

evidence. It was clearly taken under s. 122 of the Criminal Procedure Code. The prisoner was brought before Mr. White simply for the purpose of having his alleged confession recorded, and there are no grounds for saying that, when Mr. White took down the prisoner's statement, he was examining the prisoner in the course of a preliminary enquiry, or that he intended to do so. The circumstance that Mr. White was also the committing Magistrate, furnishes no reason, in my opinion, why, upon Mr. White's proceedings on the 17th of November, a construction should be put which is contradicted by the facts. The alleged confession of the 17th November is defective for the reasons stated by my brother, Mr. Justice Morris, and upon the authority of the case in *Reg. v. Bai Batan* (1), the defects cannot be remedied by examining Mr. White.

We are not at liberty, therefore, to look at the alleged confession of the 17th November. It appears to me, however, that independently and irrespective of it, there is no reasonable doubt upon the evidence that the prisoner is guilty of the offence with which he is charged. (The learned Judge then went through the rest of the evidence, and agreed in convicting the prisoner.)

*Conviction affirmed.*

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## APPELLATE CIVIL.

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*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.*

GOLUCK CHUNDER MASANTA AND OTHERS (DEFENDANTS) v. NUNDO  
COOMAR ROY (PLAINTIFF).\*

1878  
Dec. 2.

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*Suit for Possession—Specific Title—Adverse Possession.*

Where a person claims possession of property under a specific title, coupled with an allegation that he has been in possession of that property for more than twelve years under that title, he is entitled to a decree on the strength of his twelve years' possession, even though he fail to make out his specific title.

(1) 10 Bom. H. C. Rep., 166.

\* Appeal, under s. 15 of the Letters Patent, against the decree of Mr. Justice Tottenham, dated 9th July 1878, in appeal from Appellate Decree, No. 91 of 1878.

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*Gossain Dass Chunder v. Issur Chunder Nath* (1) followed.

*Aliter*.—Where a declaratory decree by virtue of some particular title is sought for.

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THIS suit arose originally out of a decision under s. 530 of the Criminal Procedure Code, by which one Goluck Chundra Masanta was confirmed in possession of a certain tank and its banks. Immediately on this decision being come to, the plaintiff, one Surup Narain Roy, brought this suit against Goluck Chundra and others to obtain possession of the tank and the surrounding lands, claiming the land as his ancient debutter property, and also as having been in possession of the same for more than twelve years before the institution of the suit.

The defendants contended that the land in question was their "mâl" estate.

The Munsif dismissed the plaintiff's suit, on the ground that he had failed to prove that the land in question was debutter, or that he had ever been in possession of it.

The plaintiff appealed to the Subordinate Judge, who held that the plaintiff had established a *primâ facie* case on both titles, which the defendants had failed to rebut, and accordingly reversed the decision of the Munsif, and gave a decree in favor of the plaintiff.

The defendants appealed to the High Court, contending that the lower Court was wrong in deciding the case in favor of the plaintiff on the strength of his alleged long possession, he having failed to establish the specific title set up by him.

Baboo *Hem Chunder Banerjee* and Baboo *Oomahally Mookerjee* for the appellants.

Baboo *Bhoobun Mohun Doss* for the respondent.

The judgment of the High Court was delivered by

TOTTENHAM, J. (who, after setting out the facts of the case, continued).—I am disposed to concur in the view taken

\* (1) I. L. R., 3 Cal., 225.

in the cases of *Bissonath Komilla v. Brojo Mohun Chuckerbutty* (1), *Ram Lochun Chuckerbutty v. Ram Soonder Chuckerbutty* (2), and *Kylash Kaminee Dossia v. Judoo Bushinee Dossia* (3), which do not lack the authority of decisions in the Privy Council, to the effect that long possession not only creates title, but extinguishes an adverse title, so becoming paramount.

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But I think it is in fact unnecessary for me to decide the point in the present case, because I understand the decision of the lower Appellate Court to be, that in fact the plaintiff did prove *prima facie*, not only long possession, but also the lakhraj debutter title which he set up, and it cannot be said there was no evidence of this. It is certain that the plaintiff paid no rent for the tank, nor has it been demanded. Possession, accompanied by the non-demand and non-payment of any rent, is itself some evidence of a rent-free title, and this is corroborated by the plaintiff's sworn testimony. It seems to me, therefore, that the appellants have failed to show that the lower Court did not find the title proved as set up, or that it found it upon no evidence. I, therefore, dismiss the appeal with costs.

The defendants then appealed under the Letters Patent.

Baboo *Hem Chunder Banerjee* for the appellants.—The plaintiff having claimed to set aside the order under s. 350 of the Criminal Procedure Code passed in favor of Masanta, the defendant in possession of the property, and claiming possession of the property by virtue of an ancient debutter title, was bound to prove, not only that he had been in possession for upwards of twelve years, but also to prove the debutter title which he set up.—See *Ram Dhun Chuckerbutty v. S. M. Komul Tara* (4), *Luckhee Koer v. Ram Dutt Chowdhry* (5), *Huro Soonduree Debia v. Unnopoorna Debia* (6), *Bhaygo Mutty v. Mahomed Wasil* (7), and *Bijoya Debia v. Bydonath Deb* (8).

(1) 10 W. R., 61.

(2) 20 W. R., 104.

(3) 22 W. R., 390.

(4) 11 W. R., 301.

