

fact that the plaintiff was asleep would not affect his rights.—*Hunter v. the Earl of Hoptoun* (1). The doctrine has also been applied to proceedings to realise a mortgage after a decree for sale.—*Shivjiram Sahebram Marwadi v. Waman Narayan Joshi* (2).

The doctrine of *lis pendens*, which has been applied in this country to sales *in invitum* as well as voluntary alienations, might have application, if the equity of redemption of the mortgagor was capable of being separately dealt with by a mortgagee under a decree for sale on the mortgage. If we can contemplate the sale of the equity of redemption as a separate incident on a decree for sale and a sale thereunder, it might be said that the plaintiff's suit having as its object the foreclosure of the equity of redemption, as it stood on the date of the mortgage, and the subject of his suit [907] being such equity of redemption, the sale at the instance of the defendants of the same equity of redemption during the pendency of the plaintiff's *lis* is affected by a *lis pendens*. This might be the utmost limit of the application of the doctrine of *lis pendens* in the present case. I am not, however, disposed to separate in this country the mortgagee's right to the property and the equity redemption of the mortgagor, as if they are distinct entities in law, with reference to the same property.

I do not think it necessary to pursue the argument about *lis pendens* further, as I think the decree of the Lower Appellate Court is sustainable irrespective of it. The defendants took the property subject to a prior incumbrance, and as the plaintiff has obtained the same property under a valid though imperfect decree on such prior incumbrance, the defendants, to refer again to the words of Markby J., "cannot interfere with his right though they might have a right to redeem before sale." And as they were not given an opportunity to redeem before sale, their right is not lost.

The view I take is substantially the same as my learned brother Brett J. and I took in *Bunwari Jha v. Ramjee Thakur* (3).

I, therefore, agree with Brett J. in dismissing the appeal with costs.
Appeal dismissed.

32 C. 908.

[908] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Pratt.

AMAR CHANDRA KUNDU v. ASAD ALI KHAN.*
[28th June, 1905.]

*Decree—Amendment—Limitation Act (XV of 1877), s. 5, and Sched. II, Art. 153—
Appeal—Limitation—Sufficient cause for non-presentation of appeal within time.*

Where the original decree was signed on the 6th July 1903, and the plaintiffs applied, on the 22nd instant, to have the same amended in respect of the name of a party, which had been incorrectly recorded, and of the amount of the claim allowed, which had been entered as Rs. 600 instead of Rs. 1,600, and the amendment was made on the 22nd August:

Held that the period of limitation should be reckoned from the 22nd August as the date when the correct decree was prepared, and that an appeal filed on the 2nd September was within time.

* Appeal from Appellate Decree No. 2600 of 1903, against the decree of H. E. Ransom, District Judge of Chittagong, dated the September 3, 1903, affirming the judgment of Jogendra Lal Chowdhry, Subordinate Judge of Chittagong, dated June 29, 1903.

- (1) (1865) 4 Maq. 972.
(2) (1897) I. L. R. 22 Bom. 939.

- (3) (1902) 7 C. W. N. 11.

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Heid further that under s. 5 of the Limitation Act there was sufficient cause for not presenting the appeal within thirty days from the date of the first decree.

APPELLATE [Ref. 3 C. L. J. 188; 46 Cal. 25; 43 All. 380—19 A. L. J. 152—61 I. C. 69.]
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32 C. 908.

SECOND APPEAL by the plaintiffs.

The plaintiffs-appellants filed a suit in the Court of the First Subordinate Judge of Chittagong for the recovery of Rs. 1,600 on account of principal, and Rs. 2,327 for interest due upon a mortgage bond, executed by Nazir Khan, against his heirs and certain other persons, who had been added as defendants. The Subordinate Judge found that the added parties were fractional co-sharers in the mortgaged property, and decided that the mortgage by Nazir was, therefore, invalid to the extent of their interest. He accordingly decreed the suit against the heirs of Nazir in respect of his share only, and held the latter defendants not liable. He delivered judgment on the 29th June 1903, [909] but signed the decree on the 6th July. On the 22nd instant the plaintiffs prayed for the amendment of the decree on the grounds that the name of a party defendant had been incorrectly recorded, and that the amount decreed as principal had been wrongly entered in the decree as Rs. 600 instead of Rs. 1,600. The application for amendment was granted on the 22nd August, on which date the decree was amended. The plaintiffs then presented an appeal to the District Judge of Chittagong on the 2nd September against the decision of the Lower Court upon the question of the liability of the added defendants, but it was rejected on the next day as being out of time by 16 days. They thereupon appealed to the High Court against the order of the District Judge.

Babus *Dwarkanath Chuckerbutty* and *Akhoy Coomar Banerjee* for the appellants.

No one for the respondents.

GHOSE AND PRATT JJ. The learned District Judge rejected the plaintiffs' appeal in this case on the ground that it had been preferred sixteen days beyond the due time. It would appear that the original decree was signed on the 6th July 1903. The plaintiffs-appellants applied on the 22nd July to have the decree amended, and the amendment was accordingly made on the 22nd August. The amendment was in two respects, first, as to the name of a party, which had been incorrectly recorded, and, secondly, as to the amount of the claim in the case, which had been entered and decreed as Rs. 600 only, whereas it should have been Rs. 1,600. The decree was made against some of the defendants only, and the appeal was preferred in order to have the remaining defendants made jointly liable under the mortgage. We think that the appeal ought to have been admitted, the date being reckoned from the 22nd August, when the correct decree was prepared. The decree was wrong in a very material particular, namely, as to the amount claimed and allowed; and the appeal was filed on the 2nd September, or well within thirty days of the date of the amended decree. Apart from this, we think that, under section 5 [910] of the Limitation Act, there was sufficient cause for not presenting the appeal within thirty days from the date of the first decree, namely, the 6th July. We, therefore, direct that the order of the District Judge be set aside and the appeal be admitted for hearing. We make no order as to costs.

Appeal allowed.