

1929
 MA ME HLA
 v.
 MAUNG PO
 THON.
 HEALD, J.

His Lordship discussed the evidence and held that a divorce by mutual consent was proved; that adultery was not proved and so allowed the appellant half the share of the property of the marriage.

APPELLATE CIVIL.

Before Mr. Justice Brown.

1929
 Jan. 14

MAUNG PO LWIN

v.

MAUNG SEIN HAN.*

Landlord and tenant—Landlord whether possessing a lien on the crops—Landlord's rights against third parties—Specific Relief Act (I of 1877), s. 27 (b)—Transferee of crops otherwise than without notice and for value bound by personal obligation of his transferor.

Where paddy land was leased by a written agreement by which the tenant bound himself not to sell, move or dispose of the crops in any way before paying up the full rent to the landlord,

Held, that it is not correct to say that the landlord has a lien over the crops, as a lien denotes possession in the person having a lien.

Held, however, that the personal obligation on the tenant under the agreement binds a third party who takes the crops unless he has taken the crops for value, in good faith and without knowledge of the original agreement between the landlord and the tenant.

Maung Han and one v. Ka Ho, Civil 2nd Appeal No. 298 of 1924 H. C. Ran.—*referred to.*

Myint Thein for the appellant.

Tun Aung for the respondent.

BROWN, J.—The plaintiff-respondent, Maung Sein Han sued one Maung Shwe Hmyin and the appellant Maung Po Lwin for 375 baskets of paddy valued at Rs. 742-8, claimed as rent due for paddy land. He was given a decree against both defendants for 255 baskets or their value Rs. 484-8.

* Civil Second Appeal No. 489 of 1928 from the judgment of the District Court of Bassein in Civil Appeal No. 96 of 1925.

The land was admittedly leased out to Maung Shwe Hmyin, and Maung Shwe Hmyin did not appeal against the decision of the trial Court. Po Lwin was made a defendant on the ground that the landlord had a lien or charge on the crops for his rent and that with full knowledge of this Po Lwin had taken from the produce of the land 400 baskets. Po Lwin appealed to the District Court without success and has now come to this Court in second appeal.

The appeal is argued on two grounds; firstly, it is contended that no cause of action has been made out against Po Lwin, and, secondly, it is contended that there is no evidence on the record from which the lower Court could find that 400 baskets of paddy had been taken away by Po Lwin.

On the first point, reference has been made to the case of *Maung Han and one v. Ko Ho* (1). In that case, the landlord sued his tenant and a third party jointly for rent. The third party was impleaded on the ground that he received half the outturn of the land from the defendant with full knowledge of the plainiff's lien on the crops. It was held that he was liable jointly with the tenant. It was pointed out in that case that it is the usual practice in this country for landlords to have a lien over the paddy reaped by the tenants for their rent. In the present case, the contract of lease was by written agreement and in that agreement, the tenant Maung Shwe Hmyin bound himself not to sell, to move or dispose of the outturn of paddy in the paddy field or fields in any way whatsoever before paying up the full rent to the landlord.

I do not think it is strictly speaking correct to speak of the landlord's having a lien in these

1929
 MAUNG PO
 LWIN
 v.
 MAUNG SEIN
 HAN.
 BROWN, J.

(1) Civil Second Appeal No. 298 of 1924 of this Court.

1929
 MAUNG PO
 LWIN
 v.
 MAUNG SEIN
 HAN.
 BROWN, J.

circumstances. A lien denotes that the property over which it is claimed is in the possession of the person claiming it and the paddy in this case was admittedly not in the possession of the plaintiff. But there is clearly here a personal obligation on Shwe Hmyin not to dispose of the crops in any way without first paying up the rent in full. A third person would not of course ordinarily be bound by this contract, but in view of the custom of the country referred to in *Maung Han's* case, I think the tenant may in a case such as the present be looked on as holding the property in trust subject to this promise and that any one who takes the property with knowledge of this promise would be liable to make it good.

Under section 27 (b) of the Specific Relief Act, specific performance of a contract may be enforced against any person claiming under a party by a title arising subsequently to the contract except a transferee for value, who has paid his money in good faith and without notice of the original contract, and it seems to me that the claim in the present case is somewhat analogous to a claim for specific performance under this section. It has been found in the present case that Po Lwin had full notice of the landlord's claim and in the circumstances I am not satisfied that there is sufficient reason for departing from the principles followed in *Maung Han's* case. I do not think, therefore, there is sufficient reason for interference with the decision of the lower Courts on this ground.

There does, however, seem to me to be some force in the second contention made on behalf of the appellant. Plaintiff in his plaint states that the appellant received 400 baskets of paddy from Shwe Hmyin, but he has not given evidence on that point

and does not seem to have any personal knowledge on the point. There is evidence as to an abortive attempt at an agreement whereby Po Lwin would take all the paddy and pay all Shwe Hmyin's debts, but that agreement fell through and I can find no real evidence of any kind that 400 baskets were given by Shwe Hmyin to Po Lwin. The witness, Kha Kha, states: "I went and visited Shwe Hmyin's *talin*. I saw 500 baskets sold. These 500 baskets were given to U Po Lwin, who was present. I did not see Po Lwin carrying them away." Witness does not state to whom they were sold and he does not state that Po Lwin took the paddy away. I cannot see how this can be held to prove Po Lwin to have received 400 baskets. On the other hand, there is the evidence of Shwe Hmyin that 150 baskets only were taken by Po Lwin and this figure is admitted by Po Lwin himself.

I alter the decree of the trial Court by directing that so far as Po Lwin is concerned, the amount payable is 150 baskets of paddy or their value Rs. 285. The decrees of the lower Courts directing Po Lwin to pay costs are also set aside and the parties will bear their own costs in this appeal.

1929

MAUNG PO
LWIN
v.
MAUNG SEIN
HAN.
BROWN, J.