plaintiff to go to the Collector for consequential relief, and it has been rendered necessary by the appellant's own act in opposing the application which she formerly made to the Collector. Nor can the appeal be sustained upon the other ground. The same question was clearly decided in the former suit between this appellant and the widow, the defendant No. 1. The widow then represented the estate; and even if it were not so, her daughter, the present plaintiff, is at present claiming under her.

"We dismiss the appeal with costs."

On this appeal Mr. *J. D. Mayne* appeared for the appellant.

Mr. *R. V. Doyne* and Mr. *G. P. Johnstone* for the respondents.

Mr. *J. D. Mayne* for the appellant, after adverting to some other points bearing on the question how far the decision of 1863 was conclusive in regard to the present suit, suggested that the transfer of 1880 was open to the construction that it attempted to control the descent of the estate. This might be held to render it an invalid act on the part of a female, whose estate was but a limited one, the estate of a widow. This question, however, had not been raised below.

Their Lordships, in the result, without calling upon counsel for the respondents, dismised the appeal with costs. C.B.

Appeal dismissed.

Solicitor for the appellant—*R. T. Tasker.*

Solicitors for the respondent—*T. L. Wilson & Co.*

APPELLATE CIVIL.

Before Mr. Justice Brandt and Mr. Justice Parker.

VENKATRAMANNA (PLAINTIFF), APPELLANT,
and
VÍRAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886. Sept. 6, 8.

Decree—Fraud—Collusion between parties—Defendant subsequently pleading his own fraud.

A obtained a decree against B, in execution of which he was put in possession of certain land by proclamation, the land being in the possession of tenants. A subsequently sued B and the tenants to recover possession of the same land. B pleaded

* Second Appeal 418 of 1886.

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that the decree obtained by A was the result of collusion between himself and A in fraud of B's creditors:

Held, that it was not open to B to raise this plea.

APPEAL from the decree of Mr. F. Graham, Acting District Judge of Cuddapáh, reversing the decree of M. Jayaram Ráu, District Múnsif of Nandalúr, in suit 313 of 1884.

Plaintiff, Ravoru Venkatramanna, sued Víramma, Bojjaya and Subbadu to recover certain land.

In suit 283 of 1869 plaintiff obtained a decree against Víramma, in execution of which he alleged the land was delivered to him in 1873.

Plaintiff also alleged that he had let this land to the father of Bojjaya and to Subbadu who refused to give up possession in 1881. Víramma pleaded that the decree in suit 283 of 1869 and the sale deed on which it was based were collusive, intended to protect the land against her creditors not to transfer it to plaintiff, and that the land had been in her possession throughout.

She also alleged that she had let the land to the other defendants.

The Múnsif found that it was not proved by Víramma that the sale deed or the former suit were collusive.

He found that the land had been in plaintiff's possession after the execution of the decree, but that it was not proved that defendants Nos. 2 and 3 were tenants of plaintiff.

The claim was decreed.

Defendants appealed.

The District Judge found that the former suit was collusive, that no valid delivery took place in execution thereof, and that defendant No. 1 had been in possession since the date of that suit.

The suit was dismissed.

Plaintiff appealed on the following grounds:—

I. As between the plaintiff and defendant No. 1 the process of delivery in execution of the decree in Original Suit No. 283 of 1869 transferred possession from the defendant to the plaintiff; and the defendant No. 1 and defendants Nos. 2 and 3 who claim under him are precluded from contending that there was only a symbolical delivery of possession and that such possession as defendant No. 1 had was not transferred to plaintiff.

II. Whether the process of delivery purported to be under s. 223 or s. 224 of Act VIII of 1859 is immaterial as between the parties to the said suit and such delivery cannot affect the rights of third parties or the tenants if any having a right of occupancy.

III. That defendants Nos. 2 and 3 are estopped from denying the title and possession of the plaintiff on the dates of the rental agreement executed by defendant No. 3 and the father of defendant No. 2 in favour of the plaintiff whether or not rents were paid under those agreements.

IV. Defendant No. 1 who was defendant in Original Suit No. 283 of 1869 cannot be permitted to plead that the decree in the said suit was obtained by the plaintiff in collusion with her.

V. The decree in Original Suit No. 283 of 1869, dated 22nd April 1870, is in force, and even assuming that it can be set aside by a party alleging that it was obtained in collusion with him, the period of limitation of three years for setting aside such a decree has long ago expired.

Bhásh-yam Ayyangár for appellant.

Anandáchárlu for respondents.

