance of the mortgage. If the parties have agreed that such improvements shall be subject to such terms as are agreed upon between the parties the section does not apply. In such a case the right of the mortgagor to the improvement and the right of the mortgagee to the costs thereof are subject to the contract into which the parties have entered in respect thereof. If, on the other hand, there is no contract between the parties, the case is governed by Section 63A and the mortgagor has the right conferred upon him by Sub-section (1) subject to the rights which are given to the mortgagee by Sub-section (2). In other words, the mortgagor is entitled upon redemption to the improvement and the question, whether he has to pay for it or not, depends on whether the mortgagee comes within the terms of Sub-section (2). But if a mortgagor has agreed to become liable for the cost of any improvement that the mortgagee might make he would be so liable even though the improvements are not of the nature mentioned in Sub-section (2). As has been stated above, this is a case in which the parties did enter into a clear and definite contract which authorized the mortgagee to demolish the kachcha building and to erect a new one in its place. It was further clearly laid down that the mortgagor

would pay the cost of a construction along with the mortgage money at the time of redemption. That being so, the case stands outside the scope of section 63A.

5. Mr. Saran has strongly relied upon the decision in *Mt. Sabratan v. Dhanpat*[1] That decision goes the whole length of Mr. Saran's contention. It even goes further. Although we agree with the decision that, in view of the facts and circumstances of that case, the parties were bound by the particular contract into which they had entered, we think, with great respect for the learned Judges who decided that case, that they went too far in their observations with regard to the value that the Courts in India should attach to the decisions of the Courts in England. It is true that for the most part the law of India is to be found in statutes. But it is also true that those statutes are largely based upon the decisions of the English Courts and we do not see why the Courts in India should not derive assistance from those decisions. It is, of course, hardly necessary to say that the Courts in India are not bound by them. At the same time, it cannot be denied that the decisions of the English Courts often afford valuable guidance and assistance in the interpretation of the Indian statutes. For example, it is obvious that Section 63A, T.P. Act, is largely based on the statement of the law contained in para. 1783 of the 6th Edn.of Fisher's Law of Mortgage, and that statement of the law was based on the cases decided in England, i.e., *Sandon v. Hooper*[2] and *Shepard v. Jones*[3] We see no reason for discarding the assistance which can undoubtedly be derived from those decisions when the Courts in India have to interpret that section. Our attention has been drawn to the dictum of Edge C.J. and Blennerhassett J. in *Abdullah v. Abdur* [4]at page 324. Similar dicta are to be found in several judgments of the High Courts in India and of the Judicial Committee.

6. As we have already observed, this case does not fall to be decided in accordance with the provisions of Section 63A but has to be considered in the light of the agreement between the parties. Sir Tej Bahadur Sapru has strongly urged that this agreement should not be enforced as it amounts to a clog on the equity of redemption. It has been suggested on behalf of the respondents, on the basis of the observations in *Mt. Sabratan v. Dhanpat*[5] that this is an argument which cannot be entertained as it is based upon 'mere vague grounds of equity.' We do not agree. In our opinion it is an argument which deserves serious consideration. It is true that the Courts ought not lightly to interfere with the contract entered into by the parties. At the same time, it cannot be denied--and is not denied by Mr. Saran that there are contracts with which it is the duty of the Courts to interfere. A covenant which is found to amount to a clog or fetter upon the mortgagor's right to redeem is such a contract. The phrase "clog on the equity of redemption" is nowhere used in the Transfer of Property Act. Its meaning, however, is well-known and the nature of the covenants which come within that meaning is well defined and well understood. The doctrine is implicit in the language of Section 60, T.P. Act, which deals with the mortgagor's 'right to redeem,' as is shown by the fact that the words "in the absence of a contract to the contrary" do not occur in the section. If it is insisted that a contract must be brought within the four corners of the relevant sections of the Contract Act before it can be interfered with by the Courts, all that we need say is that, if a contract is considered by the Court to amount to a penalty

