1871. *April* 26. *A. No.* 129 *of* 1869.

brother. But if illegitimate, he has no right to any portion of it. No additional issue is necessary. We wish it to be distinctly understood that it is not intended, by anything said in this judgment, to indicate any opinion as to the right of the Government to alter the assessments of peshkash on this, or other poliems, not held under an Istimrári sannad, if they think it equitable to do so, and have not bound themselves not to do so, an obligation which it seems from Exhibit 23 does in some instances exist. The question of the 1st defendant's legitimacy we are not now in a position to determine,and,if the plaintiff persists in her denial of it, the issue must be sent for trial by the Court below. She must be required to state, within three weeks, whether she abandons the issue or desires to have it tried.

APPELLATE JURISDICTION.

Regular Appeal No. 1 *of* 1871.

TRANQUEBAR SÁMI ÁYYAN.....*Appellant.*

NATHAMBEDU AMMAI AMMÁL .....*Respondent.*

Suit by executrix to recover under deeds of mortgage and sale, dated respectively October 1837 and April 1840, executed to the testator by 1st defendant's deceased husband, certain villages which 1st defendant, in 1848 and 1851, mortgaged to 2nd and 3rd defendants. Plea, the Act of Limitations. For the plaintiff it was contended that the operation of the Limitation Act was suspended from 1844 until 1867, by reason of the pendency of an Equity Suit, commenced by bill filed by present 1st defendant against the testator, to set aside the deeds of October 1837 and April 1840, which bill was dismissed by consent in June 1867. *Held*, (reversing the decision of the Lower Court) that these proceedings had no such effect, that plaintiff might have brought ejectment at any time and that the present suit was barred.

1871. *April* 24. *A. No.* 1 *of* 1871.

THIS was a Regular Appeal against the decree of C. R. Pelly, the Acting Civil Judge of Tranquebar, in Original Suit No. 4 of 1868.

The plaintiff as executrix and sister with probate of the last Will and Testament of one Manali Latchmana Mudali, deceased, sued to recover, under deeds of mortgage and sale, dated respectively 7th October 1837 and 18th

(a) Present : Holloway and Innes, JJ.

1871. *April* 24. *R. A. No.* 1 1871.

April 1840, that purported to have been executed in his favor by 1st defendant's deceased husband, one Manali Muttukistna Mudali, the villages of Pedda Kokur and Chinna Kokur in the Myaveram Taluq, which the 1st defendant in 1848 and 1851, fraudulently, as plaintiff alleged, mortgaged to the 2nd and 3rd defendants, together with mesne profits from 1852 to 1867, the aggregate value of the claim being Rupees 1,40,498-6-6. The 1st defendant allowed the suit to proceed *ex-parte*, the 2nd denied the genuineness of the deeds of mortgage and sale sued on, and pleaded that the villages in question were first mortgaged and afterwards, viz., on the 25th June 1856, by two different documents, sold to him and 3rd defendant with mirás registry ; and that the suit was barred by the Law of Limitations, plaintiff's cause of action having accrued in 1840.

Four issues were framed, one of which was—

Whether the suit is barred by the Law of Limitations.

The plaintiff relied on the proceedings in an Equity Suit carried on in the Supreme Court of Madras (and afterwards in the High Court) and commenced by Bill filed in 1844 by Tripura Sundra Ammál (the first defendant in the present case) against Manali Latchmana Mudali, alleging that Muttukistna Mudali, husband of the said Tripura Sundra Ammál and undivided brother of the said Latchmana Mudali, became of weak mind, and that the said Latchmana Mudali, taking undue advantage of this, obtained from the said Muttukistna Mudali, amongst other deeds, in 1837, a mortgage deed and a warrant of Attorney, and in June 1840 a bill of sale of certain villages of which Pedda and Chinna Kokur were two, and praying that these deeds be declared cancelled and null and void. Proceedings were continued in the suit until June 1867, when the bill was dismissed by consent, and it was in the present case argued that the pendency of those proceedings prevented the operation of the Limitation Act.

The Lower Court being of this opinion, gave judgment for the plaintiff. The second defendant appealed.

1871. *April* 24. *A. No.* 1 *of* 1871.

