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"for the purpose of prejudicing" the man upon his trial. It is, as is justly stated in the reports, the law of England "with some modifications." The English Legislature passes an Act for the sole purpose of shielding an accused from prejudice. The Legislature in this country enacts a provision for the express purpose of prejudicing him.

Having thus ascertained that the peremptory language of the section was meant to have the full effect which the words do, no doubt, *prima facie* bear, we are relieved from the second difficulty which also oppressed us. It is in truth of the less consequence that the fact of previous convictions may have no possible bearing and constitute no possible guide upon the question of the truth of the charge at trial, because it is not for that purpose that they are admitted in evidence, but for another wholly different, and for which relevancy in the ordinary sense is immaterial.

We are constrained to answer this reference by saying that previous convictions are in every case admissible. That must be the law so long as this section remains unaltered.

We own that, could we have come to any other conclusion, we should have done so; but it is our duty to carry out the intentions of the Legislature.

T. A. P.

*Before Mr. Justice Mitter, Mr. Justice Prinsep, Mr. Justice Wilson,
 Mr. Justice Tottenham and Mr. Justice Norris.*

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GIRWAR SINGH, AND ON HIS DEATH SRIKISHEN SINGH, AND OTHERS
 (PLAINTIFFS) v. THAKUR NARAIN SINGH AND OTHERS (DEFENDANTS).*

Limitation Act, 1877, Arts. 132 and 147—Suit on a mortgage bond—English mortgage—"Mortgage" and "Charge"—Transfer of Property Act, ss. 58, 60, 67, 83, 86, 87—89, 92, 93, 100.

A suit on a mortgage bond to enforce payment by sale of premises hypothecated is governed by Art. 132 of the Limitation Act. *Brojo Lal Sing v. Gour Charan Sen* (1) overruled; *Shib Lal v. Ganga Prasad* (2) dissented from.

* Full Bench Reference in Regular Appeal No. 488 of 1885, against the decree of Baboo Ram Pershad, Rai Bahadur, Subordinate Judge of Patna, dated the 12th of August, 1885.

(1) I. L. R., 12 Cal., 111.

(2) I. L. R., 6 All., 551.

The clear distinction drawn for the first time between "mortgago" and "charge" in the Transfer of Property Act is not observed in the Limitation Act.

Article 147 of the Limitation Act relates to a special kind of mortgage known as English mortgage, and includes only that class of suits in which the remedy is either foreclosure or sale in the alternative.

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BATESWAR NATH and others executed a bond on the 15th June, 1865, in favor of Girwar Singh for a sum of Rs. 2,695-9-2, hypothecating a 5 annas 4 pie share of mouzah Rampore Gobind. The time stipulated in the bond for the repayment of the money was five years from the date of execution, that is, the 15th June, 1870. The share was afterwards sold in execution of a certain decree and purchased at auction by Thakur Narain Singh and others. Thereupon, on the 15th June, 1885, Girwar Narain brought a suit on his bond for payment of the sum of Rs. 9,126-11-5, due as principal and interest, by sale of the premises hypothecated to him in mouzah Rampore Gobind. Thakur Narain and others, the defendants, raised *inter alia* the plea of limitation, and it was contended that, upon the authorities of *Ramdin v. Kalka Prasad* (1) and an unreported case, *Sheo Churn Lal v. Ram Churn Singh* (Appeal No. 279 of 1881), decided by Mitter and Norris, JJ., the suit came under Art. 132 of the Limitation Act, and not having been brought within 12 years from the 15th June, 1870, was barred. The plaintiffs' pleader relied upon *Shib Lal v. Ganga Prasad* (2) and claimed the benefit of Art. 147 of the Limitation Act.

The Subordinate Judge, dissenting from the last-named decision of the Allahabad High Court, dismissed the suit.

The plaintiff appealed to the High Court.

Baboo *Saligram Singh* for the appellant.

Baboo *Mohesh Chunder Chowdhry* and Baboo *Karuna Sindhu Mookerjee* for the respondents.

The Court (WILSON and PORTER, JJ.) referred the case to a Full Bench with the following opinion :—

This is a suit upon a mortgage bond, the object being to obtain satisfaction of the money by sale of the lands hypothecated.

(1) I. L. R., 7 All., 502 ; L. R., 12 I. A., 12.

(2) I. L. R., 6 All., 551.

