

The 10th May 1865.

*Present :*

The Hon'ble W. Morgan and Shumbhoonath  
Pundit, *Judges.*

**Re-sale in execution of decree (consequent on non-deposit)—Liability of purchaser to damages—Appeal.**

Case No. 126 of 1865.

*Special Appeal from a decision passed by Mr. P. E. Taylor, Judge of East Burdwan, dated the 26th August 1864, affirming a decision passed by the Principal Sudder Ameen of that District, dated the 28th May 1864.*

Sree Narain Miiter, *Appellant,*

*versus*

Maharajah Mahtab Chand Bahadour and others, *Respondents.*

*Baboo Prosunno Coomer Sein for Appellant.*

*Baboo Juggadanund Mookerjee for Respondents.*

A purchaser at a sale in execution of a decree is liable for damages caused by a re-sale consequent on his not making the required deposit. An appeal lies to this Court from the order of the lower Courts absolving the purchaser from liability.

THE first Court disallowed the damages arising out of the re-sale (in which the property was sold for less than it had fetched in the first sale) on the ground that the mooktear of the purchaser had not made a deposit, and had not signed the proceedings of sale. The Lower Appellate Court upheld the order on the ground that the provisions of sections 253 and 254 had not been observed, and that there was some irregularity in the sale. It is shown to us from a copy of the petition of the purchaser that he admits that his mooktear had signed the sale proceedings. We know of no irregularity, and the sale was not set aside for any. The non-deposit of a portion of the consideration on the first day of the sale, and the remainder within the time allowed by law, led to the re-sale. It is clear that the fact of the deposit not being made cannot, as the lower Courts think, absolve the purchaser from the liabilities attached to the purchase made for him by his mooktear. The contract was completed, and, if the purchaser fail to pay the consideration, a re-sale must take place, and the purchaser in the first sale must abide by the results of his acts in abandoning the purchase.

It is true, the law of 1861 allows an appeal in matters of dispute arising only between the parties; but section 254 enacts that the damages payable by the first purchaser may be realized under the proceedings allowed for execution of decrees. It, therefore, follows that for all the purposes of enforcing payment of these damages, the original decree-holder has all the rights of a decree-holder to enforce his claim against the defaulting purchaser, and so appears to have a right to appeal in all matters appealable.

We think, therefore, that an appeal lies to this Court; and that may be the reason why no objection was taken by the purchaser to the appeal to the Lower Appellate Court. As the order of the lower Court is evidently wrong, we reverse them with costs, and decree the appeal of the appellant, declaring that the appellant is entitled to recover the difference by way of damages.

A copy of this order is to be sent to the Court of first instance to enable the decree-holder to recover the sum adjudged to him by this order.

The 10th May 1865.

*Present :*

The Hon'ble W. Morgan and Shumbhoonath  
Pundit, *Judges.*

**Limitation—Acknowledgment of title of Mortgagor (made by Mortgagee to third party).**

Case No. 118 of 1865.

*Special Appeal from a decision passed by Moulvie Etrat Hossein, Principal Sudder Ameen of Sarun, dated the 18th November 1864, affirming a decision passed by the Moonsiff of that District, dated the 8th June 1864.*

Dur Gopal Singh (Plaintiff), *Appellant,*

*versus*

Kasheeram Pandey and others (Defendants),  
*Respondents.*

*Baboo Kishen Succa Mookerjee for Appellant.*

*Baboo Madhub Chunder Banerjee and Chunder Madhub Ghose for Respondents.*

A written acknowledgment by the mortgagee of the title of the mortgagor or of his right of redemption is

sufficient within the meaning of clause 15, section 1, Act XIV. of 1859, though made to a third party, and not to the person entitled to the land.

This suit, brought against a mortgagee for the recovery of the property mortgaged, is clearly barred by limitation, unless the written acknowledgment of title on which the plaintiff relies saves it. The acknowledgment is in terms a clear recognition of the plaintiff's right as mortgagor; but it is contained in a document (to which the plaintiff is not a party) whereby the mortgagee conveyed his interest in the land to a third person by way of mortgage. Act XIV. of 1859, section 1, clause 15, merely requires the acknowledgment of the title of the mortgagor or of his right of redemption to be given in writing by the mortgagee. The construction given to these words by the Court below is that they require the written acknowledgment of title to be given to the mortgagor; and that, in the present case, the acknowledgment, being in a writing passing between the mortgagee and a third person, is insufficient to prevent the operation of the Law of Limitation.

Whatever may be the requisites of an acknowledgment of a debt to revive a right of suit within the 4th section of the Act, we are of opinion that an acknowledgment of title may be sufficient within the above clause of the Act, although it is not made to the person entitled to the land.

After the prescribed period has elapsed, the mortgagor loses all remedy by suit, and the mortgagee consequently holds the land free from all rights of suit by the mortgagor. But if, before the expiration of the appointed time, the mortgagee makes known that he holds the land as a mortgagee, or, in other words, in a character incompatible with the notion that he is himself the owner, and if he makes this manifest by a writing acknowledging the title of the owner, the mortgagor, we find nothing in the law to require that such written acknowledgment should be addressed to the mortgagor. It appears to us that a public written acknowledgment of the mortgagor's title, or an acknowledgment such as that now before us, contained in a writing addressed to a third person, if signed by the mortgagee, satisfies the requirements of the law.

\* We reverse the decision of the lower Court, and remand the suit for trial.

The 11th May 1865.

*Present :*

The Hon'ble H. V. Bayley and E. Jackson,  
*Judges.*

**Judgment of Lower Appellate Court (to record grounds of appeal and reasons for rejecting them)**

Case No. 3433 of 1864.

*Special Appeal from a decision passed by the Principal Sudder Ameen of Mymensingh, dated the 27th August 1864, affirming a decision passed by the Moonsiff of that District, dated the 16th December 1861.*

Kishen Chunder Patronovis (one of the Defendants), *Appellant,*

*versus*

Tara Monee Chowdhraïn (Plaintiff),  
*Respondent.*

*Baboo Romesh Chunder Mitter* for  
Appellant.

*Baboo Bhuggobutty Churn Ghose* for  
Respondent.

The grounds urged in a petition of appeal to a Lower Appellate Court, and the reasons for rejecting them, should be distinctly and concisely recorded by the Court.

THE only order passed in this case is in these words: "Whereas no reason is shewn for entering this case again on the file, it is ordered that the petition to that effect be rejected." We think this order quite insufficient and most unsatisfactory. The grounds urged by the petitioner, and the reasons why these grounds are not tenable, should be distinctly and concisely recorded by the Principal Sudder Ameen. The attention of the Principal Sudder Ameen is directed to the decision of this Court, page 254, Weekly Reporter, 24th March 1865, No. 2905, special appeal from his decision, and he is enjoined to be more careful in future.

The 11th May 1865.

*Present :*

The Hon'ble E. Jackson and F. A. Glover,  
*Judges.*

**Execution of decree—Suit by intervenor under section 230, Act VIII. of 1859—Transfer of land in dispute from one jurisdiction to another.**

Case No. 3564 of 1864.

*Special Appeal from a decision passed by the Judge of Mymensingh, dated the*