(1881) 02 CAL CK 0006

Calcutta High Court

Case No: None

Bibee Solomon		APPELLANT
	Vs	
Abdool Azeez and Another		RESPONDENT

Date of Decision: Feb. 7, 1881

Acts Referred:

- Contract Act, 1872 - Section 20

Citation: (1881) ILR (Cal) 687

Hon'ble Judges: Richard Garth, C.J; Pontifex, J

Bench: Division Bench

Judgement

Pontifex, J.
The plaintiff is a minor, and sues by her next friend to set aside a compromise sanctioned by this Court in a former suit.

2. In that suit her title was stated in the following way:

One Sudickjee, of Cashmere, carried on large business operations in Calcutta, other parts of British India, and Cashmere. He died, nearly fifty years ago, intestate. His business was carried on in partnership with Khajah Mussijee and Koodoor Mullick. He left two sons, Khaluckjee and Ackbarjee, and a daughter, Fatima, who was the wife of his partner Khajah Mussijee.

3. That, after Sudickjee''s death, his son Ackbarjee had charge of the Calcutta business.

4. That Khajah Mussijee died in 1854, having bequeathed the residue of his estate to his son Khajah Moheeoodeen and Khaluckjee. That Khaluckjee died in 1859 intestate, leaving Ackbarjee one of his heirs.

5. That Ackbarjee died in 1868 having been jointly interested in the business with Khaluckjee and Khajah Mussijee up to the death of the latter; and from his death, with Khaluckjee and Moheeoodeen until the death of Khaluckjee; and after his death with Moheeoodeen until his own death in 1868.

6. That Ackbarjee left, among other heirs, a son, the defendant Abdool Azeez arid a daughter, the infant plaintiff, her share as an heir being 7-24ths of the estate left by Ackbarjee. That it was alleged that Ackbarjee left a will, by which, after giving certain legacies, he bequeathed a sum of Rs. 30,000 in trust for his son Abdool Azeez. That such will contained a recital that Moheeoodeen had given the testator the said sum of Rs. 30,000 in full satisfaction and discharge of all claims which he might have against the estate of his deceased brother Khaluckjee.

7. But the infant plaintiff denied that she had ever given any consent to the will of Ackbarjee, which would, therefore, be inoperative against her.

8. This suit of the infant plaintiff was instituted on the 21st December 1871 against the executors of the will of Ackbarjee and against Moheeoodeen, alleging that the latter had possessed himself of the whole of Ackbarjee''s estate.

9. Now if these allegations were true, Ackbarjee would have been a partner in the aforesaid business and interested in the property thereof, partly on his own account and partly as being one of the heirs of his brother Khaluckjee.

10. The infant plaintiff''s suit was tried by Mr. Justice Phear. He had dismissed the executors named in Ackbarjee''s will from the suit, as they had never taken out probate, or in any way intermeddled with the estate.

11. The only question considered by Mr. Justice Phear was, whether Moheeoodeen was accountable to the plaintiff for assets of Ackbarjee come to his hands. In his judgment he said: "Moheeoodeen is, without doubt, the principal defendant in this suit; and although Abdool Azeez, now somewhat feebly advances a personal responsibility for the Rs. 30,000, I should be shutting my eyes to all the indicia afforded by the conduct of the parties to the suit if I did not perceive that Moheeoodeen is the person really concerned in the fate of this trial. I have no sort of doubt that, on the death of Ackbarjee, all his estate and effects came into the hands of Moheeoodeen, and so far as they have been administered at all, have been administered by him. He must, therefore, account in this suit. And regard being had to the share he had in putting the will into its existing shape, I think the release contained in the last clause must not be used as evidence in his favour in the accounts." It is observable that Mr. Justice Phear expressed no opinion as to whether Ackbarjee had been a partner in the business as alleged by the plaintiff, or as to what his estate consisted of. That of course was a matter reserved for further consideration in a later stage of the cause when the inquiries and accounts directed by the decree had been made and taken.