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The bond was dated the 15th June, 1865; the money was payable within five years, which expired on 15th June, 1870, and the suit was instituted on the 15th May, 1885. The Subordinate Judge dismissed the suit as barred by limitation, and against that decision the plaintiff has appealed. Under the Limitation Act (IX of 1871), which was in force prior to the present Act (XV of 1877), it was well settled that a suit upon a mortgage bond, if it sought a personal decree, was governed in respect of limitation by the rules relating to bonds, or as the case might be, and if it sought a decree against the land, by Art. 132 of the schedule, which fixed 12 years as the period of limitation for suits "for money charged upon immovable property." For this it is not necessary to do more than refer to the Privy Council decision, *Ramdin v. Kalika Prasad* (1). The Act of 1877 has slightly altered the language of Art. 132 by speaking of suits "to enforce payment of money charged upon immovable property" instead of "for money charged." And it has added a new Art. 147, which says that, for a suit "by a mortgagee for foreclosure or sale," the period of limitation shall be 60 years from the time "when the money secured by the mortgage becomes due." It is contended for the appellant that the present suit is governed by Art. 147, and that he has 60 years from the 15th June, 1870, within which to bring his suit; and there is authority in support of that contention. In *Shib Lal v. Gunga Pershad* (2) it was held by a Full Bench of the Allahabad Court that such a suit is governed by Art. 147, and that 60 years is the period of limitation. The view of the learned Judges, if we rightly follow it, seems to be that a suit for sale by a mortgagee is governed by Art. 147, Art. 132 applying to charges not amounting to mortgages. The same view of the law was taken by Prinsop and O'Kinealy, JJ., in *Brojo Lal Sing v. Gour Charan Sen* (3). On the other hand, in *Lallubhai v. Nuran* (4), it was held by three Judges of the Bombay Court that s. 132 does apply to cases of mortgage, and applies also to suits for a personal decree. The latter of these propositions was distinctly dissented from by some at least of the Judges in the Allahabad Full Bench case just

(1) I. L. R., 7 All., 502; I. R., 12 I. A., 12. (3) I. L. R., 12 Calc., 111.

(2) I. L. R., 6 All., 551.

(4) I. L. R., 6 Bom., 719.

referred to. In *Davani Ammal v. Ratna Chetti* (1) a Division Bench at Madras appears to have accepted both the propositions of the Bombay Court. In *Aliba v. Nunu* (2) another Bench at Madras refused to follow the Allahabad Full Bench, and held that Art. 132 governed a suit upon a mortgage bond to recover the mortgage money by sale of mortgaged property. In an unreported case (Appeal No. 279 of 1881) on the 21st June, 1882, Mitter and Norris, JJ., treated it as clear that such a case as the present is governed by Art. 132, and the reasoning of the Privy Council in the case already referred to, *Ramdin v. Kalka Prasad* (3), though directed to the Act of 1871, seems equally applicable to the Act of 1877. We are not inclined to think that Art. 147 has the wide operation attributed to it by the Allahabad Court. We are rather disposed to hold that it refers to the common form of suit upon an English mortgage in which the plaintiff is entitled to claim, and ordinarily does claim "foreclosure or sale" in the alternative. A mortgage in the English form was in 1877 the only mortgage upon which such a suit could be brought, and under s. 67 of the Transfer of Property Act it seems to be so still. In such Acts as the Limitation Act, forming a connected series, we think the presumption is strong against the intention to make a sudden and unexplained departure from the general line of policy running through the whole series; and that policy as to mortgages is to keep the right of suit within narrow limits of time. We think too that in such Acts mere changes of phrase not obviously involving changes of meaning ought not to be so treated as to alter the substance of the law. We are, therefore, inclined to think that, except so far, if at all, as s. 147 may have altered the law in the case of mortgages in the English form, the law of limitation applicable to suits to enforce mortgages remains the same as it was under the Act of 1871 and as it was explained by the Privy Council in the case above cited. We desire to refer to the Full Bench the question whether this suit is barred by limitation.

Before the Full Bench :

Baboo *Saligram Singh* for the appellant.—The case falls under

(1) I. L. R., 6 Mad., 417. (2) I. L. R., 9 Mad., 218.

(3) I. L. R., 7 All., 502 ; L. R., 12. I. A., 12.

