

respondents under the order appealed from. The appellant will get her costs in both courts.

1916

*Appeal allowed.*

PIARI LAL  
v.  
HANIF-UN-  
NISSA BIBI.

## FULL BENCH.

*Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Tudball,  
and Mr. Justice Muhammad Rafiq.*

SHAMBHU SINGH (PLAINTIFF) v. DALJIT SINGH AND OTHERS  
(DEFENDANTS).\*

1916

*February, 17.*

*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 233,  
clause (k)—Civil and Revenue Courts—Jurisdiction—Partition—Land  
of a third party alleged to be wrongly included in a pattā formed by im-  
perfect partition—Suit for recovery of possession in Civil Court.*

Where land belonging to one *pattā* was, apparently by mistake and without notice to the person who claimed to be the rightful owner thereof, included in another *pattā* and made the subject of an imperfect partition, it was held that the person who claimed to be the owner of the land so dealt with was not debarred by section 233 (k) of the United Provinces Land Revenue Act, 1901, from suing in the Civil Court to have his right to the land declared and to recover possession thereof. *Muhammad ḡ Sadiq v. Laute Ram* (1) distinguished.

*Quære* whether section 233 (k) of the United Provinces Land Revenue Act, 1901, applies at all to an imperfect partition.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case are set forth in the judgement under appeal, which was as follows:—

“The question for determination in this appeal is whether this suit was barred by the provisions of sections 233 (k) of the United Provinces Land Revenue Act, Local Act No. III of 1901. According to that section the Civil Court is debarred from taking cognizance of any suit with regard to partition or union of mahals. The section itself is drawn up in broad terms and it has been applied broadly by this Court ever since the Full Bench decision in *Muhammad Sadiq v. Laute Ram* (1). That decision was under the former Land Revenue Act No. XIX of 1873, the wording of which differed somewhat. The provisions of section 233 (k) as they now stand, were considered by two Judges of this Court in *Lachman Das v. Hanuman Prasad* (2). I understand that ruling as laying down the broad principle that where there has been a partition of a certain mahal by a Revenue Court, resulting in a certain distribution of the lands of that mahal being effected, if any error has been

\* Appeal No. 94 of 1915, under section 10 of the Letters Patent.

(1) (1901) I. L. R., 28 All., 291. (2) (1910) I. L. R., 33 All., 169.

1916

SHAMBHU  
SINGH  
v.  
DALJIT  
SINGH.

made in connection with this distribution to the prejudice of a particular co-sharer, the remedy of the latter is by way of application to the Revenue Court itself to correct its own mistake. Any exercise of jurisdiction on the part of a Civil Court which would disturb, or in any way affect, the distribution of land made on a partition, is barred by section 233 (b) of Act III of 1901. The facts of the present case are given at length in the very careful judgement of the learned Munsif. It appears that the mahal with which we are concerned had been divided by perfect partition in the year 1875. A number of *pattis* had been formed, one of which, *patti* No. 9, was known as *patti shamilat*, and consisted of those lands which had not been divided amongst the co-sharers, that is to say, the joint lands in which all the co-sharers of the various *pattis* retained their rights according to their proportionate shares. In the year 1904, Daljit Singh, who is the defendant in the present case, presented an application for the separation, by perfect partition, of his share in *patti* Nos. 4 and 5 and also of his share in *shamilat patti* No. 9. Notice of this application was issued to all the co-sharers of all the various *pattis* in the mahal. The Assistant Collector, however, came to the conclusion that there were objections to a perfect partition, and intimated as much to Daljit Singh. The latter thereupon presented a fresh application on the 25th of March, 1905, asking the court to separate his share by imperfect partition only, thus forming it into a new *patti*. The learned District Judge seems to have felt some doubt as to whether on this application any actual partition of the lands appertaining to the *shamilat patti* No. 9 could have followed, or actually did follow. Obviously, when Daljit Singh's application was limited to one for imperfect partition, no actual partition of the lands appertaining to the *patti shamilat* would follow. A new *patti* would be created by separating Daljit Singh's share in lands appertaining to *pattis* Nos. 4 and 5 from those of the other co-sharers in the same *pattis*. In the course of carrying out this imperfect partition the Assistant Collector laid hold of a plot, .69 of an acre in area, shown as No. 1956 in the village map. He treated this as appertaining to *patti* No. 4 and divided it amongst the co-sharers of that *patti*: assigning to the defendant appellant, .49 acre as his share in the same. The plaintiff in this case, Shambhu Singh, has acquired since the partition the proprietary rights which belonged in the years 1904 and 1905, to a co-sharer named Dular Singh. He contends that plot No. 1956 above referred to never appertained to *patti* No. 4 at all, but formed part of the land appertaining to *patti* No. 2, in which Dular Singh was a co-sharer. He suggests that the proceedings of the Assistant Collector dealing with this plot in the course of the partition of 1905 were a pure mistake. The courts below have gone into the question of fact. Apparently it was not a question which could be settled off-hand on a mere inspection of the village records. It turned upon a comparison of the existing village records with the older papers and the ascertainment and location of the older numbers which went to make up plot No. 1956 in the present village map. The courts below have, however, found that plot No. 1956 did appertain to *patti* No. 2 and was wrongly included by the Assistant Collector in *patti* No. 4 and partitioned amongst the co-sharers of that *patti*. Assuming that this finding is correct, the plaintiff has suffered an injury, but

