This judgment, this Court in special appeal, on 31st May 1864, characterized as a singular one. The Court observed that the Judge, whilst he admitted that the examination of the Lower Court into the accounts (and the suit was on the accounts) had been defective in the Lower Court, took no steps to supply the defect in the appeal by the examination of the books himself. In respect to the Judge's decision on the merits of the claim, and his reasons for it, this Court remarked as follows: "Now, "the Judge must have overlooked the fact "that it was not obligatory on the plaintiff to "file this document (the kistbundee), *as it did* "*not exist until after the filing of the plaint.* "Again, it is not pleaded by the defendant "that this deed forms any bar to the plaint- "iff's right to continue the suit and to recover, "and that is not his defence. The defendant "wholly sets aside any reliance on the kist- "bundee, and denies that it was ever execut- "ed by him, *vide* his grounds of appeal to the "Judge. Therefore, we utterly fail to see "why the Judge was to give the defendant "relief, and free him from the decree of the "first Court, because the plaintiff had not "filed this document. We require the Judge "to take up this appeal again, and to pass a "judgment upon the merits of the case, and, "if he has any solid reasons for reversing the "clear judgment of the first Court, to state "those reasons and the legal ground on which "he puts his judgment, holding that the de- "cree cannot be supported."

The decision of the Judge on the remand, if it can be called the decision of the Judge at all, is in these words:—

"The reasons for not upholding the de- "cree were given in the former decision. "The Appellate Court deems those reasons "insufficient, and considers the decision of the "Principal Sudder Ameen good and correct. "In plain words, the superior Court would "confirm the decision of the Principal Sud- "der Ameen. As this Court has no other "reasons for not upholding the original de- "cree than those already stated, it only re- "mains to give effect to the expressed opinion "of the higher Appellate Court. The "decree of the Lower Court is accordingly "affirmed, and the appeal dismissed with "costs and interest."

Of course, there is another appeal against this order of the Judge, on the obvious ground that the Judge has not carried out the order of the High Court.

The first judgment of the Judge, Mr. Brodhurst, was a singular one, but this second order is infinitely more remarkable. We will not suppose, as we no doubt might from the tone and tenor of the decision, that the Judge has acted in a contumacious and petulant spirit in disposing of the case in the way he has done. Nor can we take the Judge at his word, and suppose that he is really unable to give any better reasons for his decision than those which this Court showed to be so inconsistent and unsound. The Court would rather not suppose that the Judge is so incompetent as he avows himself to be; and, under any circumstances, we think the Judge was bound to make some endeavour to comply with the order of the Court on remand, and justify his original decision on good and substantial reasons.

This Court never said that it considered the judgment of the first Court was good and correct. All that was said in regard to this judgment was, that the Principal Sudder Ameen had, in a careful and clear judgment, given a decree in favor of the plaintiff. A careful and clear judgment may still not be a good or a sound judgment; and certainly, whatever our judgment might have been as to the merits of the judgment, there was no warrant from our remarks to suppose that we sent the case back, intending that the Judge should confirm the judgment. The case was sent back that the Judge might, as he was bound to do, exercise an independent and unfettered judgment as to whether or not the defendant was indebted to the plaintiff in the sum claimed, or in any part of it. In now remanding the case for a second time, we hope the Judge will pass such a well-considered judgment as will do justice to the parties, and save them from the grievous burden of any further unnecessary litigation.

The 6th September 1865.

Present:

The Hon'ble Shumbhoonath Pundit and G. Campbell, *Puisne Judges.*

Limitation—Suit to recover possession of property attached for sale.

Case No. 513 of 1865.

Special Appeal from a decision passed by Mr. R. Alexander, Officiating Judge of Cuttack, dated the 2nd December 1864, affirming a decision passed by the Moonsiff of that District, dated the 1st April 1864.

Roghoonath Doss Mohaputtur (one of the Defendants), *Appellant*,

versus

Kinoo Doss (Plaintiff) and others (Defendants), *Respondents*.

Mr. R. E. Twidale for Appellant.

Baboo Upprokash Chunder Mookerjee for Respondents.

In a suit to recover possession of property attached for sale, in which it did not appear that the plaintiff had been really dispossessed by the Court, but that the sale was only of rights and interests according to the former practice, the plaintiff, who had no knowledge of these proceedings, was held entitled to the full period of limitation.

In this case the only question is, whether a suit to recover possession of property attached for sale, of which possession is delivered by the Court, and plaintiff thereby dispossessed, must be brought within one year, or within twelve years of the date of such dispossession under the sale? Plaintiff sues to set aside the sale, which he cannot do after one year; but we may consider the case to be simply one to recover the property; and the question is, whether he must or must not set aside the sale before he can recover the property? In another suit, where it appeared that the Court had actually seized the property, and dispossessed the defendant under the sale, judgment on the same point has been reserved by this Bench. But in the present case there is nothing whatever to show that plaintiff was really dispossessed by the Court; and it is clear that, if the Court does not act up to the full to the letter and spirit of Act VIII. of 1859, so as to ensure the settlement of disputes then and there, but merely sells the rights and interests in the old loose way, a party, who may have no knowledge of these proceedings, cannot be prejudiced, but has the full period of limitation. That being, so far as is shown, the case of the plaintiff, the appeal is dismissed with costs.

The 6th September 1865.

Present:

The Hon'ble Shumbhoonath Pundit and G. Campbell, *Puisne Judges*.

Limitation—Sale in execution of decree—Claims to attached property by Shareholders.

Case No. 827 of 1865.

Special Appeal from a decision passed by Mr. L. W. Hutchinson, Additional Principal Sudder Ameen of East Burdwan, dated the 7th January 1865, reversing a decision passed by the Moonsiff of that District, dated the 24th August 1863.

Monohur Khan and others (Defendants), *Appellants*,

versus

Troyluckhonath Ghose (Plaintiff), *Respondent*.

Baboo Rajendur Misser for Appellants.

Baboo Mohendur Lal Seal for Respondent.

Where intervenors claim a share of attached property, the Court should define the respective shares of the debtor and the intervenors, and sell the debtor's definite share only. If the Court omits to do so, and sells the undefined rights and interests, there is no decision under Section 246, Act VIII. of 1859, of which the purchaser, by lying in wait without possession for one year, can take advantage.

A CERTAIN piece of land was attached in execution as the property of Johur Khan. The present defendants intervened, alleging that they had a two-third share in the land. The Moonsiff's order was to this effect: "I "find that the intervenors and the debtor "are in joint possession. Only the debtor's "rights and interests will be sold, they will "not be affected; therefore their petition is "rejected."

The purchaser did not get possession at the time, but he now brings his suit for the whole land, and alleges that, as the above-quoted order was a decision under Section 246 rejecting defendant's claim, they were bound to set it aside by suit within one year, and, not having done so, his title is complete.

The Lower Appellate Court, apparently admitting this plea, and also finding that defendants have not proved their title, gave plaintiff a decree.

It is quite clear that, in the execution case, the Court wholly failed in its duty, as is, we fear, too often the case in this matter. Clinging to the old practice, it avoided a decision under Section 246, and sold the undefined rights and interests. It ought to have then defined what share was possessed by the debtor, and what by the intervenors, and to have sold the debtor's definite share. Not having done so, we think that there is no decision under Section 246, of which the purchaser, by lying in wait without possession for one year, can take advantage. And there thus being no pre-adjudication in plaintiff's favor, it is for him, and not the defendants, to prove his title. The case is therefore remanded to try simply whether plaintiff has proved his title.