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Art. 147. It is the case of a mortgage as defined in the Transfer of Property Act. It is a simple mortgage. Art. 132 deals with charges. The provisions in parts of the Civil Procedure Code and the Limitation Act were made in anticipation of the Transfer of Property Act—see the observation of Pigot, J., in *Shurnomoyee Dasi v. Srinath Das* (1). At the time when the Limitation Act was under consideration the Bill relating to the Transfer of Property Act was before the Council. These Articles should be construed by the light of ss. 58, 60, 67, 83, 86, 87, 88, 89, 92, 93 and 100 of the Transfer of Property Act. Article 147 has effected a change in the old law; cases against me were decided in inadvertence of the change effected. The decisions of all the High Courts are substantially in my favor. The Punjab Court has held in the same way—*Gujar Mull v. Ilaiichi Ram* (2); Rivaz's Limitation Act, 276.

Baboo Mohesh Chunder Chowdhry for the respondent.—It has been settled that the words used in Art. 132 of the Limitation Act of 1871 include simple mortgages. There is no marked change in the corresponding Article of the present Act. The effective words in both the Articles, “money charged upon immovable property,” are identical. Article 132 of the present Act must include a simple mortgage unless there is anything to the contrary in any other Article. Is 147 that Article? The word “mortgagee” in 147 does not imply all kinds of mortgages; it is not used in a generic sense. It cannot be said, for instance, that usufructuary mortgage is implied by that word. Article 147 includes only a particular class of mortgages, namely, that defined in s. 58, cl. (e) of the Transfer of Property Act. Art. 132 is the Article that applies to this case. All the judgments against me proceed on the ground that the term “mortgagee” in Art. 147 is intended to include all sorts of mortgages.

The judgment of the Full Bench was delivered by

MITTER, J. (PRINSEP, WILSON, TOTTENHAM and NORRIS, JJ., concurring).—The question referred to the Full Bench is substantially this: Whether the present suit falls under Art. 132 or Art. 147 of the present Limitation Act. Article 132 provides that, for a suit to enforce payment of money charged

(1) I. L. R., 12 Cal., 614.

(2) Punjab Rec. No. 19 of 1885.

upon immovable property, the period of limitation should be 12 years from the time when the money sued for became due. Article 147 says that, for a suit by a mortgagee for foreclosure or sale, the period of limitation shall be 60 years from the time when the money secured by the mortgage became due. The plaintiff in this suit seeks to recover money secured by simple mortgage of certain immovable property by the sale thereof. The mortgage was created by a bond, by which the debtor also personally covenanted to repay the money but within a stipulated time. It would be useful to see what were the periods of limitation prescribed for a suit of this description in the two previous Limitation Acts. It is not disputed that under both these Acts the period of limitation was 12 years—see *Jonessur Das v. Mohabir Singh* (1); *Ramdin v. Kulka Prasad* (2). In the Limitation Act of 1871 there was no Article corresponding to Art. 147 of the present Act; and the Art. 132 of that Act with slight modification has been re-enacted in Art. 132 of the present Act. Instead of the words “to enforce payment of money charged upon immovable property” it contained the words “for money charged upon immovable property.” The addition of the words “to enforce payment of money” indicates that the Article would not apply to a suit for money charged upon immovable property *when the payment of the money is not sought to be enforced upon the property hypothecated*. The modification therefore does not at all affect the question before us. The class of suits now under consideration was therefore described in the Act of 1871 as a suit for money *charged upon immovable property*. The contention of the (plaintiff) appellant before us is that, although in Art. 132 of the present Act the same expression, *viz.*, “money charged upon immovable property,” has been used, yet the Legislature intended to exclude this class of suits from it, and to include it under Art. 147, which has been for the first time introduced into the Act. This contention is, in my opinion, not sound. It seems to me to be an unreasonable contention that, although the Legislature intended to exclude from Art. 132 of the present Act this class of suits, yet, in

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(1) L. R., 3 I. A., 1; I. L. R., 1 Calc., 163.

(2) I. L. R., 7 All., 502; L. R., 12 I. A., 12.

