

1913.

*Present: Pereira J. and Ennis J.*MOHAMADU *v.* HUSSIM *et al.*

10—D. C. Galle, 11,038.

*Conveyance of property—Subsequent refusal to pay the consideration—  
No action lies for cancellation of conveyance.*

Where a person obtains a conveyance of property without fraud, but afterwards fraudulently refuses to pay the consideration stipulated for, the grantor is not entitled to claim a cancellation of the conveyance, but his remedy is an action for the recovery of the consideration.

THE facts appear from the judgment.

*Bawa, K.C.*, for defendants, appellants.

*A. St. V. Jayewardene*, for plaintiff, respondent.

*Cur. adv. vult.*

March 6, 1913. PEREIRA J.—

In this case the main issue is whether the bill of sale No. 5,470 dated September 3, 1910, was fraudulently obtained by the defendants from the plaintiff. The plaintiff's original attitude was that he was a minor, and that the defendants fraudulently and with intent to cause loss and damage to him induced him to execute the bill of sale, conveying to them thereby the land mentioned therein, which the plaintiff had inherited from his father Seyadu Ali Mawlana. In instituting this action also the plaintiff apparently proposed to be a minor, and had a next friend appointed for the purpose of representing him in Court. At the trial, however, the plaintiff appeared to have attained the age of majority, and in his evidence he says that he sold the land to the defendants; that at the time he owed one Mohamado Rs. 400, and that the defendants agreed to pay that amount to Mohamado, but that they have not yet done so. It is also stated in the attestation clause of the conveyance that the consideration, Rs. 400, was withheld by the vendee for the purpose of paying a debt due by the vendor. Now the question is whether, in obtaining the conveyance referred to above from the plaintiff, the defendants practised any fraud on him. The District Judge has expressly found that the conveyance was obtained without fraud, but he thinks that the defendants "subsequently fraudulently refused to pay the consideration." In these circumstances, it is quite clear that the plaintiff is not entitled to claim a cancellation of the conveyance (see *Voet 19, 1, 21 and 15 N. L. R. 280*), but that his remedy against the defendants is for the recovery of the Rs. 400, if it is true that the defendants have failed to pay off the plaintiff's

debt, and that the plaintiff has hence paid it off or has become liable to do so.

I would set aside the judgment appealed from and dismiss the plaintiff's claim with costs, reserving to the plaintiff the right to sue the defendants, if so advised, for loss, if any, sustained by him by reason of any omission on the part of the defendants to perform any undertaking with reference to the consideration for the conveyance.

ENNIS J.—I agree.

*Set aside.*

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PERRERA J.

*Mohamadu  
v. Hussim*