

proving a right as *bona fide* vested in himself, or by an agent regularly empowered by such person; but, in this case, the condition alluded to has no reference to the present suit, but, clearly, exclusively to an earlier suit, out of the steps taken in execution of which the present suit has arisen. The appeal is, therefore, not merely untenable in law, but is in truth frivolous and vexatious on the face of the document on which it is founded.

There is further the consideration, mentioned in the decree of the principal sudder ameen, that the consent recorded to this suit being carried on by the plaintiff in his own name is given by only one of the two purchasers of his rights. The appeal is, therefore, dismissed with all costs.

The 30th January, 1850.

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

CASE No. 79 OF 1849.

Special Appeal from a decision passed by Niamut Ali Khan, Principal Sudder Ameen of Zillah Tirhoot, September 15th, 1848; confirming a decree passed by the Sudder Moonsiff, January 20th, 1848.

HOOLAS TEWAREE, *Appellant (Defendant)* v. BUNDOO TEWAREE,
Respondent (Plaintiff).

[*Landlord and tenant—Regulation V of 1812, sections 9 and 10—General notice to ryuts not to cultivate without pottahs, not due notice.*]

A general notice issued by a Zamindar to his *ryuts*, prohibiting them to cultivate without taking *pottahs* from him, is not a due notice under sections 9 and 10, Regulation V, 1812.

The decision of Niamut Ali Khan, principal sudder ameen of Tirhoot, noticed as inconsistent and unsatisfactory.

Wukeels of Appellant—Rampran Raae and Bungee Buddun Mitr.

Wukeel of Respondent—Aftabooddeen.

THIS case was admitted to special appeal, on the 10th January 1849, under the following certificate recorded by Mr. Aber. Dick:

'This application is granted on the following grounds:—

'*First*.—Because it appears, that the notice required by sections 9 and 10, Regulation V, 1812, was not duly served upon the petitioner (appellant).

'*Secondly*.—Because, after issue of notice, no summary suit was instituted to prove that a legal demand of enhanced rent only had been made, and not paid, previous to virtually ousting petitioner by entering into engagements for his lands with another.'

[9] JUDGMENT.

We find that the principal sudder ameen, Moulvee Niamut Ali Khan, has declared in his decision the sufficiency of the notice, though he, in his detail of the process of proclamation, sets forth that the zamindar issued only a *general notice to the ryuts*, prohibiting them to cultivate without taking *pottahs* from him. Such general notice, (if, indeed, any notice is necessary in the case) is entirely opposed to the specific provisions of the law quoted in the certificate. The first ground raised by the certificate, obliges us to remand the case for complete investigation of all merits, on which we must observe that there is a great repugnancy in the different grounds stated on the face of the decree itself.

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.

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