1916

---

 SHAMBHU  
SINGH  
v.  
DALJIT  
SINGH.

the question remains whether his remedy is by way of suit in a Civil Court, or, as was said in the ruling to which I have already referred, by way of application to the Revenue Court to correct its own mistake. Both the learned Munsif and the learned District Judge have taken the view that the case stood on an entirely different footing from the moment that Daljit Singh applied to the Revenue Court to separate his share from the rest of the mahal by imperfect instead of by perfect partition. It certainly cannot be denied that if the proceedings had continued on the application for perfect partition as originally brought, and the Assistant Collector had, however erroneously, taken this plot of land and divided it amongst the co-sharers in *patti* No. 4, a suit would not have been maintainable in the Civil Court to disturb that apportionment. I understand the District Judge to mean that the sharers in the remaining *pattis* other than *pattis* Nos. 4 and 5, ceased to have any interest in the partition, or to be under any obligation to watch the proceedings in the Assistant Collector's Court, from the moment that Daljit Singh's application was limited to an application for imperfect partition. The only reported case I can find which lends some support to the decision of the courts below is that of *Kishen Prasad v. Kalker Mal* (1), which was a single Judge case. So far as I can discover from the reported cases of this Court, it has only once been considered by a Bench of this Court, and that was in *Jagan Nath v. Tirbeni Sahai* (2). It was then distinguished, though not expressly dissented from. It seems to me that the plaintiff is not entitled, in the present case, to ask the Court, to treat the Assistant Collector's proceedings as a nullity. On Daljit Singh's application for partition the Assistant Collector had to ascertain what lands belonged to *pattis* Nos 4 and 5 and to apportion them between the recorded co-sharers of the said *pattis*. He would have to do this equally on an application for imperfect partition as on an application for perfect partition. It may be that the Assistant Collector came to an erroneous decision when he included this plot No. 1956 in the area which he proceeded to apportion amongst the co-sharers of *patti* No. 4. Nevertheless he did so, and it seems to be impossible to say that he had no jurisdiction to do so. This case is really distinguishable from that of *Kishen Prasad v. Kalker Mal* (1), because in the present case all the co-sharers in the *shamilat patti*, including the proprietors of *patti* No. 2, had notice of the partition proceedings. I am not sure that I should myself have been disposed to regard this as in itself decisive, but it seems to me that I am bound to follow the general principle laid down in *Lashman Das v. Hanuman Prasad* (3), unless something can be shown to take the case before me outside the operation of that principle. In my opinion this appeal must succeed. The suit was not cognizable by reason of the provisions of section 233 (k) of the Land Revenue Act and should have been dismissed accordingly. I accept this appeal, and setting aside the decrees of both the courts below dismiss the plaintiff's suit with costs throughout."

The plaintiff appealed.

(1) Weekly Notes, 1900, p. 11. (2) (1908) I. L. R., 31 All., 41.

(3) (1916) I. L. R., 33 All., 169.

1916

SHAMBRU  
SINGH  
v.  
DALJIT  
SINGH.

