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in the record-of-rights to be a record of custom, we are still at liberty to collect its incidents from the terms in which it is recorded. Indeed, were the clause merely a record of custom, and its language were ambiguous, a custom to be a good custom must be reasonable, and we could not hold a custom reasonable which allowed the validity of transfers of property to remain for an indefinite period in suspense.

For the reasons we have stated we affirm the decree of the lower appellate Court and dismiss the appeal with costs.

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### BEFORE A FULL BENCH.

(*Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

GHAZI AND OTHERS (DEPENDANTS) v. KADIR BAKSH AND ANOTHER (PLAIN-  
TIFFS).\*

*Execution of Decree—Irregularity—Sale in Execution—Act VIII of 1859, s. 257.*

*G* and *M* obtained a money-decree against *K* in the Court of the Principal Sudder Amin on the 12th December, 1864. This decree was reversed by the District Judge, but on the 5th March, 1866, the Sudder Court set aside the Judge's decree and ordered a new trial. On the 5th May, 1866, the District Judge affirmed the decree of the Court of first instance. On the 3rd December, 1866, the High Court again set aside the Judge's decree and ordered a new trial. On the 14th January, 1867, the District Judge again affirmed the decree of the Court of first instance, and no appeal being preferred, the decree became final. The decree-holders had in the meantime taken proceedings to execute the decree dated the 5th May, 1866, and from time to time, and finally on the 7th November, 1870, they renewed these proceedings, in each instance referring to the decree dated the 5th May, 1866, even after it was set aside and the decree dated the 14th January, 1867, passed. On the last application a sale of certain immoveable property belonging to *K* was ordered, and took place on the 15th February, 1871. *K* objected to the confirmation of the sale on the ground of the irregularity in the application, but his objections were disallowed and the sale was confirmed. He brought a suit to recover possession of the property from the auction-purchaser on the ground that the sale was a nullity. *Held, per STUART, C. J., and PEARSON, TURNER, and SPANKIE, JJ.,* that the sale ought not to be set aside, as the irregularity in applying for execution of the decree dated the 5th May, 1866, was an irregularity which did not prejudice the judgment-debtor.

\*Special Appeal, No. 1557 of 1874, from a decree of the Subordinate Judge of Allahabad, dated the 25th September, 1874, reversing a decree of the Munsif, dated the 24th December, 1873.

*Per* OLDFIELD, J.—That, with reference to s. 257, Act VIII of 1859, the suit was not maintainable.

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This was a suit to recover possession of the one-third share of a dwelling-house, being the plaintiff Kadir Baksh's share by inheritance in the said dwelling-house, and to eject the auction-purchaser at a sale of the share in execution of a decree held on the 15th February, 1871. It was instituted on the 7th September, 1873, and was brought on the allegation that the decree in execution of which the share had been sold had been reversed, and that the sale and all other proceedings relating to the execution were therefore null and void.

The defendant Ghazi, and Mangli, the deceased ancestor of the defendant Zahuran, obtained a decree for Rs. 1,500 against the plaintiff Kadir Baksh in the Court of the Principal Sudder Amin of Allahabad on the 12th December, 1864. This decree was reversed by the District Judge on the 28th July, 1865; but on the 5th March, 1866, the Sudder Court set aside the Judge's decree and ordered a new trial. On the 5th May, 1866, the District Judge affirmed the decree of the Court of first instance. On the 3rd December, 1866, the High Court again set aside the Judge's decree and ordered a new trial. On the 14th January, 1867, the District Judge again affirmed the decree of the Court of first instance, and no appeal being preferred the decree became final. The decree-holders had in the meantime, on the 12th June, 1866, taken proceedings to execute the decree dated the 5th May, 1866. They renewed these proceedings on the 5th July, 1866, and again on the 2nd June, 1869, referring in each instance to the decree dated the 5th May, 1866. Finally, on the 7th November, 1870, they applied for the sale of the property in suit, referring in this application, as in their previous applications, to the decree dated the 5th May, 1866, and stating that the amount which was entered therein as due by the judgment-debtor was due under that decree. A sale of the property was ordered and took place on the 15th February, 1871. The notifications of sale stated that the property was for sale in satisfaction of the decree dated the 5th May, 1866. On the 10th March, 1871, the judgment-debtor objected to the confirmation of the sale on the ground of the error

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in the application for execution, but his objections were disallowed, and the sale was confirmed on the 22nd March.

Other properties were at the same time sold under the same circumstances. Kadir Baksh sued to recover these other properties, and obtained a decree in the Court of first instance. The lower appellate Court reversed the decree, holding that the error in the application of the 7th November, 1870, for the sale of the properties was a mere clerical error which caused the judgment-debtor no substantial injury, and an error which he was bound to have pointed out before the sale. On special appeal the decision of the lower appellate Court was reversed on the ground that the reference in the application of the 7th November to the decree dated the 5th May, 1866, was not a clerical error, and that, if it could be held to refer to the decree dated the 14th January, 1867, that application would have been barred by limitation.

In the present suit the Court of first instance held that the claim was barred by limitation under article 14 (a), sch. ii, Act IX of 1871. The lower appellate Court held that the limitation applicable to it was that provided in article 145, sch. ii, Act IX of 1871, that is to say, 12 years. It therefore remanded the suit for a new trial.

On special appeal by the defendants to the High Court it was contended that the suit was not maintainable, with reference to s. 257, Act VIII of 1859, and that the clerical error in the application for execution was not a sufficient reason for holding the sale invalid, the judgment-debtor having suffered no substantial injury thereby.

