have been bound to produce evidence of the consideration, and to show that the transaction was one which would be good against creditors. But that is not the case here; the Lower Courts have found quite sufficient to show that it was a real transaction, and that there was a consideration for it, although it is not clear what the consideration was, whether it was so ample as to have been sufficient against the creditors. We think that is a question for the Lower Courts to determine, and they have properly determined it. And supposing that the Judge of the Appellate Court was wrong in giving effect to the decree of the Hig Court, it is clear, upon his judgment, that he thought there was quite sufficient to justify his decision, if that had been put aside altogether, and that he would have come to the same conclusion if there had been no such decree.

We think there is no ground shown in special appeal for interfering with the decision appealed against. In fact, unless the proposition which we mentioned can be made out, that the plaintiff was put in the position of the creditors, and bought the rights of the creditors, there is no ground whatever for this appeal. That not being shown, and not being in our opinion the law, the appeal, so far as the two *Mokurrureedars* are concerned, must be dismissed with costs in proportion to their interest.

But with respect to Gokool, the *ticcadar*, there seems to have been a mistake. He not having appealed, the Judge had no power to reverse the decree of the Lower Court as regards him. The result, therefore, is that the decree appealed against must be altered by omitting that part of it which relates to Gokool, and to the share which belonged to him, and he must pay the appellant's costs to the extent of his share.

The 6th May 1872.

Present:

The Hon'ble Sir Richard Couch, *Kt.*, *Chief Justice*, and the Hon'ble W. Ainslie, *Judge.*

Prohibitory Order—Execution—Payment of money into Court—Jurisdiction.

In the Matter of
Maharaj Coomar Kishen Pertaub Sahee,
Petitioner,

versus

Chowtarinee Sree Bhowya Debya and others,
Opposite Party.

Mr. R. T. Allan for Petitioner.

Baboo Rash Beharee Ghose for Opposite Party.

In execution of a decree against B, the Judge made an order requiring petitioner to pay into Court 700 rupees out of the monthly allowance of 1,000 rupees due from the estate of the petitioner to B, in the first instance from August to November 1871, and then month by month; petitioner objected that the allowance due from his estate to B had been paid up in advance from October 1870 to November 1871, but the Judge upheld his former order and directed petitioner to pay into Court the allowance for August and September, and thereafter monthly. HELD that the Judge was only competent to dismiss the application or decline to set aside the prohibitory order; but that he was not justified by any provision in the Code of Civil Procedure in making an order that petitioner should pay the money into Court; and his order was accordingly set aside as illegal.

EARLY in 1871, the Judge of Sarun made an order upon the petitioner (the Maharajah of Hutwa) which was in the nature of an order of attachment, in a case of execution of decree against one Beerpertab Sahee, requiring him to pay into Court the sum of 700 rupees out of the monthly allowance of 1,000 rupees due from the estate of the Maharajan to Beerpertab Sahee,—in the first instance for the months of August to November 1871, and then month by month.

The Maharajah objected by a petition that the allowance due from his estate to Beerpertab Sahee had been paid up in advance from October 1870 to November 1871, both months inclusive. The Judge thereupon (on the 25th September 1871) upheld his former order, and directed the Maharajah to pay into Court, on the 30th September 1871, the sum of 1,400 rupees, the allowance for August and September, and thereafter 700 rupees month by month. From this last order the Maharajah filed a petition of Miscellaneous Regular Appeal. But inasmuch as the applicant was not a party to the suit in which the decree was passed, it was held that he could not come up to the High Court in appeal from the order passed by the Lower Court; and his application was rejected, on the 2nd February 1872 by Mr. Justice Loch.