Pandit *Kailas Nath Katju* (with The Hon'ble Dr. *Tej Bahadur Sapru*), for the appellant:—

The present suit is a suit against a person who is in possession of the plaintiff's land. He is only a trespasser. Section 233 (k) of the Land Revenue Act does not bar a suit by a rightful owner against a trespasser, although the effect of it may be to upset a partition. The learned Judge of this Court relies upon the case *Muhammad Sadiq v. Laute Ram* (1) but the underlying principle of that case is that persons who were no parties to partition proceedings are not bound by them. The present plaintiff was not interested in *patti's* 4 and 5 and could not have been and was not made a party to the partition proceedings of 1905. That partition cannot therefore bind him; *Dharam Singh v. Ram Dayal Singh* (2) *Bhagwati Prasad v. Bhagwati Prasad* (3). The case on all fours with the present case is *Kishen Prasad v. Kadher Mal* (4), which was followed in 1914 by Mr. Justice SUNDAR LAL in *Dharam Singh v. Ram Dayal* (2).

Munshi *Gulzari Lal*, for respondent:—

The bar created by section 233 (k) of the Land Revenue Act is an absolute bar for any relief which may have the effect of undoing a partition. No doubt it is unjust to bind a person by a decree or order to which he was not a party. But the law lays down that whenever a person has an opportunity of filing objections and does not file them he will be deemed to be a party to the proceedings. The procedure is laid down by sections 106, 107, 111, 112 of the Land Revenue Act. All we have to see is whether the plaintiff had an opportunity of filing objections. When an application is made notice is issued to all the co-sharers in the mahal whether the application is for perfect or imperfect partition. This must have been done in the present case. The plaintiff must be deemed to be a party to the partition proceedings. The old Act (XIX of 1873) section 241 laid down that a partition could not be disturbed at the instance of a person who was a party to the proceedings but the new Act section 233 (k) does not lay down any such limitation. When the effect of a suit is to disturb a partition the courts, under the new

(1) (1901) I. L. R., 23 All., 291.

(3) (1912) I. L. R., 35 All., 126.

(2) (1914) 12 A. L. J., 1126.

(4) Weekly Notes, 1900, p. 11.

Act, cannot entertain it. The learned Judge of this Court has rightly dismissed the suit which is governed by the case of *Lachman Das v. Hanuman Prasad* (1).

The appellants were not called upon to reply.

RICHARDS, C. J.—This appeal arises out of a suit in which the plaintiff claims a declaration of his title to and possession of a certain plot of land. The case will be found reported in 13 A. L. J., 779. It is only necessary to shortly sum up the facts which have been found by both the courts below. In a particular mahal there were nine *pattis* formed in the year 1875. *Patti* No. 9 was a *shamilat patti* common to all the co-sharers. In course of time *patti* No. 2 became the property of plaintiff. The defendant was a co-sharer in *pattis* Nos. 4 and 5 and also in the *shamilat patti* No. 9. The plaintiff, or his predecessor in title, had no share in *pattis* Nos. 4 and 5. In 1904, the defendant made an application for perfect partition in the Revenue Court. He asked that a separate mahal might be made of his share in *pattis* Nos. 4 and 5 and also in No. 9. For some reason or another this application was dropped and a fresh application was made for imperfect partition in the year 1905. There is nothing to show whether or not the predecessor in title of the plaintiff, Dular Singh, ever got notice of this second application. It resulted in a separate *patti* being formed of the defendant's share in *pattis* Nos. 4 and 5, the *shamilat patti* remaining unpartitioned. The plaintiff instituted the present suit, alleging that in the partition made on the second application of the defendant, a portion of his *patti* No. 2 was erroneously brought into the defendant's new *patti*. He accordingly claimed a declaration of his title to the plot and possession if he should be found out of possession. Both the courts agreed that there was a mistake and that portion of the plaintiff's land was by mistake given to the defendant. The first two courts decided in his favour. A learned Judge of this Court held that the suit was barred by the provisions of section 233, clause (k), of the Land Revenue Act of 1901. That section provides that no person shall institute any suit or other proceeding in the Civil Court *with respect to partition or union of mahals except as provided in sections 111 and 112*. Sections

1916

SHAMBRU  
SINGH  
v.  
DALJEET  
SINGH.

1916

SHAMBHU  
SINGHv.  
DALJIT  
SINGH.