12. By Mr. Justice Phear''s decree it was declared that Ackbarjee''s will was inoperative against the infant plaintiff; and the following accounts and inquiries were ordered to be taken and made:

1. An account of the estate of Ackbarjee come to the hands of Moheeoodeen.

3. An inquiry as to what part (if any) of Ackbarjee''s estate is outstanding and undisposed of.

13. And further consideration was reserved with liberty to apply.

14. Under the account numbered 1 and the inquiry numbered 3, it was competent to the infant plaintiff to prove that Ackbarjee was a partner in the business, and that part of his estate was represented by part of the capital and profits thereof.

15. The judgment and decree of Mr. Justice Phear were confirmed by the Appeal Court on the 28th March 1876, with this modification,-That it was ordered that, in taking the said accounts, no regard was to be had to the statement in the last clause of Ackbarjee''s will except as corroborative evidence, and until after other substantive proof had been given of the said alleged release and the payment of the sum of Rs. 30,000 therein mentioned.

16. The suit was, accordingly, remitted to the lower Court for the purpose of proceeding with the accounts and inquiries.

17. But before any progress could be made with the said accounts and inquiries, Khajah Moheeoodeen died on the 12th of April 1876, leaving a will, whereby he appointed Abdool Azeez and Ahmedoollah, who are defendants in the present suit, his executors. Ahmedoollah has since died.

18. It is to be observed that the last clause in Ackbarjee''s will, even if established to be true by other substantive proof, applies only to his claim in respect of his brother Khalujkjee''s estate; and in no way relates to his claim as a partner in the business if such claim can be substantiated. But the amount of this latter claim, if substantiated, might depend to a very great extent on the true value of the estate of his alleged partner Moheeoodeen, who, as surviving partner, would have succeeded to the entire business. The value and nature of his estate might furnish some index of the value of the business.

19. On Moheeoodeen''s death the original suit was revived as against his executors.

20. On the 1st of May 1876, Moheeoodeen''s executors applied for and obtained probate of his will.

21. In their application for probate they stated that Moheeoodeen left property in British India, the approximate value of which was Rs. 4,41,124 as shown by an annexed schedule.

22. That schedule is set out in the 5th paragraph of the plaint in the present suit. Its particulars consist of houses in Calcutta, debts due to the deceased in Bombay, debts due to the deceased in Bengal, debts due to the deceased from his own Cotee in Umritsur, and certain personal articles.

23. According to common form the executors stated that so far as they had been able to ascertain and were aware, there was no other property belonging to Moheeoodeen in British India besides the items specified in the schedule.

24. It is to be observed that the schedule says nothing whatever about Government paper, or stocks, or shares, or balance at the deceased''s bankers. Yet Doorga Churn Law, the banker, who bas been examined, says-"At the time of Moheeoodeen''s death, the balance of the account was against us. It was a pretty large balance."

25. Shortly after probate was granted some negotiation must have been entered into for a compromise of the infant plaintiff''s claim. For, ultimately it was agreed between the adviser of the infant plaintiff and the executors of Moheeoodeen, that the infant plaintiff should accept Rs. 20,000 in full of all demands, together with Rs. 5,000 for her costs of suit; and that the approval of the Court should be obtained on behalf of the infant.

26. It was of course equally important for both parties that the Court''s approval should be obtained; and in my opinion it was the duty of both parties to take care that the Court should have correct materials on which to form its judgment.

27. According to the arrangement, the infant, by her next friend, presented a petition to the Court, asking for its approval to the compromise, such petition having been previously submitted for consideration to the executors.

28. The petition, after stating generally the plaint and decree in the original suit, and the result of the appeal therefrom, and the death and will of Moheeoodeen, proceeded in its 7th, 14th, and 15th paragraphs as follows:

7th.-That, in the petition filed by the said executors of the said defendant Khajah Moheeoodeen, and in which they applied for probate as aforesaid, they declared that the estate and effects of the said defendant Khajah Moheeoodeen left by him at the time of his death consisted" [of certain specified property, the estimated value of which was Rs. 4,41,124], as on reference to the said petition, which is now filed on record, will more fully appear.

