ever for holding that the document was fraudulent. It is by no means uncommon to execute a second mortgage of the same property, and the fact that the same witnesses were present at those two transactions is no ground whatever for suggesting that either the one or the other is fraudulent. And it is hardly necessary to say that the fact that the mortgage is not registered is no reason whatever for setting it aside. The plaintiff in this case put forward his claim upon this mortgage-bond years before the defendants purchased this property as belonging to his mortgagor; years before the defendants purchased the rights and interests of the mortgagor with their eyes open, fully knowing that the plaintiff claimed to hold certain interest in that property. The defendants having failed, as far as we can see from the Lower Appellate Court's decision, to satisfy that Court that this document is in any way fraudulent, the plaintiff was entitled to the decree which he obtained from the Lower Court. We set aside the decision of the Lower Appellate Court, and restore and affirm that of the first Court. The costs of this Court and of the Lower Appellate Court will be paid by the respondents in this special appeal.

Mookerjee, J.—I concur.

The 12th January 1871.

Present:

The Hon'ble F. B. Kemp and F. A. Glover, *Judges.*

Declaratory suit—Cause of action.

Case No. 1646 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Hooghly, dated the 19th July 1870, reversing a decision of the Moonsiff of Jehanabad, dated the 13th May 1870.

Ram Gopal Tewaree (Defendant), *Appellant,*

versus

Gora Chand Poryal and others (Plaintiffs), *Respondents.*

Baboos Kishen Succa Mookerjee and *Grish Chunder Ghose* for Appellant.

Baboo Rajendro Nath Bose for Respondents.

In a suit for establishment of lakheraj title to, and confirmation of, possession in land which was alleged to have been brought to sale and purchased in execution by the principal defendant, who had then sued some of the plaintiffs for a kubooleut:

HELD that there had been no invasion of plaintiffs' title even if they had a lakheraj title, and that therefore they had no cause of action.

Kemp, J.—THIS is a suit on the part of several plaintiffs, alleging that the 12 cottahs of land in suit formed their lakheraj holding; that the principal defendant, in execution of a decree against one Abdool Kurreem, No. 350 of 1865, attached the property in dispute with other properties, and secretly brought about a sale, and purchased the rights and interests of the aforesaid Abdool Kurreem. Subsequently the defendant sued some of the plaintiffs for a kubooleut. The names of the plaintiffs who were then sued are stated in the plaint, and it is here unnecessary to name them; and that the plaintiffs became aware of the sale from the fact of the suit for a kubooleut being brought. Then the plaint goes on to say: "Although we are, up to the present moment, "*i. e.*, at the time of bringing the suit, in "possession, still there are prospects in "future of our title being threatened or "otherwise invaded by this secret sale." Therefore, the suit is brought for confirmation of the plaintiffs' possession and for the establishment of their lakheraj title. The written statement of the defendant is to the effect that the land in dispute was held by the plaintiffs as tenants, and that they paid rent to his judgment-debtor; and that he, having purchased the rights and interests of his judgment-debtor, was entitled to receive rent from the plaintiffs.

The Lower Appellate Court, in a judgment which is very difficult to understand, states that the Court thinks "that, when the defend-"ant was capable of adducing some witnesses "as heirs of his judgment-debtor's vendors, "showing that they were not opposed to his "interests, he ought satisfactorily to have "established with plaintiffs' kubooleuts and "collection-records that plaintiffs had held as "ryots, and throughout paid rent at first to "Oojul, next to his heirs, and lastly to the "judgment-debtor, until defendant purchas-"ed the judgment-debtor's rights; and as "such has not been done, and defendant has

"not been able satisfactorily to establish that "plaintiffs ever paid rent as tenants to "Oojul and his heirs, and eventually to the "judgment-debtor, I cannot consider de- "fendant entitled as proprietor to recover "rents from plaintiffs as tenants." Now, without going further, this was not a suit by the defendant to recover rent from the plaintiffs as tenants. This was a suit by the plaintiffs, alleging that their title had been invaded by this attempt on the part of the defendant to get a kubooleut from their co-sharers, and they, therefore, sued to establish, not only their lakheraj title, but for confirmation of their possession. It is, therefore, a suit in which the plaintiffs had, not only to prove their title as lakherajdars, but also that they had been in possession.

In appeal, the first point is that the plaintiffs had no cause of action; 2nd, that this being a suit for declaration of an alleged lakheraj title, the plaintiffs were bound to establish that title; 3rd, that there is no evidence of lakheraj title, that the oral evidence adduced by the plaintiffs is hearsay evidence, and that the evidence of the defendant does not, as stated by the Lower Appellate Court, admit the possession of the plaintiffs as lakherajdars, but admits only the possession of the plaintiffs as tenants of the defendants paying rent for the land they hold.

We think that all these grounds have been fully made out. On the first ground there really appears to be no cause of action on which the plaintiffs could sue. We see no invasion of the title of the plaintiffs, supposing them even to have a lakheraj title. On the second point, after reading the evidence of the three witnesses, Ameen, Panchoo, and another witness, it is clear that they gave evidence to the effect that they heard from the plaintiffs that this was their lakheraj land. There is no legal evidence of the alleged lakheraj title of the plaintiffs, and the evidence for the defence is not, as stated by the Lower Appellate Court, evidence admitting the possession of the plaintiffs as lakherajdars, but simply that the plaintiffs had been paying rents as tenants to the defendant's predecessors.

We think, therefore, that the decision of the Lower Appellate Court is wrong, and must be reversed. We decree this appeal and dismiss the plaintiffs' suit with costs.

The 12th January 1871.

Present:

The Hon'ble F. B. Kemp and F. A. Glover, *Judges.*

Right of worship—Cause of action—Limitation —Clause 16, Section 1, Act XIV., 1859.

Case No. 1639 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Hooghly, dated the 18th May 1870, affirming a decision of the Moonsiff of that District, dated the 31st March 1870.

Gour Mohun Chowdhry (Plaintiff), *Appellant,*

versus

Muddun Mohun Chowdhry and others (Defendants), *Respondents.*

Baboos Hem Chunder Banerjee and *Umbika Churn Bose* for Appellant.

Baboos Romesh Chunder Mitter and *Kalee Mohun Doss* for Respondents.

A claim to exercise a right to a turn of worship of an idol is not a recurring cause of action, and a suit to enforce such a right is governed by the limitation prescribed in Clause 16, Section 1, Act XIV. of 1859.

Kemp, J.—THE plaintiff is the special appellant in this case. He sued on the allegation that he was entitled to a turn of worship of a certain idol, which is kept at present in the female apartments of the house occupied by the defendant Muddun Mohun. In the plaint it is set forth that this idol was the ancestral idol of the family; that the defendants were entitled to the first fifteen days of the month worship; that the plaintiff was entitled to 7½ days worship and another party to the other 7½ days; that the plaintiff's right of worship was suddenly interrupted by the defendant on the 16th of Falgoon 1275; that this interruption gave the plaintiff a cause of action, and he therefore brought this suit to enforce his right to a turn of worship of the idol.

Both Courts have dismissed the plaintiff's suit, holding that this suit is barred, inasmuch as the plaintiff has failed to prove