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describing the nature of the suits covered by it, they did not make any material alteration in the language which they had used for that purpose in Art. 132 of the Limitation Act of 1871. If the Legislature intended to alter the law they would have expressed their intention by altering the language of Art. 132, and not by simply introducing a new Article which again would not include the class of suits under consideration unless the word "or" in the expression "by a mortgagee for foreclosure or sale" be read in the distributive sense. The contention of the appellant therefore amounts to this. The Legislature intended to modify the provisions of the law laid down in Art. 132 of the Act of 1871. They have carried out their intention, not by making any change in the corresponding Article of the present Act, but by introducing into it a new Article couched in a language which, unless the word "or" be read in the distributive sense, would not indicate the change at all. It is hardly necessary to say that such a contention as this cannot be accepted as sound unless supported by the most convincing reasons. The contention also involves another equally unreasonable conclusion. Under the Acts of 1859 and 1871 the law of limitation governing suits by mortgagees under *kut-kobala* or bill of conditional-sale was as follows: Where a *kut-kobala* gave to the mortgagee the right to recover possession on default of payment, the period of limitation for a suit based upon this stipulation was 12 years—see *Brojonath Koondoo Chowdhry v. Khebut Chunder Ghose* (1); Art. 135 of the Act of 1871. In Courts not established by Royal Charter in the Presidency of Bengal the period of limitation for a suit for possession of the mortgaged property, upon the conditional-sale becoming absolute under the provisions of Regulation XVII of 1806, was 12 years from the date when the sale became absolute—*Ghimaram Dobej v. Ram Monaruth Dobej* (2); *Modun Mohun Chowdhry v. Ashad Ally Beparee* (3). But in cases where the right of the mortgagee has been extinguished by the law of limitation the proceedings under Regulation XVII of 1806 did not give a fresh start—see *Modun Mohun Chowdhry v. Ashad Ally Beparee* (3). Now in the year 1877, when the present Act was

(1) 14 Moore's I. A., 144; 8 B. L. R., 104.

(2) 7 C. L. R., 580.

(3) I. L. R., 10 Calc., 68.

passed, foreclosure suits were not known in the Courts not established by Royal Charter in the Bengal Presidency. In the year 1877 therefore suits under *kut-kobalas* or conditional bills-of-sale for possession of mortgaged property were not covered by Art. 147. The period of limitation for such suits, which was 12 years under the Act of 1871, was consequently not altered under the new Act. The contention of the appellant therefore involves this unreasonable conclusion, that the Legislature kept up the shorter period of limitation, *viz.*, 12 years for *kut-kobalas*, a higher class of mortgage, and extended the period of limitation from 12 to 60 years for an inferior kind of mortgage, namely, hypothecation of immovable property in a bond. But, as already stated, if the word "or" be not read distributively, these unreasonable conclusions are avoided. The Article would then include only that class of suits in which the mortgagee would be entitled to either of the remedies, *viz.*, foreclosure or sale in the alternative, *i.e.*, suits based upon what is usually called an "English mortgage." I have carefully considered the reasons given in support of the appellant's contention in the decisions cited before us, and with deference to the opinion of the learned Judges who decided them I am unable to concur in their conclusion.

The most important case in support of this contention is a Full Bench decision of the Allahabad High Court, *Shib Lal v. Gunga Prasad* (1). The first ground upon which this decision proceeds is that, as under Art. 147 the Legislature has allowed 60 years to a mortgagor to redeem a simple mortgage, it would be reasonable to suppose that they have allowed the same period to the mortgagee to bring a suit for sale. It seems to me that in the year 1877, when the new Act was passed, a suit for redemption by a mortgagor under a simple mortgage was wholly unnecessary, and therefore unknown. It cannot, therefore, be said that under Art. 147 the period of limitation of 60 years was allowed to a suit for redemption by a mortgagor under a simple mortgage who did not stand in need of such remedy at all. Suits for redemption were necessary only when the possession of the mortgaged premises was to be recovered from the mort-

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gagee, or when it was necessary to obtain a reconveyance of the mortgaged property, it having been previously conveyed to the mortgagee. Moreover, under the Acts of 1859 and 1871, the policy of the Legislature was to give to the mortgagor a period of limitation for redemption longer than that allowed to the mortgagee for enforcing his remedy. There is no valid reason suggested to show that there was any necessity for a departure from this policy.

The second reason assigned in the judgment is expressed as follows: "When Art. 147 of the Limitation Act speaks of a suit by a mortgagee for sale, why should we go out of our way to hold that it does not cover a case in which the plaintiff in his relation towards the defendant legally and to all intents and purposes stand in the position of a mortgagee." I have already stated the grounds upon which it seems to me that the present suit does not fall under this Article. They are substantially two, *viz.*, (a) there is no material alteration in the language of Art. 132; (b) certain unreasonable consequences follow if we bring this class of cases within Art. 147.

