any direct act of waste or injury to the property which might affect the rights of the plaintiff as the widow's reversioner. What is pressed upon us by the respondent is that although the name of Reetburn was used as that of the recorded proprietor of the property and his widow executed the deed to defendants set up by them, still the real proprietor was Sheoburn, the father of Nund Lall, whose widow is the tenant for life; in other words, that the act of Reetburn's widow must be deemed no legal act as the property was not Reetburn's at all, but Sheoburn's only. Now the late Chief Justice, in a case reported at Hay's Reports, Volume II, page 608, held that a reversioner ought to sue, not upon some contingent and uncertain right which may never accrue to him, but upon some positive right;—and further that was a case of alleged improper alienation by the widow herself. In the present case, however, it is not pretended that there was any such alienation or any waste by the widow affecting plaintiff as her reversioner. The mere execution of a deed or registration of it as between strangers without any ulterior act directed against the plaintiff or his possession, or against the widow and her possession, can in no way give the plaintiff a cause of action at this stage. It would be contrary to all judicial rules to express any further opinion in the case, as we are asked to do, at the present stage of the litigation and as the case at present stands before us. It must be left to the plaintiff when any real cause of action or reversionary right accrues to him to take such steps as he is then advised. As the case stands at present, we think the judgment of the Lower Appellate Court must be reversed, and the plaintiff's suit dismissed as brought without any existing cause of action and with all costs.

The 6th June 1871.

Present:

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

Intervention—Section 73 Act VIII of 1859.

Case No. 2608 of 1870.

Special Appeal from a decision passed by the Judge of Sarun, dated the 14th September 1870, modifying a decision of the Subordinate Judge of that District, dated the 21st March 1870.

Saligram Singh and another (Plaintiffs) *Appellants,*

versus

Gheenoo Singh and another (Defendants) *Respondents.*

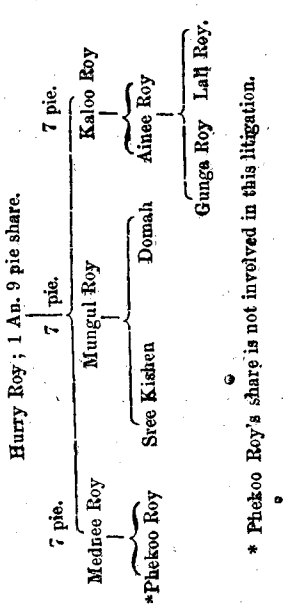
Baboos Ramesh Chunder Mitter and *Bama Churn Banerjee* for Appellants.

Baboo Mohesh Chunder Chowdhry for Respondents.

Plaintiffs, having succeeded in a suit for foreclosure of a mortgage, by a conditional bill of sale, of a share of two mouzahs, then sued for possession and registration of names as proprietors. Whilst this suit was pending, certain parties intervened and asked to be made parties under Section 73, Code of Civil Procedure, on the ground that plaintiffs' vendors were not entitled to the full share claimed as they themselves had purchased a portion thereof.

HELD that the Court exercised a wise and proper discretion in allowing the intervenors to be made parties, for a decree in plaintiffs' favor, though not legally binding on them, would, nevertheless have caused them great difficulty in all matters of rent.

Glover, J.—THE accompanying genealogical table will be of use in setting out the facts of this case.



The plaintiffs sue for possession of a 10½ pie share of mouzahs Meetapore and Punsa, mortgaged to them by a conditional bill of sale by Rackoo Roy and others (descendant of Mungul Roy and Kaloo Roy) in 1863. A foreclosure suit was brought after the year of grace, and plaintiffs now ask for possession and registration of names as proprietors.

The original defendants, that is the mortgagors, denied the mortgage, and raised various pleas relating thereto, into which it is not necessary for us to enter inasmuch as these defendants preferred no appeal against the first Court's decision upholding the conditional bill of sale.

Whilst the suit was pending, however, the present special respondents intervened, and asked to be made parties under Section 73 of the Procedure Code, on the ground that the plaintiffs' vendors were not entitled to a 10½ pie share of the estate, but only to a 7 pie share. They claimed to have themselves purchased a 7 pie share from Sree Kishen Roy and Gunga Roy in 1270, which would only leave a 7 pie share for the plaintiffs.

The table given above shows that the original owner held a 1 anna 9 pie share. On his death the property admitttedly went to his three sons, Mednee, Mungul, and Kaloo, in shares of 7 pie each.

And here begins the divergence. Plaintiff says that Mungul had two sons, Sree Kishen and Domah, who succeeded to a 3½ pie share each, and that Ainee Roy, the son of Kaloo, had also two sons, Gunga and Lall Roy, who got each 3½ pies.

The defendants aver on the contrary that Mungul and Ainee had each only one son, —Sree Kishen in the one case and Gunga in the other,—and that these succeeded to a 7 pie share each, half of which or an aggregate of 7 pie they sold to the defendants; that they, defendants, are in possession of this share and pay the Government revenue on it.

The turning point of the case therefore was,—had Mungul and Ainee two sons each, or only one? If they had two, it is clear that the half of the son's shares would amount to 3½ pie only, and not 7 pie, and that the vendors of the plaintiffs would have had the share which they mortgaged to them.

