Before Mr. Justice Norman and Mr. Justice E. Jackson.

DULLAB SIRKAR AND ANOTHER (TWO OF THE DEFENDANTS) *v.* KRISHNA KUMAR BAKSHI (PLAINTIFF.)* 1869 *Aug.* 12.

Registration—Notice—Suppression of Fact—Loss of Lien.

In execution of a money-decree, the decreeholder caused the right, title, and interest of the judgment-debtor in a certain property, which had been mortgaged to him by a registered bond, to be sold, but without notice of the existence of such lien. He afterwards obtained a decree upon the bond, and sold it to the defendants, who caused the same property to be attached. The purchaser intervened under section 246 but without success. On suit by the purchaser, to establish his absolute right, *held*, that as the defendants' vendor had suppressed the fact of the charge and thereby induced the plaintiff to purchase as the absolute property of the judgment-debtor, they were now precluded from setting up his lien.

Baboos *Kali Mohan Das* and *Tarra Prasanna Mookerjee* for appellants.

Baboos *Srinath Das* and *Mohini Mohan Roy* for respondent.

THE facts are fully stated in the judgment of

NORMAN, J.—This is a suit by the plaintiff, to establish his title as purchaser of Kismat Jaipora, against the defendants, who are seeking to bring the property to sale, in execution of a decree on a bond, by which the property had been pledged by the prior owner before the date of the plaintiff's purchase. The facts are as follows:

One Kudam Sircar mortgaged Kismat Jaipura to Ramjay Mozoomdar, by a bond, which was registered under the provisions of section 53 of Act XX. of 1866. Subsequently to the registration of the bond, Ramjay having obtained a money-decree in a suit against Kudam Sircar, caused Kismat Jaipura to be attached, and sold in execution of the decree. In describing and particularizing the property to be sold, he made no mention of the mortgage; but allowed the property to go to sale, as if it had been unincumbered. The plaintiff purchased the property for a

*Special appeal, No. 364 of 1869, from a decree of the Judge of Rajshahye, dated the 18th November 1868, reversing a decree of the Sudder Ameen of that district, dated the 9th April 1869.

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large sum, rupees 1,500. Ramjay Mozoomdar afterwards obtained a decree on his registered bond, which he sold to the defendants. In execution of that decree, the defendants caused Kismat Jaipura to be attached. The plaintiff intervened under section 246, without success.

The question in the present suit is whether the defendants have a right to sell the property under the decree which they have purchased. The Judge, reversing the decision of the Principal Sudder Ameen, holds that the defendant must be considered as standing in the same position as Ramjay Mozoomdar, and that they have not such right.

The defendants appeal. They contend that only the rights and interests of Kudam Sirkar were sold under the decree; that the plaintiff's purchase was subject to the lien under the bond; and that the bond having been duly registered under section 53, the plaintiff must be deemed to have bought with notice of the charge created by it.

We think that the decision of the Judge is correct.

By causing the property of Kudam Sirkar to be sold in execution of a decree, having not only made no objection to the property being sold as the absolute property of Kudam Sirkar but actually suppressing the fact of the charge upon it created by the bond, Ramjay Mozoomdar induced the plaintiff to buy the property in the belief that the title of Kudam Sirkar was a valid one; and that so far at least as he was concerned, there was nothing to prevent a purchaser from acquiring a good title as owner. We may add, that Ramjay Mozoomdar apparently had the full benefit of the money realized by the sale which took place.

Under these circumstances, Ramjay could not set up the lien under his bond as against a purchaser who bought the right of Kudam Sirkar. That right was allowed by Ramjay, for his own purposes, to appear to be that of an absolute owner; and Ramjay cannot now, to the prejudice of the plaintiff, say that it was not so. The defendants, who are merely executing Ramjay's decree, can have no greater right than Ramjay himself. The appeal is dismissed with costs.

Before Mr. Justice Kemp and Mr. Justice Markby.

RAKHALDAS MADAK (PLAINTIFF) *v.* MADHUSUDAN MADAK AND OTHERS (DEFENDANTS.)*

1869 *August.* 18.

Adverse Possession—Cause of Action—Trustee and Cestui que Trust—Limitation.

When property is placed in the hands of another by way of trust, no cause of action arises to the owner until there has been a demand by the owner for the restoration of the property, and a refusal by the trustee to give up the property. The period of limitation begins to run from the date of such refusal or distinct assertion of adverse right, and not from the date the trustee enters into possession.

Baboos *Mahesh Chandra Chowdhry* and *Gopal Chandra Mookerjee* for appellant.

Baboo *Bama Charan Banerjee* for respondents.