111 and 112 provide that if in partition proceedings in the Revenue Court questions of title arise, the Collector may, if he thinks fit, try the question himself in which case he is to adopt the procedure therein mentioned and his decree is deemed the decree of the Civil Court. It seems to me extremely difficult to hold that the present suit is a suit "with respect to partition or union of mahals." It is admitted that, if the very same suit was brought by a person who had not received notice or by reason of his not being a recorded co-sharer was not a party to the partition proceedings, his suit would not have been barred by section 233 (k). But it is said that the section is a bar to the suit if the plaintiff was a party to the partition proceedings in the Revenue Court. I have great difficulty in seeing how a suit is a suit "in respect of partition" if brought by one person while it is not a suit "in respect of partition" if brought by another. The suit, if brought by a person who was not a party to the Revenue Court proceedings, affects the partition neither more nor less than it would if he was a person who was a party to the Revenue Court proceedings. It would disturb or upset the recent partition as much and as little in the one case as in the other. The section deals with suits of a particular nature, not with the parties to it. One has to carefully bear in mind the distinction between holding that the suit is a suit which the plaintiff cannot institute in the Civil Court and holding that the proceedings in the Revenue Court are a defence to the suit. If the suit is one which cannot be instituted, it is at once thrown out on the ground that the Civil Court has no jurisdiction to hear it. It is quite a different matter if, after the case had been heard, the court finds that the proceedings in the Revenue Court disclose a defence to the suit, for example, on the ground of *res judicata*. The facts of the present case seem to me to illustrate how dangerous it would be to hold that a suit like the present could not be instituted in the Civil Court, and in this connection I may remark that a party has a right to institute in the Civil Court any suit which he is not by the Legislature in clear terms prevented from instituting. In my opinion, under the circumstances of the present case, we are entitled and bound to treat the second application which was made by the defendant in the year

1905, as an application for the partition of *pattis* 4 and 5 alone. These were the only two *pattis* which were, as a matter of fact, dealt with in the partition. This being so, the present plaintiff or his predecessor in title was in no way interested in the manner in which *pattis* 4 and 5 were partitioned. The plaintiff's predecessor in title had no share in *pattis* 4 and 5 and the applicant for partition had no share in *patti* No. 2, which belonged to the plaintiff's predecessor in title. It seems to me that the plaintiff was not even a necessary party to this second application in so far as it was for the partition of *pattis* 4 and 5. He would only be a necessary party to a partition which was for the division of the property in which he was concerned. In my opinion the present suit was not barred by the provisions of section 233, clause (k), of the Land Revenue Act, and, as the findings are in favour of the plaintiff, I think the decree of the lower appellate court ought to be restored. I would allow the appeal.

I may add one word about the case of *Muhammad Sadiq v. Laute Ram* (1). It seems to me that the plaintiff was there asking the Civil Court to partition what was part and parcel of the property which could only be partitioned by the Revenue Court.

TUDBALL, J.—I fully agree. Partition means, as pointed out in section 106 of the Revenue Act, division not only of a mahal but also a part of a mahal. In the present case what was actually partitioned on the basis of the application of the 25th of March, 1905, was a part of the mahal in which the present plaintiff, or his predecessor in title, had no concern. It was immaterial to him how the land of those two *pattis* was divided amongst the co-sharers therein. What seems to have happened is that in dividing the land of those two *pattis* the partition court erroneously thought that a certain plot was within the boundaries of those two *pattis* and took it into consideration in the partition. Of that fact the plaintiff, or his predecessor in title probably had not the slightest information at all. It was only when the plaintiff's possession began to be disturbed that he had any knowledge of what had occurred. He has

1916

---

 SHAMBU  
SINGH  
v.  
DALJIT  
SINGH.

1916

SHAMBRU  
SINGH  
v.  
DALWIT  
SINGH.

come into court with the present suit, which in substance and in form is a simple suit for possession of land on the basis of title on the allegation that certain persons who had no title thereto had trespassed on it and some had taken it into their possession. I believe that, as a matter of fact, he made no objection to the partition proceedings nor was it necessary for him to do so. In my opinion in the circumstances of this case it is utterly impossible to say that the suit is a suit in respect of the partition of *pattis* Nos. 4 and 5. It is really a suit in respect of the trespass committed by certain persons on property to which they had no title whatsoever. In the course of the arguments attention has been called to the decision of this Court in *Muhammad Sadiq v. Laute Ram* (1) and great stress has been laid upon certain remarks to be found in the judgement therein. The facts of that case were simple. There was a partition. All the co-sharers were parties to that partition. The lands constituting the mahal were actually divided among the co-sharers. On some of the lands stood some trees. The plaintiff in that case came forward with a civil suit for the partition of the trees on the allegation that the Revenue Court had not, as a matter of fact, partitioned the trees and moreover had no jurisdiction whatsoever to partition the trees. Therefore he asked for division of the trees among the persons concerned. This Court held and I think rightly that the Revenue Court had jurisdiction to divide up not only the land but also the trees upon it, and that it had actually divided both the land and the trees. The suit was one which was barred by section 241 (f) of the old Land Revenue Act, which deprived the Civil Court of any jurisdiction in a matter relating to the distribution of the land among the co-sharers. In my opinion the case was rightly decided on the facts thereof, and any remarks which are to be found are to be read in conjunction with the facts and circumstances of that case and they are not to be taken out of their setting and placed apart as being general principles which will govern the facts and circumstances of every other case.

