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been dealt with in the award, and that the arbitration agreement had not been executed by all the parties named therein. Such having been the procedure adopted for the conduct and disposal of the suit by the Munsif, there was really no case for the application of s. 522, and therefore none for the exclusion of an appeal to the Judge, the Munsif adopting a different line of inquiry from that provided by the Procedure Code for arbitration cases, and giving a decision and order by which he dismissed the claim, and making a "decree" within the meaning of that term as defined by s. 2 of Act X of 1877, for it was clearly an adjudication or order which decided the suit in the form in which it had been taken cognizance of by him, and therefore such an order dismissing the claim was clearly a decree within the meaning of s. 540, and was appealable to the Judge. Under these circumstances the case must go back to the Judge to be restored to his file and to be disposed of on the appeal to him; costs to abide the result.

Cause remanded.

CIVIL JURISDICTION.

1881
January 11

Before Mr. Justice Pearson and Mr. Justice Straight.

KINLOCK (DEFENDANT) *v.* THE COLLECTOR OF ETAWAH AS MANAGER OF MAUZA SAMAYAN ON BEHALF OF THE COURT OF WARDS (PLAINTIFF).*

Rent—Produce of Land—Hypothecation—Purchaser—Act XVIII. of 1873 (*N.-W. P. Rent Act*), *s.* 56.

The purchaser of the unstored produce of land in the occupation of a cultivator, with notice of the lien created on such produce by s. 56 of Act XVIII. of 1873, takes such produce subject to such lien. S. A. No. 1393 of 1870 decided on the 4th February 1871 (1) and *Achul* v. *Gunga Pershad* (2) followed.

THE plaintiff in this suit claimed from the cultivators of certain land and one Kinlock, who had purchased at a sale in execution of a decree the produce of such land, Rs. 136-15-0 representing the amount of rent payable in respect of such land by such cultivators for the years 1284 and 1285 fasli. The plaintiff stated

* Application. No. 77B. of 1880, for revision under s. 622 of Act X of 1877 of a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 22nd May, 1880, affirming a decree of Babu Sanwal Singh, Munsif of Etawah, dated the 2nd September, 1879.

(1) Unreported. (2) N.-W. P. H. C. Rep., 1867, p. 73.

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in support of his claim that, at the time of the attachment and sale of such produce in the execution of such decree, such produce was, by virtue of the provisions of s. 56 of Act XVIII of 1873, hypothecated to him for the payment of Rs. 136-15-0, being the rent payable in respect of such land for the years 1284 and 1285 fasli; that notice was given to the defendant Kinlock, the auction-purchaser, of the plaintiff's lien on such produce; and that the defendant Kinlock had refused on demand made by the plaintiff to satisfy the plaintiff's claim for such rent. The defendant Kinlock set up as a defence to the suit, *inter alia*, that the produce of land in the occupation of a cultivator should be deemed hypothecated to the landholder for the rent payable in respect of such land so long only as such produce remained in possession of the cultivator, and the landholder's lien on such produce could not be enforced after such produce had passed into the hands of a third party. Both the lower Courts disallowed this defence.

The defendant Kinlock thereupon applied to the High Court to revise the decrees of the lower Courts under s. 622 of Act X of 1877, on the ground (i) that the purchase by him at an execution-sale of the produce of a field belonging to a tenant of the plaintiff, who was in arrears as regards rent at the time when such sale took place, gave the plaintiff no cause of action against him, and did not entitle the plaintiff to claim the sum representing such arrears of rent from him; and (ii) that the plaintiff's lien on the produce of such land could not be enforced after such produce had passed into his (defendant's) hands by purchase.

Mr. *Conlan*, for the petitioner.

The *Senior Government Pleader* (Lala *Juala Prasad*), for the plaintiff.

The judgment of the Court (PEARSON, J., and STRAIGHT, J.,) was delivered by

PEARSON, J.—The grounds of appeal are negatived by the rulings in Special Appeal No. 1393 of 1870 decided on the 4th February, 1871 (1), and *Achal* v. *Gunga Pershad* (2). Following those precedents we must hold that, as the *locum tenens* of

(1) Unreported. (2) N.-W. P. H. C. Rep., 1867, p. 73.

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.