

possible consequences of the omission. In the case before us, however, it is not even pleaded by the special appellant that any further process than filing a list of property for sale was taken out by him. No attachment was ever applied for; and alienation, under such circumstances, is not barred by law.

We have to notice that the Construction No. 588,* to which the judge has referred, applies to section 5, Regulation II of 1806, and upon perusal of paragraph 2, of the letter of the commissioner of the 16th division, of 20th March 1831, to the register of the court, upon which that paragraph was founded, we find that it has exclusive reference to a case *still pending*. The pleader for the appellant has further argued that, on general principles, a judgment binds all property of a debtor; but the provisions of section 7, Regulation VII of 1825 (the law under which execution of decree is carried out) enact that, according to the Regulations in force in our courts, the principles of Regulation II of 1806, are equally applicable after judgment given, as before judgment. The provision for a special remedy against disposal of property after judgment necessarily implies a power of disposal till the remedy is used; therefore, we hold that the absence of any officer to hold attachment, even if attachment had been made, is a *laches* of the petitioner, such as is alluded to in the Circular, which, of itself, might have rendered his claim untenable. We would [11] observe that the judge's decision is on the ground that there was no fraud in the alienation. For the above reasons, we dismiss the special appeal with costs.

The 31st January, 1850.

PRESENT: SIR R. BARLOW, BART., AND J. R. COLVIN, ESQ., *Judges*,
AND J. DUNBAR, ESQ., *Officiating Judge*.

CASE NO. 60 OF 1849.

Special Appeal from a decision passed by the Judge of Hooghly, July 13th, 1848; amending a decree passed by the Principal Sudder Ameen, April 20th, 1847.

BADAM BIBI, *Appellant (Plaintiff with another)* v. KISHEN KISHORE RAEI,
RAJINDUR CHUNDER NEOGEE AND BISHENNATH SOOR,
Respondents (Defendants).

[*Landlord and tenant—Transfer of tenure—No consent of landlord—Transferor still liable for rent.*]

Held that the holder of an under-tenure (*Mocurruee*) in Hooghly, could not, by transfer to a third party, without the sanction of the zamindar, avoid his personal responsibility to the zamindar.

Wukeel of Appellants—J. G. Waller.

Wukeels of Respondents—Ramapershad Ræe and Hurkally Ghose.

THIS case was admitted to special appeal, on the 21st November 1848, under the following certificate recorded by Sir R. Barlow:—

'The particulars of this case are fully recorded at page 140 of the Hooghly Zillah Decisions, for the month of July 1848. The judge takes exception to the principal sudder ameen's decree against *all* the defendants, and returns the case to that officer to ascertain whether Bishennath Soor was actually in possession of the property in question during the years 1250 and 1251.

* The case in point which has been cited in the argument, Beepurchurn Chuckerbuttee *versus* Muharajah Dbeera] Muhtab Chundur Buhadoor, decided March 27th, 1844, Reports volume 7, page 157, rested, it is proper to remark, wholly upon this Construction.

' This order is passed on appeal by the other two defendants, Kishen Kishore and Rajindur Chunder, who protest against the order for payment against *them*, instead of against Bishennath Soor, who, in their answer, they state is now in possession of the aforesaid property by right of his purchase on the 2nd *Bysack* 1250 from them.

' Bishennath in his answer acknowledges his purchase.

' The ground for application for special appeal is :—That no [12] transfer of names has been effected in the plaintiff's zamindaree *serishtah*, in which the names of the Neogees are still recorded ; and that, consequently, they cannot be exonerated ; that the remanding of the case is therefore irregular, and contrary to the practice of the courts.

' It has already been shewn that Bishennath Soor has not appealed against the decision of the principal sudder ameen. The appeal to the judge is brought forward by the other two co-defendants, the Neogees, who would endeavour to evade all responsibility for the rents of 1250 and 1251, on the score of sale of the property to Bishennath, upon whom, they urge, the liability rests.

' There can be no doubt that the plaintiff's claim is good against the parties who entered into engagements with her, that is the Neogees, who, again, have a right of action against *their* under-tenants ; but the judge, on appeal by the Neogees, has sent the case back for investigation on a point immaterial to the issue as it regards them : for whether they were in possession, or not, they must be held liable to the plaintiff under their own engagements, the *onus* of which they would make the party who purchased from them bear.

' The petitioner's (appellant's) object is, to have the principal sudder ameen's judgment upheld in all its integrity. Bishennath not having appealed, and the other co-defendants having pleaded sale to him only, no transfer from their names to his having taken place, these last are not entitled to a decree on their appeal.

' I admit a special appeal to try the soundness of the principle laid down by the judge.'

JUDGMENT.

The only argument urged by the respondents' pleader is, that, Bishennath having been made a defendant in the case by the plaintiff, that act must be held to exonerate the Neogees, and to impose all responsibility on Bishennath alone. Now, it is shewn by the record, that Bishennath was included in the objection of the Neogees themselves to the exclusion of his name ; but, irrespective of this fact, we hold that, under the circumstances detailed, the Neogees could not, by any transfer to a third party, without the sanction of plaintiff, avoid their direct responsibility to her. We therefore reverse the decision of the judge and uphold that of the principal sudder ameen, with costs against the respondents.