

the deed of sale of certain property for a consideration of rupees 500, and filed a copy of the deed.

"The lower courts found that the execution of the deed of sale was not proved, and decreed its annulment.

"Defendant now appeals specially; urging that the principle laid down in the case of Bhyrubhunder Mufoomdar *versus* Kishennath Acharj, reported at page 943 of the Decisions of this court for 1853, that it is not competent to a civil court to entertain an action with the view to obtain a declaration of forgery of a deed not issued nor attempted to be enforced.

"We admit the special appeal to try whether under the circumstances of this case, the decision of the lower court should, with reference to the case above cited, be reversed or not."

#### JUDGMENT.

We concur in the principle laid down in the case of Shakir Mahomed decided on the 12th February 1857, *viz.*, that the registry of a deed constitutes a substantial issuing and entitles the [957] party, whose rights are attacked by that deed, to institute an action to have it set aside. It is impossible to say, as the appellant contends, that the publication of this deed inflicts no actual or threatened injury on the plaintiff. It manifestly deteriorates the marketable value of his property, and renders it difficult for him to deal with it, whether in the way of mortgage, security or otherwise. This is a clear injury arising from the rejecting of the deed, for which the plaintiff is entitled to seek relief; we therefore affirm the orders of the court below and dismiss the appeal with costs.

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*The 1st June, 1857.*

PRESENT: C. B. TREVOR, E. A. SAMUELS AND D. I. MONEY, ESQRS.,  
*Officiating Judges.*

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#### CASE NO. 592 OF 1856.

Special Appeal from the decision of Mr. G. D. Wilkins, Officiating Additional Judge of Tirhoot, dated 4th January 1855, affirming a decree of Moulvee Abdool Waheb, Moonsiff of Dulsing Serai, dated 5th September 1853.

BABOO GOORDIAL SINGH (*one of the Defendants*), Appellant *v.* RAMSUHAYE SINGH (*Plaintiff*), AND KALJEPERSHAD (*Defendant*), Respondents.

[*Mortgage—Foreclosure—Notice of foreclosure issued on mortgagor—Subsequent sale of mortgagor's rights—Notice to purchaser whether necessary.*]

*Held* that as the notice of foreclosure was issued on the original mortgagor and as the rights of the mortgagor were not transferred to special appellant until six months subsequently there was no necessity of issue or notice upon him; everything was rightly done under the law and the point on which the special appeal was admitted does not arise.

The special appeal is dismissed with costs.

*Vakeel of Appellant*—Moonshee Ameer Alee.

*Vakeel of Respondent*, Ramsuhaye Singh—Baboo Bungseebudun Mitter.

THIS case was admitted to special appeal on the 1st December 1856, under the following certificate recorded by Messrs. C. B. Trevor and E. A. Samuels:—  
"Ramsuhaye Singh, plaintiff, sued for possession of 2 out of 3½ of the villages of Jugdespore by virtue of a mortgage and conditional sale, dated 29th July 1845, which was made absolute on the 27th June 1849.

"Defendant, Baboo Goordial Singh, pleaded that he was the purchaser of the rights and interests of Narain Dutt, whose rights were mortgaged to plaintiff on 9th March 1848, and that consequently the notice of foreclosure should have been issued upon [958] the legal representative by sale in execution of the right of the mortgagor, which was not done.

"The lower court decided in favour of plaintiff and gave him a decree for possession.

"Defendant has now appealed specially and urged the same plea as that which he advanced to the courts below

"We observe that at the time of the issuing of the notice of foreclosure by plaintiff, the rights and interests of the mortgagor were vested in special appellant, we therefore admit the special appeal to try whether, under these circumstances, the notice of foreclosure should not have been issued on him, the legal representative of the mortgagor, and whether, as this has not been done, the decision of the lower court should not be reversed."

### JUDGMENT.

On referring to the record, it appears that the notice of foreclosure was issued on the original mortgagor on the 16th September 1847, and that the special appellant did not purchase the rights and interests of the mortgagor until 6th March 1848, that is until six months *subsequently*. Under these circumstances, the point on which the special appeal was admitted does not arise, and as the law only recognises one notice on the mortgagor or his legal representative at the time of the issuing of the notice, we are of opinion that everything has been rightly done, and the decisions of the lower courts are quite correct; we therefore dismiss the special appeal with costs.

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[959] *The 1st June, 1857.*

PRESENT: C. B. TREVOR, E. A. SAMUELLS AND D. I. MONEY, ESQRS.,  
*Officiating Judges.*

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CASE NO. 639 OF 1856.

Special Appeal from the decision of Ameerooddeen Khan Bahadoor, Officiating Additional Principal Sudder Ameen of Chittagong, dated 23rd December 1854, affirming a decree of Moulvee Zeenuthoolla, Sudder Moonsiff of that district, dated 5th April 1854.

ABDOOL MUJEEB AND OTHERS (*Defendants*), *Appellants v. THE COLLECTOR OF CHITTAGONG (Plaintiff)*, AND MUHSUN ALEE AND OTHERS (*Defendants*), *Respondents.*

[*Limitation—Act XIII of 1848—Suit to set aside award making settlement of property.*]

*Held* that as the settlement of the property in suit was made with defendant in 1846 and as the present suit was instituted in 1854, and the award to reverse which the suit is instituted was confessedly one to which Act XIII of 1848 refers; plaintiff is clearly out of court under the operation of that law.

The decision of the lower court is reversed and the appeal decreed with costs.

*Vakeel of Appellants*—Moulvee Aftabooddeen Mahomed.

*Vakeel of Respondent, the Collector*—Baboo Ramapershad Roy.

*Vakeel of Respondent, Pranhurree*—Moulvee Ahmed Alee.