The applicant now came up by way of petition, alleging that, for as much as previous to the issue of any *purwannah* or prohibitory order from any Court of Justice, petitioner had actually paid and advanced to Beerpertab Sahee, the judgment-debtor, the full amount of allowance to which he was entitled from October 1870 to 30th November 1871, the order of the Judge of Sarum directing petitioner to pay into Court, on 30th September 1871, the monthly allowance for August and September 1871, was opposed to law and

justice, and ought to be reversed; that, at the date of such *purwannah* being issued, there was nothing due or owing to the said Beerpertab Sahee, and consequently the decrees of the several decree-holders could not operate on the monthly allowance of the judgment-debtor, the same having been already paid by petitioner; that petitioner presented a petition of objection to the Judge in respect of execution of the decrees of the decree-holders, but that the Judge, without having regard to such petition of objection, in which he stated that he had paid the full amount of allowance up to30thNovember 1871, nd had filed in the suit of Monessur Doss, ecree-holder, in *decreejaree* case No. 10 of 871, a receipt of the judgment-debtor for uch payment, passed an order requiring etitioner to pay over again the allowance for ugust and September. Petitioner, therefore, prayed for a rule to be issued directed the said decree-holders to show cause hy the order of the Lower Court, bearing ate the 25th day of September last, should it be set aside on the ground of the same ing illegal and irregular and in excess of jurisdiction, and that in the meantime all rther proceedings in respect of the said der of the 25th September last be stayed; d, further, that precept be issued directed the Judge requiring him to cause notice this order to be served on the said several cree-holders whose names are specified in s said order, as entitled to participate in the oney directed to be paid into Court, but ich petitioner had already paid.

Couch, C.J.—In this case, a prohibitory der was issued in April 1871, and served the 26th of April. It might be that if e Rajah had, as he alleged, paid the year's owance, and, consequently, at the time of e service of the prohibitory order, there as no debt in existence, he might have ken no notice of that order; but, considerg what is the practice of the Courts in the ofussil, it would not have been altogether se to have done that. It might have been id that he was admitting by his conduct at there was in fact a debt existing at that me to which the order would apply. He, erefore, appears, in May, to have made an plication to the Judge to set aside the ohibitory order on the ground that there vas no debt.

The Judge seems to have entered into the uestion whether there was a debt or not. Ie does not appear to us to find that the oney had not been paid as the Rajah lleged, but he seems to have considered that because there had been a declaration by the High Court that this allowance was subject to attachment, the Rajah had no business to pay it at all, and that it must be considered as an evasion or a device to defeat the creditor.

Now, strictly speaking, until the decree-holder in this case had served the prohibitory order, the Rajah was not bound to pay any attention to his claim. The Judge, when he came to his conclusion, whether on good grounds or not, is immaterial, should have said, "I dismiss the application; I decline to set aside the prohibitory order;" but instead of doing that, he proceeded to make an order that the Rajah should pay the money into Court. That is an order which was not justified by any of the provisions in the Civil Procedure Code—an order which was illegal, and cannot be allowed to stand.

The rule must, therefore, be made absolute, and the order of the 25th of September 1871 must be set aside; and, as there has been an appearance here by the opposite party and an attempt to support this illegal order, the petitioner must have his costs of this application, which we fix at 32 rupees.

The 8th May 1872.

Present:

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

Judges.

Relinquishment—Non-cultivation—Ancestral Jote—Minority of Holders.

Case No. 1324 of 1871.

Special Appeal from a decision passed by the Judge of Beerbhoom, dated the 26th July 1871, reversing a decision of the Moonsiff of Amdubora, dated the 18th November 1870.

Radha Madhub Pal and another (Plaintiffs), *Appellants,*

versus

Kalee Churn Pal (one of the Defendants), *Respondent.*

Baboo Nil Madhub Sein for Appellants.

Baboo Mohinee Mohun Roy for Respondent.

The non-cultivation of a small portion of an ancestral jote by the admitted holders for one year owing to their minority, does not amount to relinquishment as laid down in 6 W. R., p. 67.

Kemp, J.—This was a suit for possession of 5 beegahs 6 cottahs of land out of a jote