the defendant to the plaintiff. The deeds of compromise were regularly filed in Court, and in those deeds it was distinctly stated that one party had received possession, and the other relinquished it. Upon this a decree was passed in favour of the plaintiff in terms of the compromise. Sometime afterwards, a dispute again arose between the parties which led to the institution of certain proceedings under section 318 of the Criminal Procedure Code, and the Magistrate being of opinion that the defendant was in *de facto* possession of the property, ordered her to be maintained in possession.

The plaintiff has therefore brought the present suit to recover possession of the lands which formed the subject-matter of the compromise in the previous suit, and the only ground on which the Lower Appellate Court has thrown out his case is that the suit is barred by the law of limitation.

We are of opinion that this decision is erroneous in law. It is beyond all question that possession of the lands now in dispute had been transferred by the defendant to the plaintiff under the deed of compromise above referred to; and it therefore follows that every subsequent interference on the part of the defendant with the plaintiff's possession of the disputed lands must be considered as constituting a fresh cause of action, and if the suit is brought within 12 years from the date when that cause of action arose, no question of limitation would arise in the case. The suit is admittedly brought within 12 years from the date of the above compromise; and in the absence of any evidence to the contrary, we must take it for granted, upon the statements of the parties themselves, that possession was actually relinquished by the defendant in favor of the plaintiff in the manner and on the date mentioned in the deed of compromise. That being so, the plea of limitation cannot be sustained; and as no other question remains to be decided with reference to the validity of the plaintiff's claim, we think it unnecessary to remand the case for further investigation.

We accordingly reverse the judgment of the Lower Appellate Court, and restore that of the first Court, the defendant being liable to pay to the plaintiff all the costs of this litigation.

The 6th May 1872.

Present:

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

Sale in Execution—Rights of Purchaser—Appeal—Reversal of Decree against a Party not an Appellant.

Case No. 921 of 1871.

Special Appeal from a decision passed by the Officiating Judge of Gya, dated the 1st May 1871, reversing a decision of the Subordinate Judge of that district, dated the 24th June 1870.

Lalla Ram Surun Lall (Plaintiff), *Appellant*,

versus

Mussamut Lokebas Kooer and others (Defendants), *Respondents*.

Baboo Mohesh Chunder Chowdhry for Appellant.

Mr. C. Gregory, Moonshee Mahomed Yusoof and *Baboo Boodh Sen Singh* for Respondents.

There is no authority for the proposition that the purchaser, at a sale in execution of a decree, of the right, title, and interest of the judgment-debtor, acquires by that purchase not merely the right, title, and interest of the judgment-debtor, but any right which the judgment-creditor might have to set aside or question the validity of any deed which had been previously made, even it might be by the judgment-debtor himself.

An Appellate Court has no power to reverse the decision of the Lower Court as regards a party who has not appealed.

Couch, C.J.—What is really contended for on behalf of the special appellant in this case is, that the plaintiff, who was the purchaser at a sale in execution of a decree of the right, title, and interest of the judgment-debtor, is to be considered as having acquired by that purchase, not merely the right, title, and interest of the judgment-debtor, but any right or title which the judgment-creditor might have to set aside or question the validity of any deeds which had been previously made, even it might be by the judgment-debtor himself.

We think that is a proposition which cannot be supported, and we are not aware of any decision which can be quoted for it.

In the present case, the Lower Courts have gone very carefully into the question, whether those *mokurruree* instruments were actually executed, and it is found that they were. It is also found that there was a consideration for them, although it is said that possibly the consideration might not have been an adequate one. It may well be, if a creditor had been suing, that the defendants would

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 Maharajah 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