14th.-That the estate of the said Ackbarjee, deceased, in case the alleged payment is proved, will amount to Rs. 30,000, subject to certain legacies in his said will mentioned; but in case such payment is not proved, the same will be a moiety of the estate and effects of the said defendant Khajah Moheeoodeen, deceased.

15th.-That, under the circumstances of the case, and considering the length of time, trouble, and expense which have already been involved in this, and which may

hereafter be entailed in bringing it to a close, and considering other difficulties which the plaintiff has to meet in the matter, and with the view to put an end to further litigation, trouble, and expense, and to save the estate from being swallowed up by costs, I, as mother and guardian of the infant plaintiff and her said stepfather as her manager and agent, have, under the advice of Counsel, agreed with the defendants to certain terms of settlement in respect of all claims and demands of the infant plaintiff, which terms are hereto annexed and marked A.

29. The proposed terms of settlement were the following:

1. That the defendants do bring into Court Government promissory notes of the 4 1/2 per cent, loan for Rs. 20,000, in full of all the plaintiff''s (Bibee Solomon''s) claims and demands in respect of the matters in suit, and in full of all her claims and demands whatsoever against the estate of the late Ackbarjee or against the executors of his will, or against Moheeoodeen or his heirs and representatives, or his or their estate and effects.

2. That the said Company''s paper be placed to the separate credit of the said Bibee Solomon in this suit, and the interest thereof paid out for her benefit during her minority to her mother and guardian Bibee Rubbia.

3. That the defendants do pay all the costs of this suit and of all proceedings relative to the will of Khajah Moheeoodeen on scale No. 2 as between attorney and client, such payment to be made (as to plaintiff''s costs) through the plaintiff''s attorneys Messrs. Orr and Harriss.

4. That the defendants do pay to the defendant Doorga Churn Law and others costs directed to be paid by the plaintiff to them, so that the said Company''s paper for Rs. 20,000 may without deduction be placed to her credit herein as aforesaid.

5. That the books of account, which were brought in and now are in Court in this suit, be forthwith delivered out to the defendants.

30. This petition, as it happened, was heard by me then sitting on the Original Side of the Court; and according to my note both parties appeared at the hearing. I think I may trust my memory so far as to say that I refused to make any order on the petition until the statements contained in it wore verified by affidavit, which, when the petition was presented, had not been done. Subsequently, the petition having been verified by affidavit, it was my duty to consider whether or not the Court ought to approve the arrangement. I find from my note-book the petition was before me on the 4th and 11th of September - 1876.

31. Now, it would be exceedingly dangerous for me to charge my memory with the reasons which led me to grant the approval of the Court to this compromise. But looking at the petition and the order made upon it as if it had been made by some one other than myself, it is clear that the Court had before it only certain data on which to found its order. Those data are contained in the 14th paragraph read with

the 7th, and in the 15th paragraph.

32. According to the 14th paragraph, the infant plaintiff was entitled to either one of two sums, taking the outside value of each; that is to say, not allowing for any other claims against the funds-namely, either to 7-24ths of Rs. 30,000 or Rs. 8,750, or to 7-24ths of a moiety of Rs. 4,41,124, or somewhere about Rs. 64,000.

33. The claim in the 14th paragraph to a moiety of the estate of Moheeoodeen must of course have been in respect of the alleged partnership.

34. Then there was the further datum, namely, the allegations contained in the 15th paragraph of the petition.

35. Now, the sum offered by way of compromise was Rs. 20,000 of 4 1/2 per cent. Government paper, down, and all costs, which exceeded Rs. 5,000.

36. It was upon those data, and those data only, that the Court approved the compromise by an order dated 10th September 1876.

37. It appears by proceedings in the present suit that Moheeoodeen''s executors paid Rs. 5,000 in respect of costs alone under the order.

