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by the parties by virtue of their signatures ; but this was not the case for the plaintiff here and I am not prepared to hold that the mere signature by a party to an award necessarily in all cases estops him from afterwards disputing the correctness of the award.

In all the circumstances of the case I am not satisfied that there is sufficient ground for interference. I therefore dismiss this appeal with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Heald.*

MA THAING AND OTHERS

v.

MAUNG CHIT ON AND OTHERS.

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 Feb. 4.

*Mortgage redemption suit—Basis of suit is the mortgage—Suit fails if provision of law prevents proof of mortgage—Admission of mortgage by one party, how far binding on others—Amendment of pleadings—Suit for redemption cannot be converted into suit for possession on strength of legal title.*

The basis of a suit for redemption of a mortgage is the mortgage alleged, and if by reason of some provision of law (for instance the requisite registered instrument the mortgage cannot be proved, the suit must fail.

*Ma Twe v. Maung Lun, 8 L.B.R. 334—referred to.*

In a suit for redemption of a possessory mortgage, the admission of the mortgage by one party who has no interest in the property and was never in possession as mortgagee, cannot bind other parties who resist the claim on the ground that the mortgage required a registered instrument. A person cannot be allowed to amend his plaint which was for redemption of a possessory mortgage into one for possession on the strength of his legal title. That would be substituting one distinct cause of action for another.

*Ma Shwe Mya v. Mo Hnaung, 4 U.B.R. 30 (P.C.)—referred to.*

*Kyaw Din* for the appellant.

HEALD, J.—Appellants, as mortgagors of a piece of land, sued to redeem that land on an allegation that they had mortgaged it to the 1st respondent for

Rs. 143 on the 28th of May 1923. They said that the mortgage was possessory and that they put the 1st respondent into possession of the land under the mortgage. They joined the 2nd and 3rd respondents, who seem to be husband and wife, as being persons to whom the 1st respondent had sub-mortgaged the land by possessory mortgage, and they also joined the 4th respondent as being a person to whom the 2nd and 3rd respondents had similarly sub-mortgaged the land. They claimed to be entitled to redeem the land from the respondents for Rs. 143.

The 1st respondent admitted that appellants had mortgaged the land to him for Rs. 143 but said that he had never been put into possession of the land, and that at the time of the mortgage it was in the possession of the 2nd respondent.

The 2nd respondent said that the land did not belong to appellants at all but belonged to one Ma Ngwe and her daughter Ma Sein who mortgaged it to his parents for Rs. 143-8 on the 12th of February 1880 by a registered deed which he produced. He said further that he and his mother Ma Min Thon mortgaged the land to the 4th respondent for Rs. 200 about 1921.

The 4th respondent said that he received the land on mortgage with possession for Rs. 200 from the 2nd and 3rd respondents and Ma Min Thon on the 15th of June 1921, but he does not seem to have produced any mortgage deed or documentary evidence of the mortgage or to have taken any further part in the litigation.

The trial Court said that because the 1st respondent admitted appellant's mortgage it was unnecessary for appellants to prove the mortgage and that it could be recognised by the Court in spite of the fact that the deed by which it was supposed to be effected

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was unregistered. The learned Judge found that the land in suit belonged to persons whom the appellants represented, that it was mortgaged by them to the 2nd respondent and his mother Ma Min Thon, that that mortgage was redeemed and on redemption, by reason of a partition of the estate to which it belonged, the land passed to the appellant Ma Le as owner, that Ma Le then re-mortgaged it to the 2nd respondent for Rs. 243, that two years later Ma Le redeemed it from the 2nd respondent and mortgaged it to the 1st respondent for Rs. 143 and that appellants were entitled to redeem it from the respondents and to recover possession of it from them for Rs. 143.

The 2nd and 3rd respondents appealed against that decision on the grounds that the lower Court ought not to have recognised appellant's mortgage which was admittedly not effected by registered deed, that the admission of the mortgage by the 1st respondent, who had admittedly never been in possession of the property, could not bind them or prejudice their rights, that there was no issue and no evidence that the land came to their possession from the 1st respondent and that the evidence did not account for their having remained continuously in possession of the land for about 50 years.

The lower Appellate Court said that in view of the fact that the 1st respondent had never been in possession of the land, although the mortgage to him was alleged to be possessory, his admission of the mortgage could not bind the other respondents, and that as against those other respondents appellants could not be allowed to prove their mortgage because it was not registered, and accordingly dismissed appellant's suit.

Appellants appeal on grounds that the lower Appellate Court was wrong in holding that they could not

sue to redeem an unregistered mortgage and ought to have held that in equity they were entitled to redeem.

The case is similar to the Full Bench case of *Ma Twe v. Maung Lun* (1) where the learned Chief Judge said: "The basis of suit for redemption of a mortgage is the mortgage alleged and if by reason of some provision of law the mortgage cannot be proved it appears to me that the suit must fail." In this case it is clear that the mortgage cannot be proved because there was no registered instrument. The admission of the 1st respondent, who has now no interest in the property, cannot bind the other respondents, and in any case it was not an admission of the mortgage on which appellants sued, since it is not an admission of a possessory mortgage. The appellant's suit for redemption of a possessory mortgage and for possession of the mortgaged property on the footing of redemption of that mortgage was bound to fail because they could not prove the mortgage, and was rightly dismissed.

When the ruling mentioned above was brought to the notice of appellant's learned Advocate, he claimed that he still ought, even on second appeal, to be allowed to amend his plaint so as to convert his suit into a suit for possession on the strength of his legal title. The decision of their Lordships of the Privy Council in the case of *Ma Shwe Mya v. Mo Hnaung* (2) that "no power has yet been given to enable one distinct cause of action to be substituted for another" is sufficient answer to this claim.

The appeal is dismissed.

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(1) (1916) 8 L.B.R. 334. (2) (1921) 4 U.B.R. 30.