The third reason upon which the judgment of the Allahabad Court proceeds is that, as the Bill, which subsequently became the "Transfer of Property Act," was pending before the Legislature in the year in which the present Limitation Act was passed, it would be reasonable to infer that the Legislature used the word "charge" in Art. 132 in the same sense in which it is used in the "Transfer of Property Act." The learned Officiating Chief Justice who delivered the main judgment was further of opinion that probably the distinction which has been drawn in the "Transfer of Property Act" between a "charge" and a "mortgage" is nothing more than a crystallisation of the principle enunciated in the many decisions of the Courts delivered upon the subject. It seems to me to be more probable that the Legislature in Arts. 132 and 147 used these expressions in the sense in which they were then ordinarily used than in the sense in which they were used in a Bill which was then pending before them, and which Bill might or might not become law thereafter. The distinction between "mortgage" and "charge" was for the first time drawn by a clear line of demarcation in

the "Transfer of Property Act." For example, speaking of the class of mortgage now under our consideration, Sir Barnes Peacock, C.J., in delivering his judgment in the Full Bench decision in *Surwar Hossein Khan v. Gholam Mahomed* (1), characterised it as a "charge" upon immovable property. In *Ramlin v. Kalka Prasad* (2), their Lordships of the Judicial Committee assumed that the word "charge" included a simple mortgage. There are several cases under Art. 132 of the Limitation Act, 1871, in which a simple mortgage has been described as a *charge* upon immovable property. I am of opinion that, instead of referring to a Bill as to which it was uncertain whether it would be passed into law or not, it would be quite legitimate to refer to the forms of plaint given in the Procedure Code of 1877, which was passed in the same Session of the Legislature. No. 109 of the fourth schedule of the Code is a form of a plaint in a suit for foreclosure or sale, and it would appear from the contents of that form that it would apply only to a suit brought upon what is called an English mortgage. Mr. Justice Oldfield referred to this form in his judgment, but it seems to me that the form in question does not apply to a suit to be brought by a simple mortgagee for the sale of the mortgaged premises.

The last ground upon which the Allahabad Full Bench decision is based is that, as in the year 1877 suits by mortgagees for foreclosure or for sale were unknown to the Courts, it would not be unreasonable to refer to ss. 87 and 88 of the Transfer of Property Act for their explanation. But a suit for foreclosure or sale was not altogether unknown in 1877. A suit of this description was not uncommon in Courts in this country which administered the English law of mortgage, that is, the Courts exercising the original jurisdiction in the Presidency towns. It was a defect in the Limitation Act of 1871 that there was no Article in express language applicable to a suit of this description. Consequently in a case of *Ganpat Pandurang v. Adarji Dadabhai* (3), it was contended that the period of limitation applicable to a suit of this description was six years under the sweeping clause of the Limitation Act. It seems to me that in

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(1) B. L. R. Sup. Vol., 879; 9 W. R. 170.

(2) I. L. R., 7 All., 502; L. R., 12 I. A., 12. (3) I. L. R. 3 Bom., 312.

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order to remedy this defect the Art. 147 was for the first time introduced into the present Limitation Act. The other cases cited by the learned pleader for the appellant merely follow the Allahabad Full Bench decision. I am of opinion that the present suit is governed by Art. 132 of the present Limitation Act, and is consequently barred. The result will be that the appeal will be dismissed with costs.

Appeal dismissed.

K. M. C.

PRIVY COUNCIL.

P. C.*
1887
March 10
& 11.

ANANGAMANJARI CHOWDHIRANI AND OTHERS (PLAINTIFFS) v.
TRIPURA SUNDARI CHOWDHIRANI AND OTHERS (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

Title, Evidence of—Presumption arising from Possession—Issue as to identity of land re-formed on a site formerly submerged.

In a suit for the possession of a chur, formerly carried away and afterwards re-formed upon its former site, the issue was whether the land belonged to the plaintiffs or to the defendants. This issue was found in favor of the plaintiffs by the first Court; and the Appellate Court, finding that the plaintiffs had been in possession for more than twelve years, concluded that, at all events, they had a title by adverse possession. On an appeal, the High Court considered that the latter decision was not upon the issue raised, the plaintiff's claim being founded on an original title to the site of the chur—a title denied by the defendants; and remanded the suit for judgment on this issue, whereupon the Appellate Court maintained the judgment of the first Court in favor of the plaintiffs, finding on the evidence that the land belonged to the plaintiffs.

Upon a second appeal the High Court reversed the decree of the Appellate Court, and dismissed the suit, on the ground that there was an entire absence of evidence as to which party was entitled at the date to which the dispute related. *Held*, that this was erroneous. On a question of parcel or no parcel, when possession has been established for a period, there is not an entire absence of evidence of anterior ownership, because *presumitur retro*.

APPEAL from a decree (3rd April, 1882) of a Divisional Bench of the High Court, reversing a decree (12th April, 1881) of the District Judge of Pubna.

* *Present*: LORD WATSON, LORD FITZGERALD, and SIR B. PEACOCK,