

1879
 ANAHTA LAL
 v.
 KALI DEN.

is, I think, and operates as a certificate of sale, and I cannot regard it as an order of Court, simply because it is signed by the Subordinate Judge. The signature may authenticate the endorsement, but the endorsement itself is a certificate of sale and a transaction that confers upon the purchasers the rights of the mortgagee and gives them an interest in immovable property exceeding Rs. 100 in value.

OLDFIELD, J.—I concur in the proposed order for dismissing the appeal with costs. The endorsement by which the deed of mortgage was assigned to the plaintiffs as purchasers of it at auction sale is an instrument which required registration, and cannot be admitted in evidence.

Appeal dismissed.

1879
 June 11.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

PIAREY LAL (DEFENDANT) v. SALIGA AND ANOTHER (PLAINTIFFS)*

Wajib-ul-arz—Absconding co-sharers—Trustee—Act IX of 1871 (Limitation Act), s. 10—Limitation.

Where a clause of the *wajib-ul-arz* of a village stated in general terms that absconders from such village should receive back their property on their return, and certain persons who absconded from such village before such *wajib-ul-arz* was framed, sued to enforce such clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party to such *wajib-ul-arz*, alleging that their property had vested in such co-sharer in trust for them, held that before such co-sharer could be taken to have held their property as a trustee there must be evidence that he accepted such trust, and this fact could not be taken as proved by the *wajib-ul-arz*.

Held also that, assuming the trust to be established, as the purchaser had purchased in good faith for value and without notice of the trust, and was not the representative of such co-sharer within the meaning of s. 10 of Act IX of 1871, and had been more than twelve years in possession, the suit was barred by limitation.

This was a suit for the possession of a certain share in a village. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court, to which the defendant appealed from the decree of the lower appellate Court in favour of the plaintiffs. The defendant contended that the terms of the ad-

* Second Appeal, No. 1217 of 1878, from a decree of Maulvi Maqsood Ali Khan, Subordinate Judge of Agra, dated the 6th September, 1878, reversing a decree of Maulvi Mubarak-ul-lah, Munsif of Muttra, dated the 27th March, 1878.

ministration-paper did not create his vendors trustees for the plaintiffs, and that, assuming that his vendors had held the property in suit as trustees for the plaintiffs, the suit should have been instituted within twelve years from the date of the purchase, as he did not represent his vendors and had purchased *bonâ fide* for valuable consideration and without notice of any trust.

1879,

PIARNEY
v.
SALIOA

Babu *Jogindro Nath Chaudhri*, for the appellant.

Munshi *Hanuman Prasad*, for the respondents.

The judgment of the Court was delivered by

OLDFIELD, J.—The plaintiffs bring the suit on the ground that they are sons of Gobinda and Gopal, who many years ago absconded from the village, leaving their property in the hands of their co-sharers as trustees, and they rest the proof of the trust on an entry in the administration-paper of 1864. The defendant pleaded in effect that the plaintiffs are not the persons they represent themselves to be, and that there was no such trust created as they assert, and that the property in suit was for years possessed by Sahib Ram, Param Sakh, and others, whose rights and interests therein were bought in 1912 sambat, or 22 years ago, by the defendant at public auction, and the claim has become barred by adverse possession on the defendant's part. The Court of first instance found in favour of the several pleas advanced by defendant and dismissed the suit.

The lower appellate Court has decreed the claim, holding that the plaintiffs are the persons they represent themselves to be; but it is silent as to when and how those whom plaintiffs represent deserted their village; it holds that under the entry in the administration-paper Sahib Ram must be considered to have become trustee for the absconders, and no period of limitation will bar the suit against him, or against his representative, the defendant, who purchased at auction-sale his rights and interests.

This decision is clearly open to the objections taken in appeal. Accepting the finding that plaintiffs are representatives of Gobinda and Gopal, who at some time or other deserted their villages, in order to establish the fact that Sahib Ram and the others held their

1879

BANKY LAL
v.
SALIGA.

property as their trustees, there must be evidence that they accepted such a trust, and this fact cannot be taken as proved by a vague and general entry made in an administration-paper of a date subsequent to the relinquishment of the property by the absconders, and which refers to future years, to which Sahib Ram and the others were no parties, and which merely states in general terms that absconders from the village shall receive back their property on their return; and further, could such trust to Sahib Ram and the others be established, the claim is clearly barred by the limitation of twelve years, since the defendant is a purchaser in good faith for value from Sahib Ram and the others, and is not his representative within the meaning of s. 10, Act IX of 1871, and it is not shown that he bought with any notice of the trust.

We decree the appeal and reverse the decree of the lower appellate Court and dismiss the suit with all costs.

Appeal decreed.

1879
the 11.

CIVIL JURISDICTION.

Before Mr. Justice Spankie and Mr. Justice Oulfield.

KANTHI RAM (JUDGMENT-DEBTOR) v. BANKY LAL AND OTHERS (DEED-HOLDERS)*

Execution of Decree—Application to set aside sale of Immoveable Property—Auction-purchaser—Appeal—Act X of 1877 (Civil Procedure Code), ss. 311, 312, 313, 588 (m).

Held that, although the auction-purchaser may not apply under s. 311 of Act X of 1877 to have a sale set aside, he yet may be a party to the proceedings after an application has been made under that section, and then, if an order is made against him, he can appeal from such order under s. 588 (m) of Act X of 1877.

THE facts of this case, so far as they are material for the purposes of this report, were as follows: Certain property was sold on the 23rd August, 1878, in the execution of a decree against one Kanthi Ram and other persons. On the 6th September, 1878, the judgment-debtors applied to the Court of first instance to set aside the sale on the ground of material irregularities in publishing and conducting it. This application was opposed by Mangni Ram, the

* Application, No. 16B. of 1879, for revision of an order of W. Tyrrell, Esq., Judge of Bareilly, dated the 10th January, 1879.