The Subordinate Judge decided for the plaintiffs. But the Judge, on the appeal of the intervening defendants, held first that the plaintiffs had not proved their vendors' right to any thing more than a 7 pie share; and secondly, that the defendants had shown "by evidence, documentary and oral, that "they have all along been in possession of "the 7 pie share and have paid the Govern-"ment revenue thereon." The words used by the Judge "all along" refer to the date of the defendant's purchase, *viz.*, A. D. 1810. The Judge went fully into the documentary evidence adduced, and held that the plaintiffs had not established Domah Roy and Lall Roy's parentage. He gave them, therefore, a decree for a 7 pie share only.

They now appeal specially, urging—

(1.) That the intervening third parties ought not to have been made defendants under Section 73 Act VIII of 1859; that the Subordinate Judge had no power so to admit them, and that therefore his whole proceedings were void by reason of want of jurisdiction.

(2.) That, if they were rightly admitted as defendants, the onus should have been placed on them, and not on the plaintiffs; they being volunteers asking to be made parties, should have been made to prove their own title. And,—

(3.) That if the onus were on them, the Judge's decision shows clearly that they were unable to support it.

In support of the first objection (which we may observe was not the subject of appeal to the Judge), the special appellant's pleader relies on the ruling of this Court in the case of Joy Gobind Doss *versus* Gowree Pershad Shaha, VII Weekly Reporter, p. 202,—where it was laid down that no one claiming a title adverse to those set up by the plaintiff and defendant in a suit should intervene and be introduced into the suit, inasmuch as he would not be affected by the result of the suit.

This ruling, however, was much discussed in Kalee Pershad Singh *versus* Joy Narain Roy, XI Weekly Reporter, p. 361, one of the learned Judges (Mr. Justice L. S. Jackson) being one of those who had decided the case of Joy Gobind Doss, and its meaning explained. The order in that case was construed to mean that where a party claimed adversely to both plaintiff and defendant and was not a party to the suit, he could not in law be bound by the decision and would not be likely to be affected by the result. By "claiming adversely" was intended a claim to exclude the actual parties to the suit altogether from any share or interest in the subject-matter of the suit. It was also laid down that the law did not prohibit the decision of questions between rival defendants in all cases, and that Section 73 of the Procedure Code was intended to leave Courts a discretion in cases where intervenors apply to be made parties to a suit; and further that the words "persons who may be likely to be affected by the result" did not mean only "persons on whom the result was legally binding."

We take this to be the explanation of the Court's judgment in Joy Gobind Doss' case, and we are quite willing to follow it, for it is easy to conceive many cases (especially in this country) where a third party, although not legally bound by a decision passed *inter alios* might be put to the greatest inconvenience, if not loss, by not being allowed to intervene under Section 73. In the present case, the suit was for a specific share of an undivided estate. If the present special respondent had not been allowed to appear, the result of a decree in plaintiff's favor would have been great difficulty in all matters of rent. The plaintiff, declared by a decree of Court to be the owner of a 10½ pie share of the estate, would have sued the ryots for that proportion of rent; and in every case the defendants, special respondents, who have been found to be the real owners of a portion of that share, would have been forced into Court and have been forcibly obliged to bring a regular suit to establish their right to collect their share of the rent. The decree itself would not have affected the special respondent, but the result of that decree would have done so most injuriously, and we think that the Court below exercised a very wise and proper discretion in allowing them to be made parties to the suit.

Then as to the onus. The decision in Jugdanund Misser *versus* Hamed Russool, X Weekly Reporter p. 52, lays it down that an intervenor, claiming as against a plaintiff and being made a defendant under Section 73, has to support the ground of intervention and to prove his claim.

Now, in the present case, the Judge has found that the intervening defendants did prove their title to a 7 pie share of the property. He says :—"They (*i. e.* the intervening defendants) have shown by evidence, documentary and oral, that they have all along been in possession of the 7 pie share, and have paid Government revenue thereon."—If, therefore, the onus was on the defendants, it is clear that in the Judge's opinion they had been able to support it. And this disposes of the third ground of appeal as well as of the second.

We do not think it necessary to go in detail through the documentary evidence, or to dispose of the special appellant's objections as to the way in which the Judge has construed it; for quite apart from such considerations, the finding of the Court below would be fatal to the plaintiff's claim, inasmuch as the Judge has found that the defendants have been in possession of the share they claim, under an unchallenged title of more than 50 years. This length of possession would of itself give them an indefeasible title to the share as against the plaintiffs, even if they had not been found to have a good title in other ways.

The special appeal is dismissed with costs.

The 6th June 1871.

Present:

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

Wassilat—Cultivator's claim.

Case No. 2724 of 1870.

Special Appeal from a decision passed by the Additional Judge of Tirhoot, dated the 22nd August 1870, *affirming a decision of the Subordinate Judge of that District, dated the 30th April* 1870.

Nursingh Roy and others (Plaintiffs) *Appellants,*

versus

Mr. John Anderson (Defendant) *Respondent.*

Baboos Bama Churn Banerjee and *Taruck Nath Pallit* for Appellants.

Mr. R. E. Twidale and *Baboo Sreenath Doss* for Respondent.

Where the party recovering possession of land of which he was wrongfully dispossessed, and claiming wassilat, is himself the cultivator, he is entitled to recover the profits which he would have made out of the land by the cultivation, had he not been dispossessed.

Kemp, J.—THE plaintiff is the special appellant. He appears to have obtained a decree for possession as against the defendant that possession being a wrongful one, and he also appears to have recovered mesne profits of the 12 annas kist of the year 1274. The present suit is brought for the remaining 4 annas kist of 1274 and for the years 1275 and 1276, the claim being rupees 3,629-2-9. The plaint states that the plaintiff was the cultivator of some 72