just as much necessary for the protection of society as that of fraud. But the Privy Council have held that the Civil Court has no power to repudiate the civil rights of parties, merely because they have tried to support them by perjury and forgery; and I do not see any reason whatever why the same principle should not be extended to a case of fraud like the present.

But there is another ground also upon which I would dismiss this special appeal. Both the Lower Courts have concurrently found that the vendors of the plaintiff were in possession from the date of their purchase down to that of their dispossession by the appellant, that is to say, for a period of more than 12 years. Adverse possession for such a length of time is by itself sufficient to create a title, according to the ruling of the Privy Council in the case of Gunga Gobind Mundul,* and the plaintiff is, therefore, entitled to recover the property irrespective of any question of fraud or benamee.

For the above reasons, I would dismiss this special appeal with costs.

Bayley, J.—I concur in dismissing this special appeal. There is the fact found that plaintiff's vendors had possession under an adverse title for more than 12 years, and such possession gives title in such a case as this.

The 24th January 1871

Present:

The Hon'ble L. S. Jackson and W. Ainslie, *Judges.*

Mahomedan widow—Dower—Possession.

Case No. 1389 of 1870.

Special Appeal from a decision passed by the Officiating Judge of Gya, dated the 27th April 1870, affirming a decision of the Subordinate Judge of that District, dated the 28th September 1870.

Kureem Buksh Khan and others (Plaintiffs), *Appellants.*

versus

Mussamut Doolhin Khoord and others (Defendants), *Respondents.*

Moonshee Mahomed Yusoof for Appellants.

Mr. R. E. Twidale and *Baboo Boodh Sein Singh* for Respondents.

In a suit against a Mahomedan widow by her husband's heir to recover possession of property held by her in virtue of a claim for dower, should proof of forcible dispossession fail and no other origin of defendant's possession be alleged, a Court would be justified in finding, as a matter of inference, that the defendant had got into possession on the ground alleged by herself with the consent of the other heirs.

Jackson, J.—THIS was a suit against a Mahomedan widow to recover possession of certain immoveable property, the plaintiff claiming to be the heir of that lady's deceased husband and of the infant daughter of that husband also deceased. The plaint sets forth that the plaintiff had been in possession of the property in question, but had been dispossessed by the act of the widow, who wrongfully gave the shares in question in lease to a different party.

The defendant, the widow, averred that she was in possession of this property by virtue of a claim on the estate of her husband for dower which was then unsatisfied.

The Courts below have both held that plaintiff, although entitled as heir, could not recover possession of the property from the hands of the widow, inasmuch as she was entitled to hold it in virtue of her lien on account of her dower.

Several cases have been cited in argument upon this special appeal, one of them from VIII. Weekly Reporter, page 5, which was a decision of Mr. Justice Norman and Mr. Justice Seton-Karr, and the others from XI. Weekly Reporter, page 212, XIII. Weekly Reporter, page 49, and XIV. Weekly Reporter, page 239. In the first of these cases, the view of the Mahomedan Law which has been adopted by the Lower Courts is very broadly stated. In the other cases, however, the Judges appear to have taken a somewhat different view, and to have restricted the right of a Mahomedan widow to hold by way of lien to cases in which there has been a contract enabling her to do so, and to cases where she had got into possession with the consent of the heirs.

Now, in this case, the facts are—that the husband of the defendant died about 8 years before the commencement of the suit. The plaintiff alleged forcible dispossession, but the proof of that forcible dispossession failed, and no other origin of the defendant's possession has been suggested by plaintiff, except that forcible possession the proof of which failed. That being so, I think the Courts below would have been justified in finding, as a matter of inference, that the

h

* 7 W. R., P. C., p. 21.

defendant had, in fact, got into possession of this property as widow, with the consent of the other heirs of the husband, in satisfaction of her claim of dower.

The fact of dower has been admitted throughout, and, indeed, it appears that plaintiff's counsel, on questions being put to him, did also admit the amount of dower as stated by defendant. This latter admission, however, which is now repudiated, appears to be immaterial. When the plaintiff thinks fit to bring a suit against the defendant for an account of her husband's estate, which she holds in lieu of her claim for dower with interest, that will be the proper time to determine what the dower really was, and how matters stand between the widow and the heirs. At present, all that can be determined is, whether the plaintiff is entitled to recover possession of the estate from the hands of the widow when the claim for dower remains unsatisfied.

It appears to me that, under the circumstances of the case, we ought to hold that the widow's possession was referable to her claim for dower; and that, as that claim has undoubtedly, under the Mahomedan Law, precedence over the claim of the heirs, the heirs should not be allowed to succeed in this suit, and turn her out of possession without satisfying her claim.

That being so, I think the suit ought to have been dismissed; and, therefore, that this appeal ought to be dismissed with costs.

Ainslie, J.—I concur.

The 24th January 1871.

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Onus probandi.

Cases Nos. 1810 and 1811 of 1870.

Special Appeals from a decision passed by the Judge of Bhaugulpore, dated the 1st June 1870, affirming a decision of the Subordinate Judge of that District, dated the 29th March 1869.

Mr. P. T. Onraet and others (Defendants), *Appellants,*

versus

Kishen Soonduree Dossee (Plaintiff), *Respondent.*

Mr. R. E. Twidale and *Baboo Nil Madhub Sein* for Appellant.

Baboo Romesh Chunder Mitter for Respondent.

In the suit for the removal of certain outlets made by defendant in an aqueduct, on the ground that plaintiff was entitled to the exclusive use of the water of the aqueduct, where the defence set up was that the portion of the aqueduct to which the dispute related was where water flowed through the lands of the defendant's zemindary:

HELD that it was for plaintiff to make good the title he alleged.

Mitter, J.—THESE special appeals are admitted to be governed by one and the same decision here.

This suit was instituted by the plaintiff for the removal of three *singhas* or outlets made by the defendant in a certain aqueduct called the Rajdar, upon the ground that she was entitled to the exclusive use of the waters of that aqueduct.

The defence set up was that the portion of the aqueduct in which the disputed *singhas* have been constructed is where water flows through the lands of the defendant's zemindary, and that the plaintiff has no right to the exclusive use of the water thereof.

Both the Lower Courts gave a decree to the plaintiff upon the ground that the defendant had failed to prove that the *singhas* in question were ancient constructions, as alleged by him in his written statement; and that the plaintiff's title to the exclusive use of the waters of the Rajdar had been established in the case reported in page 218 of the Sudder Dewanny Decisions for 1856.

We are of opinion that the mode in which the Lower Courts have dealt with this case is erroneous in law.

The defendant was not a party to the above case of 1856, and it is, therefore, clear that the decision passed in that case cannot be used as evidence against him.

Besides, it is manifest that that decision related to a branch of the Rajdar distinct from the one now in dispute. Both the branches may be called by one and the same name; but this circumstance is by no means sufficient to render a decision passed with reference to one of them necessarily applicable to the other.

Moreover, the said decision was passed upon the ground that the branch of the Rajdar then in dispute flowed through lands