38. The compromise having been confirmed, the executors of Moheeoodeen suddenly discovered, before the Rs. 20,000 and the costs were paid, that property at all events of the value of three lacs, or, as estimated by the plaintiff in this suit, of the value of nine lacs, was belonging to the estate of Moheeoodeen, though not mentioned in the schedule to the application for probate, or in the petition for the Court''s approval.

39. The order confirming the compromise having been made on the 11th of September, Mr. Paliologus, the defendants'' solicitor, writes on the 20th of September as follows:

The Company''s papers for Rs. 20,000, and 5,000 towards your costs, are with me; and if you have a copy of the decree, will you please lodge it, or let me have it, that I may do so with the Company''s papers.

I have this day learnt that two lacs more of Company''s papers belonging to the estate of Moheeoodeen have been found, and I have received instructions to apply that further duty from the estate be received upon this sum.

This, however, I think you will agree with me in no way affects the settlement in this case.

40. The letter does not say, and there is no evidence to show, when the defendants first learned of this addition to their testator''s estate. And the last paragraph of the letter to my mind is rather suggestive of doubt in the mind of the writer whether the discovery did not affect the compromise.

41. But however that may be, the writer of the letter seems to have forgotten that his clients were dealing with a minor; and that it might be right to bring this discovery to the notice of the Court before payment of the Rs. 20,000 was made. Before this letter (which was written at the commencement of the vacation) was answered, the Rs. 20,000 was transferred to an account in the infant''s name, and Rs. 5,000 was paid for costs. But on the 29th of January 1877, the plaintiff''s attorney wrote as follows:

With reference to your letter to us of the 20th September last, we are instructed by our client''s guardian to say that the sum of Rs. 20,000, which she accepted for settlement of the infant plaintiff''s claim, was so done on the statement of the assets contained in the petition of the executors filed on the 1st May 1876; but as since the settlement was made so large a sum as Rs. 2,00,000 more has been discovered, she thinks that the plaintiff is fully entitled to a proportionate sum in addition to the sum of Rs. 20,000 paid as aforesaid ; and is, therefore, desirous of bringing this matter to the notice of the Court.

The desire is, we consider, reasonable, and we have no doubt you will agree with us as to the propriety of having the matter mentioned to the Court with the view to further directions.

42. On the 29th of January and 24th of February, Mr. Paliologus wrote the following letters:

January 29th.

It is strange that such a time has been allowed to go by without anything being done, and now that the executors are in Cashmere, it is proposed to reopen the question. I can at present only refer a copy of your letter for instructions.

February 24th.

I forwarded a copy of your letter of yesterday''s date to the manager of the Cotee here, and be instructs me to say that he has no power to consent to open this matter which was considered settled by the executors before they left Calcutta. Your first letter has been forwarded to them, and the manager expects a reply in two or three days. A copy of your last letter will also be sent up by this day''s date.

43. The foregoing are the circumstances under which the present suit was nstituted on behalf of the infant plaintiff on the 20th of March 1879.

44. Her plaint states the proceedings in the former suit, the defendants'' petition for probate, and the schedule annexed thereto, and the petition and order for compromise.

45. In the 6th paragraph the plaintiff alleges that the executors of Moheeoodeen conducted the negotiation; and represented the estate of Moheeoodeen to consist only of the property mentioned in the application for probate of his will, with the

sole exception of a house in Cashmere, and that the terms of settlement were accepted on the faith of such representation. The plaint then refers to the letters of the 20th September 1876 and the 29th of January 1877; and in the 12th paragraph states that, in addition to the Company''s papers for two lacs of rupees, other property has been discovered as belonging to Moheeoodeen, consisting of railway, bank, and other shares, houses and other property of the estimated value of many lacs of rupees.

46. The 16th paragraph charges wilful and fraudulent concealment, but submits that even if the estate had been under-estimated by mistake, the settlement should be reopened; and the 1st, 2nd, and 6th paragraphs of the prayer are as follows:

1. That the said agreement for settlement and the said decree may be declared not binding upon the plaintiff, and may be set aside or cancelled.

