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KINLOCH v. THE COLLECTOR OF ETAWAH.

the ostensible purchaser who purchased the produce in question at auction with notice of the rent incumbrance, or rather as the real purchaser of the produce in the name of Kanhaya, the applicant is liable to the claim which the lower Courts have decreed against him. There is nothing in the judgment of those Courts to countenance the supposition that the aforesaid produce had been stored by the cultivator before it was attached and sold in execution of decree, and was not liable to be distrained. On the contrary those judgments apparently proceed on the assumption that it had not been so stored; nor was it a part of the defence to the suit that it had been so stored. It is unnecessary therefore for us to consider an argument which has been orally urged that the hypothecation created by s. 56 of the Rent Act is merely for the purposes of distress, and does not continue after the produce of the land has ceased to be liable to distraint. The application is disallowed with costs.

APPELLATE CIVIL.

1881
January 18.

Before Mr. Justice Pearson and Mr. Justice Spankie.

JAGRANI BIBI AND ANOTHER (PLAINTIFFS) *v.* GANESHI (DEFENDANT).*

Trees—"Land"—Act I of 1868 *(General Clauses Act), s.* 2 (5.)*—Title—Act IX of* 1871 *(Limitation Act), s.* 29*—Act XV of* 1877 *(Limitation Act), s.* 28.

Trees growing upon land are "land," within the meaning of s. 29, Act IX of 1871.

Possession of land by a wrong-doer for twelve years not only extinguishes the title of the rightful owner of such land, but confers a good title on the wrong-doer.

THE plaintiffs in this suit claimed possession of six mango trees of which the defendant had dispossessed them in 1875, setting up a title to them by purchase. The defendant denied the title to the trees set up by the plaintiffs, and alleged that they belonged to him. The Court of first instance held that the plaintiffs had not proved their title to the trees by purchase, but that they had proved that they had been for upwards of twelve years in adverse possession of

* Second Appeal, No. 755 of 1880, from a decree of R. D. Alexander, Esq., Subordinate Judge of Allahabad, dated the 11th June, 1880, reversing a decree of Babu Pramoda Charan Banarji, Munsif of Allahabad, dated the 24th January, 1880.

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them when they were dispossessed by the defendant, and they had therefore acquired a title to them at that time, and gave the plaintiffs a decree. On appeal by the defendant the lower appellate Court held, having regard to s. 29 of Act IX of 1871, that the plaintiffs had not acquired a title to the trees by prescription at the time when they were dispossessed by the defendant, as the provisions of that section were only applicable to land, and were not applicable to such property as trees, and that, as they had not acquired a title to the trees by prescription, and had failed to prove the title to them by purchase set up by them, their suit must be dismissed. The plaintiffs appealed to the High Court, contending, *inter alia*, that trees were included in the term "land," and they had acquired a good title to the trees in suit by adverse possession of them for upwards of twelve years.

Lala *Lalta Prasad* and Munshi *Kashi Prasad*, for the appellants.

Babus *Barodha Prasad Ghose* and *Ram Das Chakarbati*, for the respondent.

The judgment of the High Court (PEARSON, J., and SPANKIE, J.), so far as it is material for the purposes of this report, was as follows:—

SPANKIE, J.—The Judge appears to have gone wrong in discussing the relative bearing of s. 29, Act IX of 1871, and of s. 28, Act XV of 1877, to the case. The former Act if applicable at all would not have been inapplicable for the reason assigned by the lower appellate Court, that the suit is for trees and s. 29 refers to lands only and hereditary office. Land comprehends what it covers and would include immoveable property as recognized and defined in s. 2 (5), Act I of 1868. The judgment of the Judicial Committee of the Privy Council in *Gunga Gobind Mundul* v. *The Collector of 24-Pergunnahs* (1) settled the law, that continuous possession for upwards of twelve years not only bars the remedy, but practically extinguishes the title of the true owner in favour of the possessor. It is remarked in a recent decision of the Presidency Court in *Gossain Dass Chunder* v. *Issur Chunder Nath* (2) that the

(1) 11 Moore's I. A., 345. (2) I. L. R., 3 Calc., 224.

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construction which the Presidency Court has given to the law laid down by the Privy Council is not only that a twelve years' possession by a wrong-doer extinguishes the title of the rightful owner, but confers a good title on the wrong-doer. The Presidency authority is cited. In the case to which reference is here made the suit was to recover possession of certain rooms in a house, the whole of which the plaintiff admitted once to have belonged to the defendant, but which he says was sold by the defendant to his (plaintiff's) brother in the year 1857 or 1858, and from which the defendant subsequently dispossessed the plaintiff. This suit resembles the one before us as comprehending something less limited than the Judge has allowed to the word land. The plaintiff failed to establish the title on which he based his claim, but he showed that he had been in possession of the property for upwards of twelve years. It was held that, this fact being determined in his favour, the defendant's title was extinguished.

Before Mr. Justice Pearson and Mr. Justice Straight.

1881
January 1

LAL BAHADUR SINGH (PLAINTIFF) *v.* DURGA SINGH AND OTHERS (DEFENDANTS).*

Pre-emption—Minor—Guardian.

The circumstance that a co-sharer of a village was a minor at the time of the preparation of the *wajib-ul-arz* and that document was not attested on his behalf by a guardian or duly authorized representative is not a reason for excluding him from the benefit of the provisions of that document relating to pre-emption.

The guardian of a minor is competent to assert a right of pre-emption and to refuse or accept an offer of a share in pursuance of such a right, and the minor is bound by his guardian's act if done in good faith and in his interest.

THE plaintiff in this suit, a minor, sued by his next friend, his brother and guardian, Autar Singh, to enforce his right of pre-emption in respect of a certain share in a certain mahál, basing his claim upon an agreement relating to the right of pre-emption which was recorded in the administration-paper of the mahál. That document contained the following entry regarding the right of pre-emption of co-sharers :—"If any of the co-sharers wishes to sell or mortgage

*Second Appeal, No. 537 of 1880, from a decree of H. D. Willock, Esq., Judge of Azamgarh, dated the 2nd March 1880, reversing a decree of Rai Bhagwan Prasad, Subordinate Judge of Azamgarh, dated the 15th December, 1879.