The *Acting Advocate-General* for the appellant contended that the Act of Limitations barred the action. The Civil Judge in his judgment (para. 13) holds that the Bill in Equity suspended the operation of the Law of Limitations, but it had not any such effect. There were also certain proceedings taken by the plaintiff in the Revenue Courts, but he was referred to a Civil Suit, so that they amounted to nothing. The equity proceedings which are relied upon as taking this case out of the Act are, shortly,—In 1844, Tripura Sundra Ammál, the 1st defendant, filed a bill in the Supreme Court against Latchmana Mudali, praying to be declared solely entitled to all her late husband's property and seeking to set aside the mortgage and sales to us as fraudulent and void. In March 1847 a replication was filed. In October 1851, an order was made for the translation certain documents. In January 1852, Latchmana Mudali having died, the suit was continued by bill of revivor filed by the present 1st defendant. In 1853 an answer to the revived bill was filed. A replication to this bill was filed on the 10th March 1860, and the bill was finally dismissed by consent without costs in March 1867. There was nothing in these proceedings to take the case out of the Limitation Act. The Civil Judge says (para. 13) that "the right and "title to the two villages was in issue in the suit pending "in the Supreme Court between 1st defendant and Latch-"mana Mudali, and plaintiff: so long as it remained unad-"judicated upon, he and plaintiff were powerless to interfere "with the second and third defendants; any action they "might have instituted in another Court to oust these mort-"gagees would have been thrown out on the ground that it "involved the question of title, which was pending before a "competent Court, and that they must consequently await "the result." It is difficult to see how this could have been said, for the plaintiff could not have got possession by any decree that might have been made in the Equity Suit.

O'Sullivan (with him *Rama Rau*) for the respondent contended that the Act of Limitations did not apply to the case. The proceedings in Equity took the case out of its operation. The general rule of *lis pendens* applied. That rule is

1871. *April* 24. *R. A. No.* 1 *of* 1871.

laid down in *Bellamy* v. *Sabine*, 1 De. G. & J., 566. Had there been a decree in the Equity Suit, any alienation made *pendente lite* would have been invalid: and the withdrawal of the suit by the plaintiff, it is submitted, has the same effect. The order of the Court permitting that withdrawal is, for the present purpose, equivalent to a decree in favor of defendant.

[HOLLOWAY, J.—In order to show that the Act ought not to run you must show invalidity. I look upon it as a dry legal question. Mr. O'Sullivan's client is barred, unless he can show that he falls under some of the exceptions.]

The Act of Limitations was never intended to have the effect sought to be given it by the other side. It was framed by lawyers acquainted with the doctrine of *lis pendens*. There is no legal obligation on a party defending in a suit to commence proceedings against alienees of the opposite party, made so *pendente lite*. Otherwise, in many cases, there would be endless litigation.

The Court delivered the following judgments:—

HOLLOWAY, J.—The short question, is whether the pendency of the Equity Suit from 1844 to 1867 prevents the application of the Statute during the period of its pendency. On the face of plaintiff's case it is obvious that it has been long barred, unless this effect can be attributed to those proceedings.

The first defendant was the plaintiff and the person represented by the plaintiff was defendant in that suit, and its object was to set aside, as fraudulent, upon equitable grounds, the transactions by which these two, with other villages, were acquired.

Now if the positions had been reversed, Latchmana, on grounds formally legal, kept out of possession, and had finally acquired the right by the suit on equitable grounds, it might well have been argued that, on the doctrine of *Bond* v. *Hopkins* (1 Sch. & Lef., 414), the time ought not to be reckoned. If, again, the Equity Court had providently, or improvidently, restrained the plaintiff from proceeding at law, on the principle applied in *O'Brien* v. *Osborne* (10

1871. *April* 24. *R. A. No.* 1 *of* 1871.

Hare,92) the Court might well have said that the Statute did not apply. Here, however, there is nothing of the kind. The action of ejectment could have been brought at any moment, and the Statute ran from the date of the hostile possession.

The doctrine of *lis pendens* is, simply, that parties bound by the litigation cannot alter the object of it so as to withdraw it from the decree made in the suit. It by no means implies that, upon the instant of a question being raised, the parties are compelled to quiescence until its determination. So far is this from being the case, that, unless the question involved in the litigation will, when decided in a particular manner, render a title insecure, *lis pendens* is not even an answer to a bill for specific performance (*Bull* v. *Hutchins*, 32 Beav., 615).

The case of *Bellamy* v. *Sabine* and the maxim of the Canon Law, of the application of which it is an example, were considered in *Seth Sam's Case*(*a*): it has absolutely nothing to do with the question. *Agere non valenti non currit praescriptio* is the only principle on which the plaintiff could be held not barred.

It is manifest, from the very existence of the Equity Suit, that the legal title was vested in the person whom the plaintiff represents. He might have brought his action at any time; he never did, and that this legal title was being impeached upon equitable grounds has no bearing upon the question, and cannot take the case out of the Statute.

On this short ground we reverse the decision of the Civil Judge and dismiss the original suit with costs.

INNES, J.—Agreeing, as I do, in this judgment, I would merely add that the cause of action in the one suit was not the same as that in the other, and that, thus, there is wanting one of the pre-requisites to the application of the rule in Section 14 of the Limitation Act, as to deduction of time during the pendency of litigation.

Appeal allowed.

(*a*) Reported at page 75 of this Volume.