or to be unconscientious--to borrow the language of Viscount Haldane L.C. in *G. & C. Kreglinger v. New Patagonia Meat and Cold Storage Co*[6]. at pp. 33 and 34-it will not be found difficult to apply to it one of the sections in Chap. 2, Indian Contract Act, e. g., Section 19A or Section 23, particularly the provision in the latter section that the consideration or object of an agreement is not lawful if the Court regards it as opposed to public policy. It may be pointed out, however, that the same object can be gained by the use of the phrase "clog on the equity of redemption" which has been familiar to, and has been used by, the Courts in this country ever since the establishment of the present system of administration of justice. It is a convenient and compendious way of describing some of the covenants to which a mortgagor may agree and which in the opinion of the Court are unconscientious or unconscionable and so opposed to public policy. The only question that thus arises for our consideration is whether the covenant embodied in the deed with which we are concerned does, in the circumstances of this case, amount to a clog.

7. What is a clog on the equity of redemption? It has been defined and explained in numerous judgments and by many writers of text-books, but we do not think that there is a better exposition to be found than that given by Lindley M.R. in G. & C. Kreglinger v. New Patagonia Meat and Cold Storage Co. (1914) 1914 A.C. 25. "The principle is this : a mortgage is a conveyance of land or an assignment of chattels as a security for the payment of a debt or the discharge of some other obligation for which it is given. This is the idea of a mortgage: and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. That, in my opinion, is the law. Any provision inserted to prevent redemption on payment or performance of the debt or obligation for which the security was given is what is meant by a clog or fetter on the equity of redemption and is, therefore, void. It follows from this, that 'once a mortgage always a mortgage;' but I do not understand that this principle involves the further proposition that the amount or nature of the further debt or obligation the payment or performance of which is to be secured is a clog or fetter within the rule.... A 'clog' or 'fetter' is something which is inconsistent with the idea of 'security' : a clog or fetter is in the nature of a repugnant condition. If I convey land in fee, subject to a condition forbidding alienation, that is a repugnant condition. If I give a mortgage on a condition that I shall not redeem, that is a repugnant condition. The Courts of equity have fought for years to maintain the doctrine that a security is redeemable. But when and under what circumstances? On the performance of the obligation for which it was given.... When you get a security for a debt or obligation, that security can be redeemed the moment the debt or obligation is paid or performed, but on no other terms." The other members of the Bench, Sir Francis Jeune and Romer L.J. agreed with the Master of the Rolls and pointed out that it was no longer good law to say that there could be no collateral advantage to a mortgagee as part of his security. Sir Francis Jeune aptly remarked that "the equity of redemption only arises upon the performance of the whole of the stipulation." As was pointed out by that learned Judge, the question, thus, must always be : What under the bargain is the event upon which the equity of redemption arises? Romer L.J. observed: "I take it that it is clearly established now, in the first place, that there is no such principle as is suggested, namely,

that a mortgagee shall not stipulate for any collateral advantage for himself. He may so stipulate; and, if he does, he may obtain a collateral advantage; nothing can be said against it, and he can enforce it, always assuming that the bargain is not unconscionable or oppressive. In the second place, I take it also to be clear that there is now no such principle as is suggested, namely, that where a collateral advantage is stipulated for by the mortgagee as a condition of the loan, that advantage or contract is to be presumed to have been given or made under pressure. There is no such presumption, but each case must be decided according to its own circumstances. The Court will look into the circumstances of each case and see whether the bargain come to is unconscionable or oppressive."

