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IN THE MAT-
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PETITION OF
SAT NARAIN
SINGH AND
ANOTHER.

sufficient certainty, make up my mind that the refusal on the part of the Magistrate, who tried the applicants, either to summon the Rani of Nipal or to take the necessary steps to obtain the issue of a commission to examine her, did not prejudice them in their defence. Apart from this, however, the Magistrate has omitted to satisfy the plain directions of the law, by failing "to record his reasons for refusing to summon the witness named," which reasons, had he given them, might have themselves been made the subject of appeal. It appears to me that there is no other alternative open but to set aside the convictions of Sat Narain Singh and Ram Alam Singh, and to order the Magistrate to re-open the case and formally dispose of the application for the examination of the Rani, in accordance with the provisions of the Criminal Procedure Code. If he decides to summon her or to have her evidence taken by commission, he will, after considering her statements, pass such orders on the whole case as may appear to him to be just and right. If he refuses to summon or have her examined by commission, it would probably be as well, before giving final judgment in the matter, to allow the accused to appeal to the Judge against such refusal. This record and order will be conveyed without delay through the Sessions Judge to the Magistrate of Mirzapur, for him to carry out the directions given him.

APPELLATE CIVIL.

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January 13.

Before Mr. Justice Pearson and Mr. Justice Straight.

TAWANGAR ALI (DEFENDANT) *v.* KURA MAL (PLAINTIFF).*

Suit to cancel Instrument—Act XV of 1877 (Limitation Act), sch. ii, No. 91.

K, to whom *B* had given a usufructuary mortgage of certain land, promising to put him in possession, sued *B* for the mortgage-money, *B* having failed to put him in possession. This suit was instituted on the 22nd November, 1875. On the 25th of the same month *K*, learning that *B* was about to dispose of his property, caused a notice to issue to him directing him not to transfer any of his property. This notice was served on *B* on the 29th November. On the 1st December, 1875, *B* transferred certain land to *T* by way of sale. *K*'s suit was dismissed by the lower Courts, but the High Court, on the 7th August, 1876, gave him a decree. Certain

* Second Appeal, No. 367 of 1880, from a decree of H. M. Chase, Esq., Judge of Saharanpur, dated the 13th January, 1880, affirming a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Saharanpur, dated the 14th August, 1879.

property belonging to *B* was sold in execution of this decree, but the sale-proceeds were not sufficient to satisfy the amount due on the decree. *K* thereupon, on the 1st July, 1879, sued *T* to cancel the conveyance to him by *B* on the ground that it was fraudulent and without consideration. *Held* that the words in No. 91, sch. ii, Act XV of 1877, "when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him," must be construed to mean "when, having knowledge of such facts, a cause of action has accrued to him, and he is in a position to maintain a suit," and consequently the period of limitation for *K*'s suit began to run, not merely when he had knowledge of the fraudulent character of the conveyance to *T*, but when, having such knowledge, it had become apparent to him that there was no other property than that conveyed to *T* available for the realization of the unsatisfied balance of his decree, and the suit was within time.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *Colvin* and Pandit *Nand Lal*, for the appellant.

Mr. *Conlan*, Pandit *Ajudhia Nath*, and Munshi *Sukh Ram*, for the respondent.

The High Court (*PEARSON, J.*, and *STRAIGHT, J.*) delivered the following

JUDGMENT.—The facts of this case appear to be as follows :— In 1875, the plaintiff-respondent, *Kura Mal*, advanced a sum of money to *Bahal*, the now answering defendant, upon the security of certain property, of which the mortgagee was to have possession. This not having been given, *Kura Mal* instituted a suit on the 22nd November, 1875, for recovery of the amount of money lent by him. On the 25th of the same month, in consequence of information received by him to the effect that *Bahal* was about to convey a portion of his property, which would be available for execution should he succeed in his suit, *Kura Mal* caused a notice to issue, under s. 81 of Act VIII of 1859, to *Bahal* directing him not to transfer any of his property. This notice was duly served on the 29th November, 1875, but on the 1st December immediately following *Bahal* executed a deed of sale to *Batul-un-nissa*, the wife of *Tawangar Ali*, the defendant-respondent. *Kura Mal*'s suit against *Bahal* was dismissed by both the lower Courts, but on appeal to this Court his claim was decreed on the 7th August, 1876. In execution he brought to sale a grove, which realized Rs 238, and

