

*Before Mr. Justice L. S. Jackson and Mr. Justice Markby.*

UDAYA CHANDRA RANA, (ONE OF THE DEFENDANTS) v. BHAJAHARI JANA  
(PLAINTIFF.)\*

1869  
April 9.

*Mortgage—Tacking.*

The English law of tacking is not recognized in the Courts of this country.

Baboos *Ashutosh Dhur* for appellant.

Baboos *Hem Chandra Banerjee* and *Srinath Doss* for respondent.

JACKSON, J.—The special appellant asks us to apply the principle of the English law of mortgage, which enables a mortgagee to tack on to the amount of his mortgage, any further liability of the mortgagor to him, a principle which he does not show us has been ever recognized or adopted in the decisions of the Courts of this country. The appeal must be dismissed with costs.

MARKBY, J.—I am of the same opinion.

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

GANGA NARAYAN CHOWDHRY (PETITIONER) v. PHUL MOHAMMED  
SIRKAR AND OTHERS (OPPOSITE PARTY)†

1868  
April 9.

*Execution—Limitation—Payments out of Court.*

A decree-holder having sold a portion of his debtor's property, his case in execution was struck off the file on 27th July 1865. On 9th September, he again applied for execution, and was told to file a list of his debtor's property. This he did not do; but on 21st September, he filed a petition, alleging that he had received two small sums from persons owing money to his judgment-debtor. On 31st October, the case was struck off the file.

On the 21st August 1868, he again applied for execution. The lower Court holding that the realizations made in September 1865, were not made through the Court, and therefore, not in execution declared further execution barred by limitation. *Held*, on appeal, by the High Court, that it was material to enquire whether the petition of 9th September 1865, was *bona fide* presented with intention to proceed under it, and whether the moneys were really paid as alleged.

Baboo *Khetranath Boss* for petitioner.

Baboos *Debendra Narayan Bosa* and *Anand Gopal Palit* for opposite party.

\* Special Appeal, No. 2785 of 1868, from a decree of the Subordinate Judge of Midnapore, dated the 30th June 1868, reversing a decree of the Moonsiff of that district, dated the 10th March 1868.

† Miscellaneous Regular Appeal, No. 51 of 1869, from an order passed by the subordinate Judge of Dinapore, dated the 8th December 1868.