2. That the accounts ordered to be taken by the said decree of the 28th March 1876 may be proceeded with.

3. That so far as may be necessary, this suit may be considered supplemental to the said suit of the plaintiff and the said Bibee Rubbia.

47. The defendant Abdul Azeez alone put in a written statement, the other defendant Ahmedoollah having died after the institution of the suit.

48. The plaintiff having charged that the executors had made certain representations, Abdool Azeez in his written statement denies that allegation, but we have no denial by Ahmedoollah. It is true that, according to the plaintiff''s evidence, Abdul Azeez himself joined in the representations-nay was the principal party in making them. This of course he was in a position to deny; but in his evidence he admits that "Ahmedoollah took some part in the settlement, but he does not know what part." Obviously, therefore, he was not in a position to deny the plaintiff''s allegation so far as it related to Ahmedoollah.

49. In the 7th paragraph of his written statement Abdool Azeez says:

This defendant says that from the best enquiries that he and his said co-executor have been able to make, they have found, and he charges that it is true, that the said Ackbarjee had received Rs. 30,000 from the said Khajah Moheeoodeen in full satisfaction of all the claims of the said Ackbarjee against the said Moheeoodeen in respect of the estate of the said Mussijee in the will of the said Ackbarjee mentioned.

50. Now, as a matter of fact, we are told that the only evidence adduced by the defendants to the plaintiff''s advisers in the former suit with respect to the alleged payment of this Rs. 30,000 were certain entries in Moheeoodeen''s books; and that these entries refer to three Government papers of Rs. 10,000 each, which have been identified with three papers which Doorga Churn Law, the banker of Moheeoodeen, states in his evidence in this suit, that he held for Moheeoodeen and transferred to

Rohim Shaw, the gomashta of Moheeoodeen, in December 1875 and May 1876, long after the death of Ackbarjee. No doubt this may be capable of explanation, for the papers may have got back into Moheeoodeen''s hands as part of the estate of Ackbarjee after his death. But a strong case of suspicion seems to me to have been raised with respect to the truth of the 7th paragraph of the written statement of Abdool Azeez, particularly as Moheeoodeen in the former suit does not attempt to rely on the suggested explanation, and as, according to the plaintiff''s evidence in this suit, these papers were never in the name of Ackbarjee. And if once the story as to the payment of the Rs. 30,000 is proved to be a fabrication, the entire case and conduct of Moheeoodeen are open to the gravest suspicion.

51. The learned Judge settled six issues in this suit:

1. Did the original defendants, the executors, make the representation to Bibee Rubbia alleged in the 6th paragraph of the plaint?

2. Did Bibee Rubbia agree to the terms of compromise on the faith of such representation?

3. Was such representation false?

4. Was it fraudulent?

5. Was the Court misled when the compromise was sanctioned; and if so, was the matter in regard to which it-was misled material?

6. To what relief is the plaintiff entitled, and on what terms ?

52. Of these it was agreed that only the 1st and 2nd should be tried in the first instance. This course was taken probably to save expense to the parties, as for the trial of the other issues it might be necessary to bring down witnesses from Cashmere. But I cannot help thinking that it was unfortunate that this course should have been pursued, because, in a case of this kind, it is especially useful to investigate the entire case of each party.

53. In the trial of the two issues, the plaintiff''s mother and stepfather were respectively examined, and stated that, after Moheeoodeen''s death, first Abdool Azeez came and proposed a compromise, afterwards Soonaoollah, sometimes with Abdool Azeez and sometimes alone as his agent, and sometimes Abdool Azeez, Ahmedoollab, and Soonaoollah, and that all three were present at the final settlement. They certainly state that Abdool Azeez was the principal negotiator.