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some bullocks, which fetched Rs. 127, but this left Rs. 1,219 of the decretal amount still unsatisfied, and this he now seeks to realize by the present suit, brought on the 1st July, 1879, by voiding the deed of sale of 1st December, 1875, on the ground that it was fraudulent and without consideration. Both the lower Courts decided in his favour and decreed his claim. The defendant appealed to this Court, and at the first hearing before us it was contended by Mr. Colvin his counsel that the suit was barred by limitation, in that art. 91, sch. ii of Act XV of 1877, provides that suits of such a character must be brought within three years from the date when "the facts entitling the plaintiff to have an instrument cancelled or set aside became known to him," and that it was clear in the present case the plaintiff knew such facts before the end of 1875. We thought it right to remand an issue, under s. 566 of Act X of 1877, to the lower appellate Court for it to determine when the plaintiff actually did know the facts as to the fraudulent character of the deed of sale of 1st December, 1875. The Judge has now returned to us a finding that the plaintiff Kura Mal was aware of them "as early as the 11th December, 1875." But it is urged on his behalf that, though he had knowledge of them at that time, he was not in a position to take advantage of such knowledge, by the institution of a suit, until after the 7th August, 1876, when this Court gave him a decree upon which execution could issue, and after the sale of the grove and bullocks in execution of that decree, when it became apparent that there was no other property available for the realization of the balance still remaining due but the land to which the present suit refers. This view was adopted by the lower Courts and upon consideration we are not disposed to dissent from it. We think that the words "when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him" must be construed to mean, when, having knowledge of such facts, a cause of action has accrued to him and he is in a position to maintain a suit. In 1875, when he sued upon his mortgage, "*non constat*" but that he might fail, or, if successful, that there might have been property of his judgment-debtor sufficient to satisfy his claim. Until the result was known of the former sale in execution of this decree of the Court, it is difficult

to see what "*locus standi*" he could have had in any Court to ask to have the deed of sale set aside. Under these circumstances we are of opinion that the decisions of the lower Courts should be maintained and that this appeal should be dismissed with costs.

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Appeal dismissed.

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January

Before Sir Robert Stuart, Kt., Chief Justice Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

BHAGWAN SINGH AND ANOTHER (DEFENDANTS) v. KHUDA BAKHSH AND ANOTHER (PLAINTIFFS).*

Refusal to register on ground of denial of execution—Suit for registration—Act III of 1877 (Registration Act), ss. 71, 73, 77.

A Sub-Registrar refused to register a bond as the obligor denied the execution of it. The obligee, instead of applying to the Registrar under s. 73 of the Registration Act, in order to establish his right to have such bond registered, sued the obligor claiming a decree directing the registration of such bond. *Held* that such suit was not maintainable.

Ram Ghulam v. Chotey Lal (1) observed upon.

On the 26th April, 1879, the defendants in this suit gave the plaintiffs a bond for the payment of Rs. 213-13-0, together with interest at two per cent. per mensem, within two months, in which they hypothecated certain immoveable property as collateral security for the payment of such moneys. On the 26th June, 1879, the plaintiffs presented this bond for registration, praying that the defendants, who had refused to appear at the registration office, might be required to do so, under the provisions of s. 36 of Act III of 1877. The defendants were accordingly required to appear, and did so, and denied the execution of the bond, and the Registering Officer, the Sub-Registrar, on the 25th July, 1879, refused to register it. On the 29th August, 1879, the plaintiffs brought the present suit against the defendants in which they claimed the

* Second Appeal, No. 540 of 1880, from a decree of H. A. Harrison, Esq., Judge of Farnkhabad, dated the 5th March, 1880, affirming a decree of Pandit Gopal Sahar, Munsif of Farukhabad, dated the 16th December, 1879.

(1) *L. L. R.*, 2 All., 46.