(5) 11 W. R., 447.

(6) *Ibid.*, 550.

(7) 25 W. R., 315.

(8) 24 W. R., 444.

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Baboo *Bhoobun Mohun Doss* for the respondent cited the cases of *Bissonath Komilla v. Brojo Mohun Chuckerbutty* (1), as showing that possession of land, without payment of rent, is sufficient to support a title; *Ram Lochun Chuckerbutty v. Ram Soonder Chuckerbutty* (2); *Kylash Kaminee Dossia v. Judoo Bashinee Dossia* (3), as showing that when a plaintiff who fails to prove a specific title which he sets up, yet causes it to appear that he had a good clear *bonâ fide* possession from which the Court can infer a good title, he would be entitled to recover.

The judgment of the High Court was delivered by

GARTH, C. J. (McDONELL, J., concurring).—Two points have been raised in this appeal :

*First.*—That, as the plaintiff claimed to set aside the order made under s. 530 of the Criminal Procedure Code in favor of the defendant, and to have possession of the property by virtue of an ancient debutter title, he was bound to prove, not only that he had been in possession for upwards of twelve years, but also to prove the debutter title which he set up.

*Secondly.*—That the learned Judge in this Court was wrong in supposing that there was some evidence of the debutter title upon which the Court below had acted.

In the view which we take of the first point it is not necessary to decide the second.

The first point we consider should be decided in accordance with the judgment of this Court in the case of *Gossain Dass Chunder v. Issur Chunder Nath* (4).

The plaintiff there claimed possession of certain land under a deed said to have been executed in the year 1857, and he also stated in his plaint that he had been in possession for upwards of twelve years under that deed. The plaintiff failed to prove the deed, but did prove that he had been in possession of the land for upwards of twelve years, and it was contended, that the Courts below were wrong in finding in favor of the plaintiff upon the strength of the twelve years' possession

(1) 10 W. R., 61.

(2) 20 W. R., 104.

(5) 22 W. R., 390.

(4) I. L. R., 3 Calc., 223.

only. It was said that, as he claimed under the deed, he was bound to prove that deed, otherwise his twelve years' possession would go for nothing.

But we held in that case, that the twelve years' adverse possession was sufficient to entitle the plaintiff to succeed, and we drew the distinction, which is equally applicable here, between cases where the plaintiff sues for a decree, declaring himself to be the owner of property on the strength of some particular title, and cases where he claims generally the possession of land under some alleged title, but coupled with a possession extending over twelve years or upwards.

In the first class of cases he is not entitled to a decree, declaring him to be the owner by virtue of the particular title, unless he proves that title. It is obviously impossible for the Court to give him a declaratory decree of that kind, unless he first establishes the title which he sets up.

But in the latter class of cases, whether he proves the origin of his title or no, if he can show a twelve years' continuous adverse possession as against the defendant, that is quite sufficient by the law of this country to give him a title of itself.

The present case appears to us to be clearly one of the latter character. Here the plaintiff claims by virtue of an ancient debutter title, but he says also, that he and his father have continued in possession for a much longer period than twelve years under that title. Assuming then that he has failed to prove the debutter title, the Court below has found that he and his father have been in possession for upwards of twelve years before proceedings were taken under s. 530.

The case of *Gossain Dass Chunder v. Issur Chunder Nath* (1) is, therefore, directly in point, and for the reasons given there, we consider that the plaintiff is entitled to recover in this suit.

The case of *Ram Dhun Chuckerbutty v. S.M. Komul Tara* (2), which was decided by the late Mr. Justice Bayley and Sir Charles Hobhouse, certainly seems opposed to that view, but the distinction to which we have alluded does not appear

(1) I. L. R., 3 Cal., 225.

(2) 14 W. R., 301.

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to have occurred to the learned Judges in that case, and we believe that the rule upon which we are now acting is one which has been generally adopted by this Court of late years. There are certainly several recent authorities in favor of it, and it seems to us quite in accordance with good sense and justice.

*Appeal dismissed.*

## ORIGINAL CIVIL.

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice White.*

1879  
 Jan. 13  
 &  
 Feb. 24.

IN THE MATTER OF THE SARAWAK AND HINDUSTAN BANKING  
 AND TRADING COMPANY, LIMITED.

LALLAH BARROOMUL v. THE OFFICIAL LIQUIDATOR.

*Practice—Winding-up—Notice of Appeal—Extension of Time for Appeal—  
 Indian Companies' Act (X of 1866), s. 141.*

Notice of an appeal against any order or decision made or given in the matter of the winding-up of a company by the Court, must, under s. 141 of Act X of 1866, be given to the respondent within three weeks after the order or decision complained of has been made. The Court has power to extend the time for giving the notice after the three weeks have expired, upon special circumstances being shown.

THIS was an appeal from an order made by Mr. Justice Broughton. No notice of the appeal was given to the respondent within three weeks of the order appealed against. It appeared that the appeal was lodged with the proper officer of the Court within three days from the date of the order, and that it was the officer's duty to serve the respondent with notice that the appeal had been lodged. Upon the appeal being called on, the respondent took a preliminary objection to the hearing, on the ground that, under s. 141 of Act X of 1866 (The Indian Companies' Act), no appeal can be heard unless notice of the same is given within three weeks after any order complained of has been made in the manner in which notices of appeal are ordinarily given, under the Code of Civil Procedure; and