

support of this plea, decreed the claim in plaintiff's favor. The defendants appealed, and while the case was pending in appeal before the principal sudder ameen, [955] Ramdhone Mitter filed a petition, in which he stated that he had discovered the defendant's allegation to be true, admitted that his ancestors had made the defendants a gift of the property, and withdrew his claim. The principal sudder ameen, however, holding this proceeding to be collusive, and intended to defraud Joogulkishore, refused to allow any weight to Ramdhone's admission, and confirmed the moonsiff's decision in its entirety. We admit a special appeal to try whether he ought not to have excluded from his decree the 4 annas share, the claim to which had been abandoned by Ramdhone, inasmuch as the principal sudder ameen has awarded to Ramdhone property which he himself declares does not belong to him."

### JUDGMENT.

The admission made by Ramdhone as to the gift made by his ancestors to the defendants, special appellants, stands good as regards the 4 annas of the property sued for by him; it cannot, however, on the finding of the principal sudder ameen as to its collusive nature, affect the rights of Joogulkishore; as far as regards the rights of this person, the principal sudder ameen's decision is correct; but it is altogether a mistake on the part of the principal sudder ameen to decree to Ramdhone 4 annas of a property, to which he in effect acknowledges that he has no valid claim; we therefore reverse that portion of the decision of the lower court, decreeing 4 annas of the property sued for to Ramdhone Mitter, and decree the special appeal with costs against that individual.

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

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

CASE NO. 571 OF 1856.

Special Appeal from the decision of Baboo Dwarkanath Roy Bahadoor, officiating Principal Sudder Ameen of Tipperah, dated 18th January 1855, confirming a decree of Suyud Alee Hyder, Sudder Ameen of that district, dated 26th January 1854.

MUSST. JYETARRA AND TEWNEE (*Defendants*), *Appellants v.* MUSST. LAL BEEBEE AND OTHERS (*Plaintiffs*), AND RAMKUNYE BOSE, SUBBURAKAR, (*Defendant*), *Respondents.*

[*Suit to have deed set aside—Registration—Cause of action.*]

*Held* in concurrence with a previous ruling of the court, that the registry of a deed constitutes a substantial issuing and entitles the party whose rights are attacked by that deed and to whom injury has thereby accrued to sue to have that deed set aside.

*Vakeel of Appellants*—Baboo Kishensukha Mookerjee.

*Vakeels of Respondents*—Moulvee Aftabooddeen Mahomed and Baboo Sreeranth Singh.

THIS case was admitted to special appeal on the 25th November 1856, under the following certificate recorded by Messrs. C. B. Trevor and E. A. Samuells:—

"Plaintiff, Musst. Lal Beebee, sued defendant, special appellant, for the cancelment of a forged deed of sale. Defendant acknowledged the existence of

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 KALIEPERSHAD (*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.