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of this debt from the mortgagors. The Court of first instance gave him a decree against all the defendants for the sum claimed, which decree was affirmed by the lower appellate Court on appeal by Hira Chand.

Hira Chand then appealed to the High Court, contending that the suit as brought was unmaintainable.

Lala Lalta Prasad, for the appellant.

Babu Jogindro Nath Chaudhri and Shah Asad Ali, for the respondent.

The judgment of the High Court was delivered by

TURNER, J.—The suit cannot be maintained as brought. The plaintiff, respondent, the purchaser of a mortgagor's share, paid off the mortgage to save the property from foreclosure. He thereby became entitled to call upon each of the other mortgagors to contribute, that is to say, he could claim from each a contribution proportionate to his interest in the property. He has now claimed in the lump sum the whole amount paid by him from the other co-sharers collectively, not even excluding his own quota.

The appeal is decreed, and as the ground is common to all the defendants, and it would be inequitable to allow the decree to stand against any of them, we reverse the decrees of the Courts below as against the defendants who did not appeal as well as against the defendant who has appealed. Hira Chand will recover his costs in all Courts. The other defendants must pay their own costs.

Appeal allowed.

FULL BENCH.

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 July 23.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.

UDAI SINGH (JUDGMENT-DEBTOR) v. BHARAT SINGH AND OTHERS (DECREE-HOLDERS).*

Rival Decrees—Decree of Her Majesty in Council—Decree of the High Court—Execution of Decree.

On appeal by U, the High Court set aside a decree which the sons of K had obtained in the Court of first instance against U and certain other persons,

* Miscellaneous Regular Appeal, No. 50 of 1876, from an order of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 31st July, 1876.

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in a suit brought by them for possession of one-third of certain real property. At the same time on appeal by two of the other persons aforesaid, it affirmed a decree which *U* had obtained against these persons and the sons of *K* for possession of two-thirds of the same property, in a suit in which he had claimed possession of the whole. It subsequently, on appeal by *U* against that portion of the decree made in the suit brought by him which dismissed his claim in respect to one-third of the property, reversed that portion and gave him a decree for the whole. The sons of *K* appealed to Her Majesty in Council only from the decree of the High Court setting aside the decree obtained by them in the Court of first instance for one-third of the property. Her Majesty in Council set aside this decree of the High Court and restored the decree of the Court of first instance. In the meantime *U* was put into possession of the whole property in execution of the decree of the High Court which he had obtained in the suit brought by him. When the sons of *K*, in execution of the decree of Her Majesty in Council, applied for possession of one-third of the property, *U* opposed the application on the ground that he was in possession under a decree of the High Court which had become final. *Held*, by a Full Bench of the High Court, that the decree of Her Majesty in Council must be executed, notwithstanding that its execution involved the disturbance of the possession obtained by *U* under the decree of the High Court which had become final.

ONE Pem Singh died possessed of certain real property situated in the district of Bulandshahr. On his death his widow succeeded to the same. On her death it came into the possession of Padam Singh, said to be the adopted son of Pem Singh. One Mohar Singh sued to set aside the alleged adoption and to obtain possession of the property as the sole heir of Pem Singh. The suit went up to Her Majesty in Council. It was there determined that Mohar Singh was only one of the heirs and not the sole heir of Pem Singh. In order that it might be determined who were the other heirs and what the extent of Mohar Singh's right of inheritance in the property was, Her Majesty in Council remanded the suit to the High Court. While the suit was before Her Majesty in Council, Mohar Singh died, and his son, Udai Singh, entered into an agreement with Phul Singh and Nathi Singh, the surviving sons of Dharajit, one of the heirs of Pem Singh, by which Phul Singh and Nathi Singh surrendered their rights of inheritance in the property to Udai Singh. The High Court determined on remand that Mohar Singh and Dharajit were entitled to succeed to the property in equal shares. A decree was therefore given to Udai Singh for possession of a moiety of the property and in execution of that decree he obtained possession of such moiety. Subsequently Bharat Singh, Ranjit Singh, and Bhola Singh, the