KEMP, J.—This was a suit to recover possession of a certain property, on the allegation that, under a deed dated the 22nd of Jaishta 1257, the plaintiff having nobody to look after his property, and being obliged to go to Calcutta in search of service made, over the property in dispute to the defendant, who is the son of the plaintiff's father's sister, upon trust. The deed recites that the defendant was to pay the rent to the superior talookdar that he was to look after the property and to enjoy the profits thereof until the plaintiff returned, when he was to give up the property to the plaintiff, without any objection. It appears that the plaintiff was abroad for more than twelve years, and that this suit has been brought about five years after his return, after demanding restoration of his property. The first Court dismissed the plaintiff's suit.

In appeal, the Judge of the Appellate Court, that is the Subordinate Judge of East Burdwan, states that he concurred generally with the decision of the Court below, but it appears to me clear that in reality he disposed of this suit upon the issue of limitation alone, for he says, "that this document, that is to say the deed

* Special Appeal, No. 1232 of 1869, from a decree of the Subordinate Judge of East Burdwan, dated the 5th March 1869, affirming a decree of the Sudder Moonsiff of that district, dated the 24th August 1863.

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of the 22nd Jaishta 1257, cannot be construed to mean that the plaintiff's right to the land in dispute existed within twelve years preceding the date of suit." Again, in another passage, he says: "It is evident that the plaintiff has been out of possession for a long time, and therefore his right has ceased to exist." There has been no finding by the lower Appellate Court as to whether this document is a genuine and subsisting document, and whether the lands in dispute are comprised in the document or not. I have no manner of doubt that, assuming this to be a genuine and subsisting document, the plaintiff's suit is not barred by the Statute of Limitation. The document is not a kabuliat, for there is no provision for the payment of rent by the defendant to the plaintiff. If the document be genuine, the defendant was a trustee for the plaintiff, and bound to give up the land upon the plaintiff's return. The suit of the plaintiff is brought within time from the date of the demand for the restoration of the property. The lower Appellate Court was therefore wrong in dismissing the plaintiff's suit, on the ground that it was barred by the Statute of Limitation, and the case must go back for the lower Appellate Court to find whether the deed is a genuine and subsisting document, and also whether the lands claimed in this suit are comprised in it.

Costs to follow the result.

MARKBY, J.—I am of the same opinion. It is clear that if, as the plaintiff alleges, the defendant came into possession of the land under this document, there could be no cause of action which would be the commencement of a period of limitation at least until there had been a demand on the part of the plaintiff, and a refusal on the part of the defendant to give up the land, or else a distinct assertion of some adverse title. The lower Appellate Court does not find that the plaintiff's title was barred on any such view as this, but appears to me to find on the terms of the document itself, that the suit was brought more than twelve years after the defendant had entered into possession of the property under the deed. I think this is an entirely erroneous view of the transaction, and I agree that if the document was a genuine document, and had not been put an end to more than twelve

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years before the commencement of this suit, that the plaintiff's claim is no way barred by limitation. The case must therefore go back to be heard and disposed of on the issues mentioned by Mr. Justice Kemp.

Before Mr. Justice Macpherson and Mr. Justice Glover.

MR. T. M. GIBBON (PLAINTIFF) *v.* ABDUR RAHMAN KHAN AND OTHERS (DEFENDANTS)*

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Aug. 23.

Trespass—Suit to close Doors—Ground of Action—Possibility of Injury.

No suit can lie to close doors opened by a person in his own wall, on the ground of a possibility of his committing trespass on the land of the plaintiff, or of his having actually committed such trespass. It will only lie, when the opening of the doors is in itself such an irremediable injury that the plaintiff would not be sufficiently compensated by money damages.

Munshi *Mohammed Yusaff*, for appellant.

Messrs. *R. E. Twidale* and C. *Gregory* for respondents.

MACPHERSON, J.—It appears to me that this special appeal must be dismissed with costs. The plaint shows no cause of action whatever. The case is that the defendant has made two doors in a wall upon his own land. The plaintiff complains of this, alleging it to be "contrary to the ancient practice," and says that by the opening of the doors, and by the coming and going which may take place in and out of these doors, there is danger of the plaintiff's being dispossessed of his land and that he is altogether injured by the opening of the doors.

The suit also was brought to obtain an order for closing a well situated upon the lands of the plaintiff himself. No question is now raised with reference to this well, because, as the Judge of the lower Appellate Court has stated, the Moonsiff, on enquiry and personal observation, found that the well was no longer in existence. Therefore, when the case was heard by the lower Appellate Court, there was no appeal as to the well, and the only point tried was whether the doors in question ought or ought not

* Special Appeal, No. 412 of 1869, from a decree of the Officiating Subordinate Judge of Patna, dated the 28th November 1863, affirming a decree of the Moonsiff of that district, dated the 1st January 1868.