54. Abdool Azeez, on the other hand, in his deposition, denies that he had anything whatever to do with the negotiation. And although he was the principal party interested, he makes what seems to me to be the following incredible statement:-" I was not aware that the settlement was going on. I never came to know of the negotiations going on, or of the settlement. I did not know of the negotiations until the matter of the payment arose."

55. But he says :-"Soonaoollah was managing the negotiations "; and that "Soonaoollah and Rohim Shaw were acting jointly on his behalf in the matter of the settlement." Neither Soonaoollah nor Rohim Shaw has been called as a witness.

56. In this state of circumstances the learned Judge has believed Abdool Azeez, and disbelieved the plaintiff''s mother and step-father.

57. But if the extent of Moheeoodeen''s estate was not a factor, and an important factor in the negotiation, it is difficult to understand why such prominence should have been given to it in the petition for the Court''s approval.

58. There must have been some negotiation, and indeed this is admitted by Abdool Azeez to have occurred with Ahmedoollah, Soonaoollah and Rohim Shaw. And the fact that the plaintiff obtained with costs over Rs. 25,000, a sum greatly larger than her 7-24ths of the Rs. 30,000, would seem to indicate that some other important items had been taken into consideration. It moreover seems difficult not to conclude from the evidence that a house in Cashmere was mentioned; and if it was mentioned, in what other possible connection than the extent of Moheeoodeen''s estate?

59. In trying the first two issues, a question was asked by the defendants'' counsel of Abdool Azeez as to when he first knew of the addition to Moheeoodeen''s estate. This question was objected to by the plaintiff''s counsel, and the objection was allowed, probably on the ground that the question did not "bear on the first two issues. This is an ill result of trying the two first issues by themselves; for, as the evidence now stands, we do not know whether the "defendants were aware of the addition before the compromise, and concealed it.

60. The learned Judge in fact only tried the two first issues, and he seems to have decided that if any representation was in fact made, it was not material, and was not an inducing cause of the compromise with the plaintiff''s advisers.

61. Speaking, not as the Judge who approved the compromise, but as a stranger to that proceeding, I feel bound to say that I think the 5th issue should have been considered ; and having regard to the petition upon which the order for compromise was founded, I should myself consider that the Court was misled in a particular, which, according to the 14th paragraph of the petition, was material, and the verified petition was the only matter before the Court on which an opinion could be founded.

62. Now let us see what were the circumstances under which the executors of Moheeoodeen allowed that petition to go before the Court.

63. It must have been well known that Doorga Churn Law was the banker of Moheeoodeen.

64. Abool Azeez says that he had heard from Rohim Shaw, the gomashta of Moheeoodeen, the particulars of his estate. Doorga Churn Law says, that, in December 1875 and the 12th of March 1876, he had transferred to Rohim Shaw the Company''s paper for Rs. 30,000; and that, at Moheeoodeen''s death, which occurred on the 12th April 1876, he had in deposit with him for safe custody the following securities belonging to Moheeoodeen''s estate:-200 National Bank shares, worth Rs. 20,000 ; 10 Bombay Bank shares, worth Rs; 6,000; 20 Paris Municipal Debentures, worth Rs. 2,000 ; and 25 East Indian Railway shares, worth Rs. 7,500. And he also says: "At the time of Moheeoodeen''s death the balance of the account was against us. It was a pretty large balance." At the time of the compromise Rohim Shaw was in Calcutta, and acted in it as the defendants'' agent, as Abdool Azeez admits.

65. Is it conceivable that Rohim Shaw, the gomastah, had made no inquiry of Doorga Churn Law, or was ignorant of the existence of the Company''s papers for two lacs or some part of it?

66. The defendant now admits the existence of these two lacs; but we do not even know how, where, or when they were discovered.

