Macpherson, the relation of landlord and tenant existed between the plaintiff and them, and they were liable for the rents, unless there was a special contract to the contrary, that is to say, unless there was a special contract, that the person whose name was used should alone be liable. Obviously that is a case that has no application whatever to the facts and circumstances of the present case.

We now come to the Full Bench decision to be found in Volume VIII. in the case of Prosunno Coomar Paul Chowdhry *vs.* Koylash Chunder Paul Chowdhry. The learned Chief Justice in that case observed that it was never the intention of Legislature to empower the Collector to try questions relating to rent depending upon equitable rights and liabilities arising from circumstances other than those of the relationship of landlord and tenant. The relationship of landlord and tenant is clearly and distinctly denied here; and the question which has been gone into is a question which, under the Full Bench ruling in Volume VIII., the Revenue Courts are not competent to entertain.

In a case which is to be found in Volume XI., Weekly Reporter, page 406, and which was passed subsequent to the Full Bench ruling in Volume VIII., the very question which is now raised before us was clearly raised. The learned Judges who decided that case, Justices Glover and Mitter, observe that, assuming that the *kubooleut* upon which the action was based in that case was executed by the defendant No 1, a further question still remained, namely, whether the defendant No. 2 was the party beneficially interested in the lease, and they held that that was a question which was not intended by the Legislature to be tried by the Revenue Courts, and that the point had already been set at rest by the Full Bench decision in Volume VIII. These are precisely the facts and circumstances of the present case: if we assume that the *kubooleut* executed by the other defendant is genuine, there still remains the question whether the defendant before us, the special appellant, was the party beneficially interested in the lease or not, and that is a question which the Judges held was not intended by the Legislature to be tried by the Revenue Courts as settled by the Full Bench decision in Volume VIII.

We think that this case clearly falls within the purview of the Full Bench decision, and without going into the merits of the case, for it is unnecessary to do so under the circumstances, we reverse the decision of the Judge and dismiss the plaintiff's suit with costs of all the Courts with interest.

The 4th May 1872.

Present:

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

Possession — Compromise — Dispossession Cause of Action—Limitation.

Case No. 1351 of 1871.

Special Appeal from a decision passed by the Officiating Judge of Rungpore, dated the 2nd September 1871, reversing a decision of the Subordinate Judge of that district, dated the 24th August 1869.

Nobin Chunder Roy Chowdhry (Plaintiff), *Appellant,*

versus

Radha Pearee Debia Chowdhrain (Defendant), *Respondent.*

Baboos Sreenath Doss and *Mohinee Mohun Roy* for Appellant.

Baboos Unnoda Pershad Banerjee and *Hem Chunder Banerjee* for Respondent.

Where possession of the lands in dispute had been transferred by defendant to plaintiff under a deed of compromise,—HELD that every subsequent interference on the part of the defendant with the plaintiff's possession of the lands in question must be considered as constituting a fresh cause of action, with a limitation of 12 years from the date when that cause of action arose.

Mitter, J.—It is quite clear that the judgment of the Lower Appellate Court in this case cannot be sustained.

The plaintiff is the proprietor of a village called Tumbulpore.

The defendant is the proprietor of a neighbouring village called Chaola.

It appears that in the year 1861 the present plaintiff sued the present defendant for possession of certain lands which he alleged appertained to his estate (Tumbulpore), and for the correction of a survey map.

An Ameen was deputed to hold a local investigation in the case, and on certain lands being demarcated by him, both parties appeared before him through their duly constituted agents, and entered into a compromise, most full and precise in its terms, by which possession of certain lands amounting to 13 bissees and odd drones was transferred by

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