

justify the plaintiff in claiming the ejectment of the trespasser. If the plaintiff's title was denied, he could certainly defend that title by claiming a declaration of his right; but, so long as he did not himself possess the right to enjoy physical possession, he could not eject the trespasser. I agree in the decree proposed.

AIKMAN J.—I also agree in the decree proposed and in the reasoning upon which that decree is based. It appears to me that the difficulty experienced by my brother Blennerhassett, which has prevented him from concurring in the judgment of the majority of the Court, would disappear if the distinction between the two kinds of possession which has been pointed out by the learned Chief Justice, and which is recognized by the Legislature in sections 263 and 264 of the Code of Civil Procedure, is borne in mind. If a person is wrongfully ousted from possession he is entitled to a decree replacing him in such possession as he had when his cause of action arose. If at that time he had a right to immediate, or what is called in this country *khas*, possession, then he is entitled to a decree replacing him in such possession. If, on the other hand, his possession was only derived from the enjoyment of the rents and profits, then the possession to which he is entitled is that provided for by section 264 of the Code.

BY THE COURT.—With these opinions the case will go back to the Bench which made the reference.

On the appeal being again laid before the Division Bench which had made the reference, that Bench (Edge C. J., and Blennerhassett, J.), on the 11th June 1896, made a decree in accordance with the opinion of the majority of the Full Bench.

APPELLATE CIVIL.

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June 12.

Before Mr. Justice Blair and Mr. Justice Banerji.

AMAR NATH (PLAINTIFF) v RAJ NATH (DEFENDANT).*

Civil Procedure Code, section 505—Receiver—Power of District Court under section 505 as to appointment of receiver.

The concluding words of section 505 of the Code of Civil Procedure—"or pass such order as it thinks fit"—must be read as controlled by the words

* First Appeal from order No. 35 of 1896, from an order of J. Denman, Esq., District Judge of Allahabad, dated the 18th April 1896.

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preceding them, and do not confer upon the District Court the power itself to appoint a receiver not nominated by the Subordinate Court.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri* and Babu *Satya Chandar Mukerji*, for the appellant.

Maulvi *Mahmud-ul-Hasan* for the respondent.

BLAIR and BANERJI, JJ.—This is an appeal from an order of the learned District Judge of Allahabad appointing a receiver of the property in suit in a case to which the present appellant and respondent are parties. That is a case which is pending in the Court of the Subordinate Judge. The learned Subordinate Judge had conceived the case to be one in which the property needed the exceptional protection provided for by section 503 of the Code of Civil Procedure. He considered the circumstances so exceptional that he considered it expedient to apply the exceptional remedy of appointing a receiver in the suit. He was not, however, empowered by law to make such an appointment himself without the sanction of the District Judge to whom he was subordinate. He accordingly forwarded to the District Judge a nomination of the person he considered fit for such appointment, and submitted that person's name with the ground for the nomination to the District Court. It was open then under section 505 to the District Judge to authorize the Subordinate Judge to appoint the person so nominated, or "pass such other order as the District Court thinks fit." It was contended before us on behalf of the appellant that these words in no way authorize a District Judge to nominate upon his own motion any person to be a receiver and himself to appoint such person as receiver. On the other hand, our attention was called to the wide generality of the words used. We think, however, that we ought to apply to this, as to other provisions of Acts, the principle that large general words should be read in connection with, and as qualified and restricted by, the more specific words which stand in collation with them. It seems to us therefore that the District Judge could either authorize or refuse to authorize the appointment of the person nominated, could regulate his functions as set forth

in section 503 at its discretion, or could determine whether the appointment of a receiver was at all expedient or necessary. We think that if the Legislature had intended to confer on a District Court the power of appointing without nomination by a Subordinate Court any person as receiver, appropriate words for that purpose would have been used in the Act. The expression used in section 505 is not that the District Court may appoint, but may authorize the Subordinate Judge to appoint. Those words, it seems to us, are inconsistent with the wide powers contended for by the respondent. The decision of the first point urged on behalf of the appellant renders the decision of the other points unnecessary. We allow the appeal and set aside the order of the District Judge with costs.

Appeal decreed.

Before Mr. Justice Banerji.

CHIRANJI LAL AND OTHERS (DECREE-HOLDERS) v. DHARAM SINGH

(JUDGMENT-DEBTOR).*

Mortgage—Prior and subsequent mortgages—Decree giving a defendant, second mortgagee, a right to redeem a prior mortgage within a fixed period Appeal—Limitation.

When a decree gives a right of redemption within a certain specified period with a certain specified result to follow if redemption is not made within such period, the mere fact of an appeal being preferred against it will not suspend the operation of such decree, and, unless the appellate court extends the period limited by the original decree, the right of redemption will be barred if not exercised within the period so limited. The principle in *Jaggar Nath Pande v. Jekhu Tewari* (1) applied.

THE facts of this case are fully stated in the judgment of Banerji, J.

Munshi *Gobind Prasad* for the appellants.

Babu *Jogindro Nath Chaudhri* for the respondent.

BANERJI, J.—This appeal arises out of proceedings relating to the execution of a decree passed in favour of the appellants. The facts of the case are these. One Moti Singh made a simple mortgage of some property in favour of one Durga Prasad in 1871.

* Second Appeal No. 889 of 1895, from a decree of Babu Bopin Behari Mukerji, Subordinate Judge of Aligarh, dated the 26th June 1895, reversing a decree of Babu Gauri Shankar, Munsif of Haveli, Aligarh, dated the 17th November 1894.

(1) I. L. R., 18 All., 223.

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