The Court (Brandt and Parker, JJ.) delivered the following judgments:—

BRANDT, J.—The District Judge finds that there was such delivery of possession as the case admitted of, viz., symbolical delivery by proclamation, the land being in the occupation of tenants; and such delivery is in the circumstances as effectual to effect transfer of possession as physical delivery, and the suit is brought within twelve years from the date of such delivery.

It is admitted then that the decree of the Lower Appellate Court cannot be supported, except upon the ground that there was in fact no sale by defendant No. 1 to the appellant, and that the suit and decree in and by which the land was adjudged to the appellant can be, and should be treated as a nullity, the sale having been, as it is found by the Lower Appellate Court, a merely colourable transaction intended to screen the land from the pretended vendor's creditors. It is suggested that the rule observed in cases in which plaintiff and defendant are *in pari delicto*, should be observed in this case also, viz., that the position

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of the defendant is the better, and that the Court will not assist a plaintiff in such case. But the contention of the learned vakíl for the plaintiff is correct, viz., that where there is a decree which the defendant has taken no steps to have set aside on the ground of fraud or otherwise, the decree, although it was the result of fraud and collusion between the parties, will not be set aside, nor treated as a nullity when no injury to third parties will ensue. The subject is dealt with in *Ahmedbhoy Hubibhoy* v. *Cassumbhoy*, (1) and, on the authorities therein cited, I consider rightly dealt with. I may add that there is also considerable force in the argument that as defendant No. 1 would not be in time with a suit to set aside the decree on the ground of fraud, so it is not open to her now to set up this plea; but the case may be disposed of irrespective of this, and on the broad ground above stated I am of opinion that the decree of the Lower Appellate Court should be set aside, and that of the Court of First Instance restored, and the appellant should have costs of this appeal and in the Lower Appellate Court.

PARKER, J.—Although when a contract or deed is made for an illegal or immoral purpose a defendant against whom it is sought to be enforced may—not for his own sake but on grounds of general policy (per Lord Mansfield in *Holman* v. *Johnson* (2) and *Luckmidás Khimji* v. *Mulji Canji* (3)—show the turpitude of both himself and the plaintiff, it is otherwise when a decree has been obtained by the fraud and collusion of both the parties. In such case it is binding upon both, *Ahmedbhoy Hubibhoy* v. *Cassumbhoy* (1) and *Prudham* v. *Phillips*. (4) It is not therefore open to defendant No. 1 to plead the collusion of herself and plaintiff in obtaining the decree in suit No. 283 of 1869.

And, as between them the formal transfer of possession carried out by the Court is conclusive, it makes no difference whether the transfer was under s. 223 or 224 of the Code of Civil Procedure, *Juggabundhu Mukerjee* v. *Ram Chunder Bysack* (5) and *Lokessar Koer* v. *Purgun Roy*. (6)

The suit is within twelve years of the transfer, and cannot be barred.

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(1) I.L.R., 6 Bom., 703.
(2) Cowper, 343.
(3) I.L.R., 5 Bom., 295.
(4) 2 Ambler, 763.
(5) I.L.R., 5 Cal., 584.
(6) I.L.R., 7 Cal., 418.

The decree of the Lower Appellate Court should be reversed and that of the District Múnsif restored, and the respondent must bear appellant's costs in this and in the Lower Appellate Court.

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APPELLATE CRIMINAL.

Before Mr. Justice Parker.

GREGORY

against

VADAKASI KANGANI.*

1886. September 28.

Act XIII of 1859—*Jurisdiction—Breach of contract to labour in foreign territory.*

V having received an advance of money from G, contracted to labour for him in foreign territory. Having broken the contract V was prosecuted under Act XIII of 1859, ordered to repay, and sentenced to imprisonment in default:

Held, that the order was illegal.

CASE referred to the High Court by S. H. Wynne, Acting District Magistrate of Tinnevelly, in calendar case No. 10 of 1886 on the file of the Second-class Magistrate of Tenkasi.

The facts were stated as follows:—

"The magistrate has directed a man to pay up a sum under the Contract Act XIII of 1859, and, in default, ordered him to be kept in rigorous imprisonment for one month, which sentence has been undergone.

"The contract was for work in Travancore territory. This is beyond the limits of British India, and the Act does not apply, though the contract was made in British territory (High Court Proceedings, 15th December 1876, No. 2940)."

Counsel were not instructed.

The Court (Parker, J.) delivered the following

JUDGMENT:—The defendant was prosecuted under the Breach of Contract Act XIII of 1859, and was ordered to repay the money advanced. It is not stated whether the contract was made in British territory, but the work was to be performed in foreign territory.

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*Criminal Revision Case 307 of 1886