TURNER, J. (who, after setting out the facts and referring to the grounds of the former decision of the High Court, continued) :— These two grounds appear to resolve themselves into one ground, for if the date of the decree given in the application of the 7th November, 1870, be held to be a clerical error, then the dates of the decree mentioned in the other applications made subsequently, to the decree of the 14th January, 1867, were clerical errors, and those applications would be sufficient to keep alive the decree. Having succeeded in setting aside other sales, the judgment-debtor

has now brought the present suit to set aside the sale of the property in suit.

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As I entertain doubt whether the sale ought to be set aside for an error which in no way prejudiced the judgment-debtor, I propose that the case should be submitted to the Full Bench that the propriety of the former ruling may be considered.

SPANKIE, J.—I concur in the reference.

Pandit *Bishambar Nath*, for the appellants.

The *Junior Government Pleader* (Babu *Dwarkanath Banarji*) and Pandit *Ajudhia Nath*, for the respondents.

The *Junior Government Pleader*.—The application for execution of the decree dated the 5th May, 1866, was an irregularity, as it was not the proper decree to execute; and inasmuch as the decree-holders sought to recover under that decree a larger sum than was due under it, the irregularity inflicted substantial injury on the judgment-debtor.

Pandit *Bishambar Nath*.—The sale took place in satisfaction of an existing judgment-debt. The judgment-debtor was not in reality affected by the irregularity. No objection was taken by him in the course of the execution-proceedings. The sale was duly notified and conducted.

The opinions of the Full Bench were as follows :—

STUART, C. J.—The wrong date given to the decree in the application for execution must have been, I think, not so much a clerical error as a legal mistake on the part of the pleader or other person who prepared the application. But it is a mistake, an innocent mistake perhaps, which clearly appears as such on the face of the record, and which, I think, we are entitled to disregard, being, as the reference suggests, a mere error which in no way prejudiced the judgment-debtor.

PEARSON, J.—What is called a clerical error appears to me to have been rather erroneous procedure; but I am bound to admit that the ruling of which the propriety is called in question is not one which on reconsideration I am prepared to maintain, and that

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the view that the sale ought not to be set aside for an error which did not prejudice the judgment-debtor commends itself to my judgment.

TURNER, J.—The decree which Mussammat Zahuran obtained in the Court of the Principal Sudder Amin in December, 1864, was affirmed in appeal on the 5th May, 1866, and although the decree of the appellate Court was set aside, and a re-hearing of the appeal ordered in December, 1866, the original decree was again affirmed in January, 1867. When then the decree-holder in 1869 and in 1870 applied to continue the proceedings in execution which she had commenced in 1866, although she erroneously referred in the heading of her application to the decree of the appellate Court passed in May, 1866, which had been set aside, both the decree of the Court of first instance subsisted and a decree of the appellate Court affirming that decree.

The proceedings in 1869 and in 1870 were a continuation of the proceedings commenced in 1866, wherein she had sought to execute not only the decree of the appellate Court, but the decree of the Court of first instance, which the decree of the appellate Court affirmed.

Under these circumstances it seems inequitable to hold that an innocent purchaser is to be damnified by an error which in no way prejudiced the judgment-debtor, and which, had he thought fit to intervene before the sale was ordered, might easily have been corrected. In my judgment the sale ought not to be set aside.

SPANKIE, J.—I am of opinion that the error was more than clerical and amounted to a material irregularity, but not to one by which the judgment-debtor could be really said to have been prejudiced, and therefore I do not think that the suit can be maintained.

OLDFIELD, J.—The application for execution contained this error, that it referred to the decree of which execution was sought as bearing date May 5th, 1866, whereas the subsisting decree which alone was capable of execution was of date December 12th, 1864.

Notwithstanding this error in the application, the execution proceedings were made in effect, though not nominally, with reference to the latter decree, and the irregularity, such as it was, pervaded the entire proceedings in execution, including the publication of the sale, and it was made the ground of an objection to the confirmation of the sale under s. 256, Act VIII of 1859, and the objection was disallowed. This being so, I am of opinion that this suit cannot be maintained with reference to s. 257, Act VIII of 1859.

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(*Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

TAJUDDIN KHAN (DEFENDANT) v. RAM PARSHAD BHAGAT (PLAINTIFF).  
Act XVIII of 1873, s. 93, cl. (a)—*Bhaoli—Money-equivalent—Rent—Revenue Court—Civil Court—Jurisdiction.*

*Held* (PEARSON, J., dissenting), that a suit for the money-equivalent of arrears of rent payable in kind is a suit for arrears of rent within the meaning of s. 93, Act XVIII of 1873, and therefore cognizable by a Revenue Court.

*Per* PEARSON, J.—Such a suit, being a suit for damages for a breach of contract, is cognizable by a Civil Court.

THIS was a suit to recover Rs. 29-1-2, being the market-value of the plaintiff's share in the produce, for the years 1278, 1279, and 1280 fasli, of two bighas, two biswas, and 17 dhurs of land situated in patti Ram Dihal Rao. The defendant denied that he was a tenant, alleging that he was a co-sharer with the plaintiff in the patti and that the land was his sir-land.

The Revenue Court of first instance found that the defendant held the land as a tenant, and gave the plaintiff a decree. The first Court of appeal held that the suit was barred by s. 106, Act XVIII of 1873, and that the land was the defendant's sir-land, and dismissed the suit. The second Court of appeal agreed with the Court of first instance and also gave the plaintiff a decree.

On appeal to the High Court by the defendant, the Court (Pearson and Turner, JJ.), with reference to the second ground

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\* Special Appeal, No. 1018 of 1875, from a decree of the Judge of Gházipur, dated the 23rd June, 1875, reversing a decree of the Collector, dated the 23rd January, 1875.