does distinctly state the date of the letter, and when and under what circumstances it was written. The letter being in confirmation of the previous lease by Akburoonissa for the whole house, which has been found to be valid, and that lease and the letter confirming it by Nujoomoonissa being of date prior to plaintiff's attachment, plaintiff would be bound by both leases.

Having found, however, that the property was wuqf created by Dad Ali, and that his widows took the same as trustees of the endowment, and there being evidence not discredited or commented upon by the Judge, that the endowment was *bonâ fide* and the profits appropriated according to the terms of the trust, we dismiss the plaintiff's suit, and decree this appeal with costs of both Courts payable by the plaintiff, special respondent.

The cross-appeal of the plaintiff in the matter of the rate of rent is dismissed with costs.

The 23rd January 1871.

Present:

The Hon'ble E. Jackson and Onookool Chunder Mookerjee, *Judges.*

Section 347, Act VIII., 1859—Default—Re-admission.

Shomaed Ali Sowdagur, *Petitioner,*

versus

Eusoof Khan Chowdhry, *Opposite Party.*

Baboo Bhugobutty Churn Ghose for Petitioner.

Baboo Debendro Narain Bose for Opposite Party.

An appeal having been struck off for default, application was made for re-admission under Section 347, Act VIII. of 1859; but the Judge refused the application, because the appellant had not conformed to a rule which he had passed that two pleaders should be engaged in every appeal.

HELD that the Judge was bound to see whether the reasons set forth for re-admission of the appeal were satisfactory or not.

Mookerjee, J.—IN this case it appears that the petitioner was the appellant in a certain appeal before the Judge of Chittagong. The appeal was called for hearing. But neither the appellant nor his vakeel being present, the appeal was struck off. Subsequently the applicant applied to the Court under Section 347, Act VIII. of 1859, for re-admission of the appeal, setting forth the reasons which prevented him from appearing when the appeal was called on for hearing.

The Judge disposes of this application by saying that, inasmuch as he had passed a rule that two pleaders should be engaged in every appeal, the rule of his Court is the same as that existing in the High Court, he would not re-admit the appeal.

We think that the Judge was bound to see whether the reasons set forth in the application for the re-admission of the appeal were satisfactory or not. This he has not done. We send the case back to the Judge to act under the provisions of Section 347, and to consider whether a good ground has been shown for the re-admission of the appeal.

The 24th January 1871.

Present:

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

Wrong-doer—Fraud—Civil Courts—Jurisdiction—Possession—Title.

Case No. 1193 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Bhaugulpore, dated the 22nd March 1870, affirming a decision of the Moonsiff of Teghra, dated the 23rd July 1869.

Ram Sahoy Singh (one of the Defendants), *Appellant,*

versus

Kooldeep Singh (Plaintiff), *Respondent.*

Baboos Romesh Chunder Mitter and *Nil Madhub Sein* for Appellant.

No one for Respondent.

A wrong-doer who has forcibly taken possession of another man's property is not entitled to withhold it from its lawful owner on the ground of a fraud which has in no way affected his own status or position.

Civil Courts have no power to interfere with the vested rights of parties merely by way of penalty, unless they are authorized to do so by positive legislative enactment.

Adverse possession for more than 12 years is of itself sufficient to create a title.

Mitter, J.—I AM of opinion that there is no ground for this special appeal.

The plea of *bonâ-fide* purchaser without notice is not available to the appellant, who is merely the purchaser of the right, title,

and interests of Gondee Singh at a sale in execution of decree, nor does it appear that this objection was ever urged or attempted to be proved in either of the Courts below.

The second objection appears equally unsound.

Granting that the vendors of the plaintiff had made the benamee for the purpose of depriving their creditors, the position of the appellant would still remain the same, namely, that of a mere trespasser. I have already expressed my opinion on this point, or rather on a point cognate to it, in the case reported in page 136 of the 12th Volume of the Weekly Reporter, and I still adhere to that opinion.

The suit is undoubtedly one of a civil nature, and there is no express law or enactment that I am aware of to bar its cognizance. The Civil Court is, therefore, bound to entertain it under the express provisions of Section 1, Act VIII. of 1859; and if this is once conceded, the only question we have to try is, whether the plaintiff or the appellant is the lawful owner of the property in dispute.

But the answer to this question seems to be perfectly plain. The right of property was vested in the vendors of the plaintiff, notwithstanding the fraudulent nature of the benamee; for a mere benameedar has no right of any kind whatever, there being no distinction between legal and equitable titles in this country.

Why then are we to dismiss this suit, merely because the vendors of the plaintiff had been guilty of a fraud against their creditors. The appellant has nothing whatever to do with those creditors, nor is the person through whom he derives his title wholly innocent of the fraud upon which he wishes to rely. What principle of justice or equity can he cite to support the contention that a mere wrong-doer like himself, who has forcibly taken possession of another man's property, is entitled to withhold that property from its lawful owner upon the ground of a fraud which has no way affected his own status or position, and which was perpetrated against persons to whom he is an utter stranger, and who would be placed in a much better position by the success of this suit than by its dismissal, if their claims are still alive! As between the plaintiff and the appellant, there can be no doubt whatever that law and justice are both on the side of the former, for he is not only the legal owner, but a purchaser for value wholly innocent of the fraud, though he might have come to the knowledge of it at the time of his purchase. The appellant is clearly a trespasser, and I do not see any reason whatever why we should allow him to take shelter under a fraud which was jointly committed by his predecessor in title and the vendors of the plaintiff against persons whose interests are no way involved in this litigation.

It has been said that no one ought to be permitted to take advantage of his own fraud or of that of his predecessor in title. But what is the advantage which the plaintiff is endeavouring to take in this case, and against whom? All that the plaintiff asks for is that the appellant should be compelled to give up a property which is lawfully his, and from which he has been forcibly dispossessed by the appellant without the semblance of a title. Surely, there is nothing unreasonable or unfair in such a prayer, whatever fraud the vendors of the plaintiff might have committed against other parties who cannot be possibly prejudiced by the result of this suit. On the contrary, it is the appellant who is seeking to take advantage of that fraud, after having completely failed to justify the wrongful act of dispossession which has been brought home to him by the plaintiff. The objection that the plaintiff is trying to get rid of a deed executed by his vendors is one more of form than of substance; nor does it appear that that objection can fairly arise in this case. There are no such things as deeds, strictly so called, in this country, and the relief asked for by the plaintiff can be granted to him without the reversal or cancellation of any deed that I am aware of.

It has been further argued that the suppression of fraud is indispensibly necessary for the protection of society, and that the ends of public policy require the dismissal of such suits for the sake of example. But the Civil Courts have no power to interfere with the vested rights of parties merely by way of penalty, unless they are authorized to do so by some positive legislative enactment. No considerations of public policy can justify such a course, more specially when the Legislature has vested the Criminal Courts with full and ample jurisdiction in the matter. Suppose, for instance, that a just claim is foolishly attempted to be supported by a mass of perjury and forgery. The suppression of perjury and forgery is

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.