In my opinion the decision of the courts below was correct and I would allow the appeal.



MUHAMMAD RAFIQ, J.—I am also of opinion that this appeal should prevail. The appeal is on behalf of the plaintiff and the question for decision is whether his claim is barred by the provisions of section 233, clause (k), of the United Provinces Land Revenue Act (Local Act No. III of 1901). In order to determine the question it is necessary to recite some of the facts which are either admitted or proved. It appears that as long ago as 1875, a partition took place through the Revenue Court between the co-sharers of the mahal under which it was divided into several *pattis*, one of which, *patti* No. 9, was known as *potti shamilat*. *Patti* No. 2 was awarded to one Dular Singh, the predecessor in title of the plaintiff, and *pattis* Nos. 4 and 5 were allotted to Daljit Singh defendant and some others. In 1905, Daljit Singh applied for separation of his share out of *pattis* Nos. 4 and 5 as also out of the *shamilat patti* No. 9 by perfect partition. On the application of Daljit Singh notices were issued to all the co-sharers of the *pattis* in the mahal. The Assistant Collector, however, declined to make a perfect partition, expressing an opinion that he would, if so desired, allow an imperfect partition. Thereupon Daljit Singh presented a fresh application asking for the separation of his share by an imperfect partition. The Assistant Collector, in the course of separation of the share of Daljit Singh out of *pattis* Nos. 4 and 5, somehow included a portion of the land belonging to *patti* No. 2, that is, of Dular Singh. The plaintiff, who is the purchaser of Dular Singh's rights in *patti* No. 2, instituted the suit out of which this appeal has arisen for a declaration that the said portion of land, taken out of *patti* No. 2 and included in the *patti* of Daljit Singh by mistake during the proceedings of imperfect partition in 1905, belonged to him and that, in case he was found out of possession, a decree for possession should be granted to him.

The first two courts found that the land in suit formed part of *patti* No. 2 and decreed the claim. On appeal a learned Judge of this Court held that, though the land in suit was a part of *patti* No. 2, the plaintiff could not maintain the present suit in view of the provisions of section 233, clause (k), of the United Provinces Land Revenue Act, and accordingly reversed the decrees of the lower courts. The plaintiff has preferred this Letters Patent

1916

---

 SHAMBERU  
SINGH  
v.  
DALJIT  
SINGH.

1916

SHAMBU  
SINGH  
v.  
DALJIT  
SINGH.

appeal and contends that section 233, clause (k), does not govern his case. On the other hand, the respondents rely on the said section and the Full Bench case of *Muhammad Sadiq v. Laute Ram* (1). They contend that under the Revenue Act "no person shall institute any suit or other proceeding in the Civil Court with respect to partition or union of mahals except as provided in sections 111 and 112" of the Act. Dular Singh, the predecessor in title of the plaintiff, should have raised the question now raised during the proceedings of imperfect partition in 1905, or in any case he could have done so. He having failed to do so, no civil suit lies. I do not think that the contention for the respondents is correct. The partition or union of mahals referred to in clause (k) of section 233 means the partition or union of those mahals in respect of which partition or union is sought and not any other. The prohibition therefore governs the case of those mahals only in respect of which partition or union is asked for and made. It could not apply to other mahals which were not the subject of partition or union. If the construction of the section in question contended for on behalf of the respondents were correct, the proprietors of a village some portion of whose land had been included by mistake or error during the partition of an adjacent mahal, would have no remedy at all. It may be said for the respondents that the proprietors of the village could bring a civil suit on the ground that they had no notice of the partition of the adjacent mahal. But the obvious reply would be that under the law no notice was required to be given to them, and, partition once made and no objection taken during the partition proceedings, no civil suit could be entertained. However, in the present case it has been found by the lower courts that no notice was given to Dular Singh of the second application of Daljit Singh asking for imperfect partition. In my opinion, even if a notice had been issued to Dular Singh he might very well have kept away thinking that he was not concerned with the partition of *pattis* Nos. 4 and 5, in which he had no share. Besides it is doubtful whether the provisions of section 233, clause (k), of Act III of 1901, would apply to proceedings in an imperfect partition. In the case of

(1) (1901) I. L. R., 23 All., 291.