67. Even if the executors were really ignorant of this large addition to the estate at the time of the compromise, though the discovery was made suspiciously soon, ten days afterwards, was it not such culpable and wilfully blind ignorance, at all events as to the securities on deposit with Doorga Churn, as to be equivalent to or carry with it the consequences of knowledge. In the case of Bell v. Gardiner (4 Man. & Gr. 24), C.J. Tindal says:-"We can in fact regard the possession of the means of knowledge only as affording a strong observation to the jury to induce them to believe that the party had actual knowledge of the circumstances." And again: "There may be cases where the existence of the means of knowledge might lead irresistibly to the inference that the party had actual knowledge": and Mr. Justice Cresswell added, " Where a party has the means of knowledge it may be evidence of actual knowledge." Exercising the functions of a jury, I think it would be difficult not to arrive at the conclusion that the executors of Moheeoodeen had actual knowledge of the securities with Doorga Churn Law. But with respect to the two lacs of Company''s paper, I have no materials to form an opinion beyond the suspiciously sudden discovery immediately after the sanction of the compromise.

68. Now a transaction very similar to this was discussed by the Lords Justices in the case of Brooke v. Lord Mostyn (2 DeG. J. and S. 373). In that case a compromise had been approved by the Court on behalf of an infant. For the purposes of the compromise it was necessary to ascertain the value of an estate. A document relative to the valuation of the estate, and which the Lords Justices considered material, was in the possession of the party to be charged, and was not produced. On that ground the Lords Justices set aside the compromise. On appeal to the House of Lords, that decision was reversed only on a question of fact and not of law.

69. Lord Justice Turner, at p. 416, considers what circumstances will furnish sufficient ground for impeaching a compromise made under the order of the Court. He says with respect to a compromise between adults:-"If there be no fraud, and equal knowledge on both sides, the compromise cannot be disturbed; but if there is knowledge on one side, which is withheld, the compromise cannot stand, because the withholding of the knowledge amounts, in the view of a Court of Equity, to fraud." And he proceeds to say, that the rule is the same when a compromise is sanctioned by the Court on behalf of an infant.

70. I confess I am myself inclined to think that even a higher degree of good faith is due when the Court''s sanction is required, because that sanction is equally necessary for both parties; and each party is in my opinion bound to see that the materials before the Court are unimpeachable. The Lord Justice proceeds, p. 423:-" It may be said, perhaps, that the master was satisfied with the information laid before him and called for no further information; but the question is not whether the master called for further information, but whether the parties having this further information in their possession were justified in withholding it."

71. I am of opinion that if the plaintiff''s allegations as to the partnership are true-which question has not yet been tried-the extent of Moheeoodeen''s estate may be material, and that at all events the petition for compromise led the Court to believe so. The compromise was confirmed under that impression; and the representation as to the extent of Moheeoodeen''s estate in the petition was due either to the fraud (which issue has not been tried), or the culpable and wilful ignorance of the executors in a matter which it was their duty to have thoroughly inquired into, and as to which, at least so far as respects the property in Doorga Churn Law''s custody, they had an easy and natural means of knowledge.

72. I am of opinion, therefore, that the judgment appealed against should be reversed, and the case remitted to the lower Court for the trial of all the issues.

73. Of course, if the compromise is set aside, the parties must be replaced in their former positions, and the Rs. 20,000 retransferred. But it may not be necessary to deal with the Rs. 5,000 paid for costs, as the plaintiff''s admitted rights in the Rs. 30,000 would exceed that sum.

74. It may, however, be questionable whether there may not be a difficulty in trying this case as long as the plaintiff''s minority continues, as it may be argued that it may be necessary for the Court to consider whether it will be for the benefit of the plaintiff to set this compromise aside; and in the consideration of that question, the truth of the plaintiff''s allegations in the original suit might have to be investigated.

75. However it will be for the lower Court to consider whether that question arises. All that we decide now is, that the case must be remitted to the lower Court to try all the issues with respect to the compromise. The costs, both of this appeal and of the original hearing, will abide the result.

Richard Garth, C.J.

76. I quite agree that this case has been imperfectly tried in the Court below ; and it seems to me that the question of misrepresentation by the executors has been dealt with both by the Court and by the parties on too narrow a footing.

