

The *moonsiff* decreed for the plaintiff, on the ground that the defendant had abandoned the lands, and the zamindar had given a *pottah* to plaintiff, as he was fully entitled to do under such circumstances. The principal *sudder ameen* confirms this, and also rests his decree on the conflicting ground that the defendant had remained in possession, and was only removed after issue of sufficient legal process. Such a decision, we observe, is highly discreditable to the principal *sudder ameen*. The appeal is decreed, and he will enter into a full investigation of the case, and dispose of it upon a distinct examination and explanation of its actual facts. Costs are charged to the respondent.

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The 30th January, 1850.

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

CASE NO. 76 OF 1846.

Special Appeal from a decision passed by Mr. H. V. Hathorn, Judge of Zillah Sarun, August 17th, 1848; reversing a decree passed by the Principal *Sudder Ameen*, November 23rd, 1846.

SHEIKH IMAUM BUKSH AND OTHERS, *Appellants*, (*Plaintiffs*) v.  
SHEOCHURN SAHOO AND OTHERS, *Respondents* (*Defendants*).

[*Execution of decree—Mere filing of list of property to be sold—No attachment—Alienation by judgment-debtor not illegal—Construction No. 588 refers only to pending cases.*]

The mere filing in court of a list of property for sale in execution of a decree, is not, of itself, sufficient to render subsequent alienation of such property illegal.

Neither does a mere judgment in the Company's courts bind all property of a debtor. Construction No. 588 refers only to cases pending in the courts.

*Wukeel of Appellants*—J. G. Waller.

*Wukeel of Respondents*—Kishen Kishore Ghose.

THIS case was admitted to special appeal, on the 13th January 1849, under the following certificate recorded by Mr. W. B. Jackson:

[10] 'The special appellant states that having obtained a decree for money, he gave in a list of property, with a request that it might be sold in execution of the decree. A delay of several months was allowed to elapse, before the day was fixed for sale; and, in the meantime, the property mentioned in his list was alienated. He contests the legality of this alienation. From the judge's decree, his statement of facts would appear to be correct; and the judge has upheld the alienation as legal. I therefore admit the special appeal, to try whether such alienation is legal or not. I doubt the validity of such alienation. I can see no good reason for the delay in selling; for the right and interest of the party cast might have been sold immediately, without enquiry into the extent and nature of that right.'

#### JUDGMENT.

We are of opinion that the alienation of the property cannot, under the exposition of the Advocate-General, Mr. J. Strettell, quoted in Circular Order No. 50, 17th February 1816, and also under the Court's Circular No. 114, of the 5th September 1834, be considered illegal in this case. By the latter, it is at the option of the party obtaining a decree to depute a *chuprassee* to attach and remain in possession of property in execution of decree, subject to the

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 RAE,  
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 Rae 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.