8. In the case before us it was not pleaded that any pressure or undue influence had been exercised upon the mortgagors. It has also been stated by Sir Tej Bahadur Sapru that it is not his contention that the mortgagee in this case tried to gain a collateral advantage. His argument is that an onerous term has been incorporated in the deed which places such a burden on the mortgagor as to make it impossible for him to redeem. In other words, the question that is raised is that the bargain which was come to is unconscionable or oppressive, in the words of Romer L.J. The exposition of the law given by Lindley M. Rule in Santley v. Wilde (1899) 2 Ch. 474 was unreservedly approved and accepted by L*ord Halsbury L.C. in Noakes v. Rice*[7] (House of Lords). His Lordship further observed that the cases on the subject showed that the Court had not been in any doubt or difficulty as to the rule itself, but only as to the application of that rule to different sets of facts and that the differences which were supposed to prevail from time to time were only differences of fact or of the modes in which the various Courts had regarded the fact, as to whether a case came within that rule or not. The question that arises for consideration in the case before us, thus, is whether, upon a consideration of the facts and circumstances of this case and of the covenant in question, we can say that the covenant was unconscionable or oppressive, or, to quote the words of Sir Tej Bahadur Sapru, so onerous as to make it impossible for the mortgagors to redeem. In our judgment the tendency to recognize freedom of contract between the mortgagor and the mortgagee which is disclosed by the case in *G. & C. Kreglinger v. New Patagonia Meat and Cold Storage Co. (1914) 1914 A.C. 25(Supra)* already mentioned, is--if we may say so with great respectsound in principle and the doctrine of clog must be held to be limited by the terms of the mortgage unless those terms are unconscientious, unconscionable or oppressive. The main ground upon which the doctrine was based was that the mortgagee ought not to be allowed to convert what is redeemable into something which is irredeemable. The extreme rigidity with which the equitable doctrine of clog was enforced by the Courts in England was commented upon by Lord Halsbury L. C. and *Lord Macnaghten in Samuel v. Jarrah Timber & Wood Paving Corporation Ltd. (1904) 1904 A.C. 323(Supra).* The decision in *G. & C. Kreglinger v. New Patagonia Meat and Cold Storage Co. (1914) 1914 A.C. 25(supra) r*epresents a departure from that practice. There seems to be no sound reason why the Courts in India should follow the old English practice which is being departed from in England.

9. Having carefully considered the arguments that have been addressed to us, we have come to

the conclusion that, in view of the facts of this case, the stipulation in in question does not amount to a clog. There appears to be no doubt that the building which stood at the time of the mortgage was not in a sound condition and that one of the objects--probably the main--object that the mortgagors had in view when they made this mortgage was that a better and more substantial building might be constructed by the mortgagee. That the improvement, in the language used in the cases, is a lasting one, is obvious. It cannot also be denied, and has not been denied, that it has substantially enhanced the selling value of the property. It has been stated, and has not been denied, that the building in question is situated in a busy part of the city of Benares. The boundaries given in the deed show that shops are situated on three sides of it and that on the fourth side there is a public road. It may be pointed out here that the word "house" used in the description of the property in para. 2 of the plaint is incorrect. In the original deed it is described as a kachcha built tiled shop. There is no reason to suppose that the value of house property, particularly in a commercial neighourhood, in the city of Benares has not risen since 1906, when the mortgage in question was made, as has happened in other large towns. We recognize that a mortgagee ought not to be allowed to improve the mortgagor out of his estate, but, on the facts of this case, can it be said that by spending Rs. 8125 on the construction of the new house, which was obviously contemplated by the parties at the time of the execution of this mortgage deed, the mortgagee did something which amounted to improving the mortgagor out of his estate? Can it be said that the expenditure of the sum of Rs. 8125 in all the circumstances, was an unreasonable expenditure? In our judgment the answer to both these questions must be in the negative. That being so, the contract entered into by the mortgagors must be enforced. In *Dnyanu v. Fakira 8 A.I.R. 1921 Bom. 250(supra)* the mortgage was for Rs. 100 and the mortgagee was allowed Rs. 1200 on account of improvements. In *Qasim Bux v. Bhagwandeen*[8] the mortgage money was Rs. 90 and the decree for redemption was made conditional upon the mortgagor's paying to the mortgagee a sum of Rs. 789. In *Kirpa Ram v. Jowanda Mal*[10] the mortgage had been made for Rs. 900 and the amount which the mortgagor was ordered to pay to the mortgagee in order to obtain redemption was Rs. 5000. In the case before us the mortgage money was Rs. 1200 and the decree passed by the lower appellate Court directs the mortgagor to pay Rs. 10,729 odd, i.e., an amount which is less than nine times the mortgage money, to the mortgagee.