77. The question to be tried, as stated by the learned Judge at the commencement of his judgment, was this, "whether the story told by Bibee Rubbia and Mahomed Gouse as to the interviews and oral communications during the negotiations for a settlement are to be accepted as true."

78. Now it seems to me, that without going minutely into the nature of the representations made by the executors, or of the negotiations which resulted in the compromise, the following broad facts are abundantly clear:

1st.-That, from the very nature of the arrangement, the actual value of the estate and effects of Moheeoodeen was a most important matter both for the parties and for the Court to ascertain, in order to determine whether the proposed compromise was one which, in the interest of the minor, ought to have been sanctioned;

2nd.-That the basis of the compromise in this respect was the statement made by the executors in their petition for probate, confirmed by their subsequent declaration. In the petition to the Court to sanction the compromise that statement was brought prominently forward as the basis of the proposed arrangement;

3rd.-That not only Bibee Rubbia, but the Court, acted upon the assumption that this statement of the value of Moheeoodeen''s property was substantially correct; and.

4th.-That the executors might and ought to have known, and had certainly the means of knowing, if they had made proper and reasonable enquiry, that this statement was not true, and that Moheeoodeen''s property was of much larger value than they had represented.

79. I think, therefore, that the compromise was entered into by the parties, and sanctioned by the Court, under a serious misapprehension of material facts; and that this misapprehension was caused either by the actual fraud of, or at any rate by a culpable neglect of duty, of the executors, sufficient, as I consider to amount to fraud in the view of a Court of Equity.

80. As at present advised, therefore, unless something further should be proved in the Court below, of which I am not aware, I think that the compromise ought to be set aside, and the parties restored to their position and rights in the former suit at the time when it was effected.

81. I confess, if it were necessary to decide the further question, I should be disposed to set aside the compromise, even though no fraud of any kind had been established; and it only appeared that the arrangement had been brought about by an entire mistake of both parties and of the Court with regard to the subject-matter

of the agreement.

82. Thus, for example, suppose that, in an administration suit an agreement under the sanction of the Court were made with legatees, some of whom were minors, that they should accept a proportionate part of their legacies in satisfaction of the whole upon the supposition by all parties, and by the Court, that the estate to be administered was not sufficient to pay the legacies in full, and it turned out afterwards that the estate was much larger than was supposed, and that there were ample funds to pay all the legacies in full, it seems to me, as at present advised, that the compromise ought to be set aside, under such circumstances, on the ground of mutual mistake.

83. I rather think that Section 20 of the Contract Act is intended to meet a case of that kind; and, therefore, if this case rested upon nothing more than the mistake of both sides and of the Judge who gave the sanction, I think that the compromise should be set aside.

84. There can be no difficulty here, as there might be in some cases, in putting both parties in statu quo; because all that has been done is the mere payment of Rs. 25,000, which can be readily repaid or adjusted.

85. And it seems to me that this view is by no means opposed to the law as laid down by Lord Justice Turner in the case of Brooke v. Lord Mostyn (2 DeG. J. and S. 373), because he was then dealing with a very different state of things, and the question of mutual mistake was not present to the mind of the Court.

86. I should add with regard to the last observation made by my brother Pontifex, that I rather doubt much whether, in a substantive suit brought by a minor to set aside a compromise obtained by fraud or mistake, it is the province of the Court to enquire whether it would or would not be beneficial for t he minor that the compromise should be set aside. I rather think that this is a question for the adviser of the minor only; and that the minor has a right, at his option, to the relief prayed, if it is proved that there are proper grounds for it.

87. It might be a different matter, if an application were made to the learned Judge in the former suit who sanctioned the compromise to set it aside on motion for review. He might then have to consider, perhaps, whether it was proper in the minor''s interest to interfere. But here is a substantive suit to set aside a compromise on the ground of equitable fraud; and if the minor has a right to the relief prayed, I doubt whether the Court has any power to consider whether it would be beneficial to him to grant the relief.

88. This, however, will be a question for the Court below to consider when the case comes again before it.