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sons of Kundan Singh, a third son of Dharajit, who had died in his father's lifetime, sued Phul Singh, Nathi Singh, and the heirs of Padam Singh to obtain possession of one-third of the moiety of the property which had remained in the possession of Padam Singh. Udai Singh was added as a defendant in this suit on his own application. At the same time he brought a suit against the sons of Kundan Singh, the heirs of Padam Singh, Phul Singh, and Nathi Singh, in which he claimed the moiety in virtue of the agreement with him entered into by Phul Singh and Nathi Singh. These suits were tried together. In the first suit it was held by the Court of first instance that the sons of Kundan Singh were entitled to a third share of the moiety, and a decree to that effect was given them. In the second suit Udai Singh obtained a decree for two-thirds of the moiety, his claim to one-third being dismissed. The heirs of Padam Singh did not appeal from either of these decrees. Udai Singh appealed to the High Court from the decree in the first suit, but not from the decree in the second. Phul Singh and Nathi Singh appealed to the High Court from the decree in the second. The decree in the first suit was reversed by the High Court, that in the second affirmed. Subsequently Udai Singh appealed from the decree in the second suit, and obtained a decree for the whole moiety. The sons of Kundan Singh appealed to Her Majesty in Council only from the decree of the High Court in the first suit, and the decree of the High Court was reversed, and that of the Court of first instance restored. In the meantime Udai Singh, in execution of the decree of the High Court in the second suit, obtained possession of the whole moiety.

The sons of Kundan Singh applied to the Court of first instance to obtain possession of one-third of the moiety in execution of the decree which they had obtained from Her Majesty in Council. Udai Singh objected that that decree could not be enforced against him. The Court of first instance disallowed this objection, whereupon Udai Singh appealed to the High Court from the order disallowing the same, contending that, having obtained possession of the moiety under a decree of the High Court which had become final, he could not now be dispossessed under the decree of Her Majesty in Council.

The case came on for hearing before Stuart, C.J. and Oldfield, J., by whom the question whether the application for the execution of the decree of Her Majesty in Council might be granted was referred to a Full Bench.

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Mr. Conlan, Munshi *Hanuman Prasad*, and the *Senior Government Pleader* (*Lala Juala Prasad*), for the appellant.

Pandits *Bishambhar Nath* and *Nand Lal*, for the respondents.

PEARSON, TURNER, SPANKIE, and OLDFIELD, JJ., concurring : The decree of the Privy Council must be executed, notwithstanding its execution involves the disturbance of the possession obtained by Uday Singh under the decree of this Court which has become final. The decree of the Privy Council is the later in date, and had Uday Singh desired to secure his possession, he should have pleaded the decree of this Court in the cross suit when the suit in which the decree of the Privy Council has been passed was before that tribunal in appeal.

STUART, C.J.—Under the peculiar circumstances of this case I do not think that I ought to withhold my assent to the order agreed to by my colleagues, although I desire to guard myself against the opinion, as matter of law, that the decree of the Privy Council is as such a better decree than the decree of any other Court of a prior date and which has become final.

APPELLATE CIVIL.

1877
July 27.

Before Mr. Justice Pearson and Mr. Justice Spankie.

BHAGWAN SINGH AND ANOTHER (PLAINTIFFS) v. MURLI SINGH AND ANOTHER (DEFENDANTS).*

Act XVIII of 1873 (North-Western Provinces Rent Act), s. 7—Ex-proprietary Tenant—Sir-land—Mortgage of Proprietary rights in a Mahal.

Where a person mortgaged his proprietary rights in a mahal, which rights consisted of certain lands occupied by him, covenanting to give the mortgagee pos-

* Special Appeal, No. 656 of 1877, from a decree of Maulvi Muhammad Abdul Kaim Khan, Subordinate Judge of Agra, dated the 28th April, 1877, modifying a decree of Mahabansad Muhi-ud-din Khan, Munsif of Jalesar, dated the 5th January, 1877.