*Aisha Begam v. Abdulla Khan* (1) it was held that the omission to raise the question of title by a party to an imperfect partition did not preclude him from suing afterwards in the Civil Court to establish his title. In another case, namely, that of *Kishen Prasad v. Kadher Mal* (2), it was held that if at a perfect partition of a mahal the land of another mahal was taken by mistake and divided and no objection was taken by the co-sharers of the latter mahal they were not debarred from suing in the Civil Court to establish their title.

It is true that both these cases were decided under the former Act (Act XIX of 1873) but the provisions of that Act as to the exclusion of the jurisdiction of the Civil Court were similar to those in the present Act (III of 1901). It may, however, be argued that the said cases were decided before the Full Bench case of *Muhammad Sadiq v. Laute Ram* (3) and hence may be taken to have been overruled. The reply is that the points raised in the former cases were not raised and decided in the Full Bench case. Besides the facts of the latter case were quite different from those reported in the Weekly Notes for 1899 and 1900, and from the present case. The facts of the Full Bench case were that Muhammad Sadiq, Dewan Mal and some others were co-sharers in a certain village. An application was made by some of the co-sharers, in which Dewan Mal did not join, for perfect partition, and notices were issued to all the co-sharers, including Dewan Mal. He made no objection in time. The Assistant Collector made the partition, in the course of which he divided the groves also. The share of Dewan Mal was sold in execution of a decree and purchased by Laute Ram. The latter brought a suit in the Civil Court for a declaration of his title to the groves on the allegation that they belonged exclusively to Dewan Mal and that the Revenue Court could partition the land but not the trees. It was held that the suit of *Laute Ram* could not be entertained by a Civil Court in view of the provisions of section 241, clause (f), Act XIX of 1873. The case of *Laute Ram* is clearly distinguishable from the present case on three grounds, namely, first, there was in that case a perfect partition, secondly, property included in the village sought to be partitioned

(1) Weekly Notes, 1899, p. 190. (2) Weekly Notes, 1900, p. 11.

(3) (1901) I. L. R., 28 All., 291.

1916

SHAMBHU  
SINGH  
V.  
DALJEET  
SINGH.

was divided and no property outside the village was taken and divided, and, thirdly, the Revenue Court could divide also the groves situate in the village. *Laute Ram's* case is therefore not in point and does not help the respondents. The case of *Dharam Singh v. Ram Dial Singh* (1) is in point and supports the view of the law I have taken. In my judgement the provisions of section 233, clause (k), of Act No. III of 1901 do not govern the present case.

By THE COURT:—The order of the Court is that the decree of the learned Judge of this Court is set aside and the decree of the lower appellate court is restored with costs in all courts.

*Appeal allowed.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.*

GUR DAYAL SINGH AND OTHERS (DEFENDANTS) v. KARAM SINGH  
AND ANOTHER (PLAINTIFFS). \*

*Act No. IV of 1882 (Transfer of Property Act), section 55 (4) (b)—Sale—Vendor's Lien—Lien not enforceable against subsequent purchaser without notice.*

The vendor's lien for unpaid purchase money provided for by section 55 (4) (b) of the Transfer of Property Act, 1882, cannot be enforced against the property in the hands of subsequent transferees for value without notice of the lien. *Webb v. Macpherson* (2) distinguished.

THE facts of this case were, shortly, as follows:—

On the 28th of August, 1903, the plaintiffs sold certain property to one Gur Dayal, who is the first appellant in this suit for Rs. 250. The vendors received Rs. 90 in cash and left Rs. 160 with the vendee for payment to their creditors. Gur Dayal did not pay any of the creditors, but sold the property to one Kundan, who in turn transferred it to the defendants Nos. 4 and 5. The creditors of the plaintiffs recovered their money from the plaintiffs, who thereupon brought the present suit against Gur Dayal and his transferees for recovery of the money. The

\* Second Appeal No 532 of 1914, from a decree of Abdul Hasan, Subordinate Judge of Saharanpur, dated the 27th of January, 1914, modifying a decree of Priya Charan Agarwal, Munsif of Saharanpur, dated the 20th of January, 1912.

(1) (1914) 12 A. L. J., 1126.

(2) (1903) I. L. R., 31 Calc., 57.

1916

February, 1916.