10. There is another way of looking at this case. It can, in our opinion, not unreasonably, be said that the true meaning of the covenant embodied in this deed is that at the time of its execution the parties to it contemplated that the debt was not only the Rs. 1200 advanced in cash but was to include the amount to be spent by the mortgagee upon the construction of the new building which the mortgagors authorised her to erect as well as the taxes, etc., which the mortgagors had undertaken to pay and which the mortgagee might on their default have to pay. In this view of the matter, the amount which the Court below has decreed to be payable by the plaintiff for redemption is the debt due to the mortgagee and the house which has been constructed by the mortgagee in pursuance of the contract between the parties is a security for that debt. The mortgagee's representatives can therefore insist that that debt should be paid to them before redemption of the security can take place. The argument put forward on behalf of the appellant is

that the covenant in question is a clog on the equity of redemption because no maximum amount for the costs of the construction of the new building is stated therein. The contention is that the clause, as it stands, gave liberty to the mortgagee to spend any amount that she chose on the construction of the new building and that this was calculated to put a weapon in the mortgagee's hands with which she might have greatly clogged the equity of redemption. The argument is entitled to weight and is one which may, in suitable circumstances, have to be given effect to. We are satisfied, however, that it is not a valid argument in the present case. In order to be a clog, the stipulation complained of must be a device in its inception. We have no hesitation in holding that it was not so in the case before us. It is true that what was not originally intended to be a device might be converted into one by the mortgagee so as to make it impossible for the mortgagor to redeem. On the facts of this case, however, it appears to be clear that the mortgagee has not done anything of the kind.

11. We would also point out that the question of the wealth or poverty of the mortgagors, or their representative, the plaintiff, does not, as has been suggested at the bar, arise. Any one having the right and the desire to redeem this mortgage can, if he is not possessed of funds, raise money by creating a second mortgage upon the building in question. There is no restraint upon the mortgagor's power of alienation. It is also not quite irrelevant to advert to the fact that the plaintiff-appellant is a purchaser of the property from the original mortgagors. It is not unlikely that he is a speculator and is desirous of getting possession, on payment of a small sum of money, over the valuable building which has come into existence in consequence of what the mortgagee did in accordance with the terms of the mortgage. The case in Ranjit Khan v. Ramdhan Singh ('09) 31 All. 482 was also cited. Cases of that type are of no assistance to the appellant. The decision in those cases rested upon a consideration of the question whether the agreement entered into at the time of the advance of the later debt amounted to a mere personal obligation, or created a further mortgage or charge upon the property. Our conclusion is that the appeal is without force. The mortgagees defendants have filed a petition of cross-objections by which they seek to raise two points, (1) that the Court below should have allowed to the defendants a sum of Rs. 725 on account of repairs and (2) that the document in question was really a sale deed and not a deed of mortgage. It appears to us that the reasons given by the Courts below for their decision that the defendants were not entitled to claim the money spent by them on the annual repairs of the building of which they were in occupation and enjoyment are sound. As to the second contention, it is sufficient to say that the finding of the Court below is not only a finding of fact but is clearly correct. The result is that the appeal as well as the cross-objections are dismissed with costs.

Cases Referred.

1('33) 20 A.I.R. 1933 All. 70
2(1843) 6 Beav. 246
3(1882) 21 Ch. D. 469
4('96) 18 All. 322

5('33) 20 A.I.R. 1933 All. 70
6 (1914) 1914 A.C. 25
7 (1902) 1902 A.C. 24
8('30) 17 A.I.R. 1930 Oudh 337
9('22) 9 A.I.R. 1922 Lah. 252