"to keep the decree in force" may, within three years from the date of such last named application, obtain execution of his decree.

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CHUNDER COOMAR ROY v. BHOGOBUTTY PROSONNO ROY.

AINSLIE, J.—I accept the decision of my learned colleagues as the proper answer to the question put.

APPELLATE CIVIL.

Before Mr. Justice Markby and Mr. Justice Mitter.

MADHUB CHUNDER GIREE (DEFENDANT) *v.* SHAM CHAND GIREE (PLAINTIFF).*

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Nov. 24.

IN THE MATTER OF THE PETITION OF MADHUB CHUNDER GIREE.

Superintendence of High Court—24 and 25 Vict., c. 104, s. 15—Act XXIII of 1861, ss. 26 and 35.

The High Court will not, under s. 15 of 24 and 25 Vict., c. 104, interfere with judgments, decrees, or orders of a lower Court on the bare ground that they are erroneous at law, or are based upon a wrong conclusion of facts; there must be some special ground justifying the High Court to exercise such powers.

Where the appellant has a remedy by regular suit, the Court is reluctant to interfere.

THIS was a suit under s. 15 of Act XIV of 1859, for recovery of possession of certain immoveable property. The defendant was formerly Mohunt of the Tarokessur, and as such was in possession of the temple and its appurtenances, including the official residence of the Mohunt, and of large landed estates, the property of the endowment, as also of some other landed property, the private and individual property of the Mohunt. On the 24th November 1873 the defendant was convicted by the Court of Sessions of the offence of adultery, and was sentenced to three years' imprisonment. On the defendant's conviction and imprisonment, the plaintiff, who was at the time the defendant's senior disciple, took possession of the office of Mohunt, and remained in possession not only throughout the three years' imprisonment of the defendant

* Rule No. 1023 of 1877, against the decree of J. P. Grant, Esq., District Judge of Hooghly, dated 28th August 1877.

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(which expired in the latter part of November 1876), but until the 22nd December following, on which date the defendant re-entered the temple premises, and resumed possession of them and of the landed properties. The re-entry was complained of by the plaintiff as an illegal act, and he then brought a suit, to reinstate himself under Act XIV of 1859, in the Court of the District Judge of Hooghly. The plaintiff's contention was, that he was without his consent unlawfully dispossessed during a temporary absence, and that the defendant re-entered by force; and a number of cases were cited in his favor including the case of *Protab Chunder Burrooah* v. *Ranee Kyanteswarree Dabee* (1), which laid down that the remedy afforded by s. 15 of Act XIV of 1859 was a special one contrived to discourage lawless acts of ouster by depriving the dispossessor of the privilege of proving a better title.

The defendant denied the forcible entry, stating that he returned peaceably and at the invitation of the plaintiff; and further pleaded that, by certain arrangements made between him and the plaintiff when defendant's conviction seemed probable, the plaintiff was constituted the defendant's agent, and held possession throughout only as such; and, therefore, that his possession was that of his principal, who, it was contended, was entitled to eject the plaintiff—*Hansey* v. *Brydges* (2). As to the particular terms of s. 15, it was argued that, as the words "notwithstanding any other title" are used, the issue was not limited to bare possession, but to the possessory title, and that therefore a person sued under that section might prove such title; and as to the words "otherwise than by due course of law," it was maintained that they only meant "illegally," and that there was nothing illegal in a man entering upon his own property. It was further contended, that the intention of the legislature that title to possession was maintainable under this section was manifest, by comparing it and the possessory section of the Criminal Procedure Code with Act IV of 1840, the two-fold provisions of which are reproduced one in each of the subsequent laws, the criminal law providing for maintenance of *de facto* possession,

(1) 2 W. R., 250. (2) M. and W., 442.

while the limitation law allowed the title to possession to be proved lastly. In support of these arguments the following cases were quoted by the defendant: *Protab Chunder Burrooah* v. *Ranee Kyanteswarree Dabee* (1); *Bagram* v. *The Collector of Bulloah* (2); and *In the matter of the Petition of Sutherland* (3).

The District Judge, Mr. J. P. Grant, decided, that all the questions put in issue, except those relating to the anterior possession of the plaintiff, his dispossession by the defendant, and the manner thereof, were irrelevant; and ordered that the plaintiff should recover possession.

On the 3rd September 1877, the defendant applied to the High Court by petition, praying that the judgment of the Judge of Hooghly should be set aside, and that he should be directed to try the proper issues involved; and that, in the meantime, all proceedings should be stayed, and the *Advocate-General* obtained a rule calling upon Sham Chand Giree to show cause why the judgment of the District Judge of Hooghly should not be set aside on the ground that the petitioner (the defendant) was entitled to have a decision upon the question raised in the said suit, as to whether or not the possession of the plaintiff was in law the possession of the said petitioner (defendant), and whether that being so, the plaintiff was estopped from setting up an adverse title.

The Standing Counsel (officiating) Mr. *J. D. Bell* (with him Baboo *Grish Chunder Ghose*) appeared to show cause against the rule. He drew attention to s. 26 of Act XXIII of 1861, which absolutely forbade appeals from orders or decisions under Act XIV of 1859, s. 15; and cited *In the matter of Lakhi Kant Bose* (4), in which the High Court decided that, "under s. 15 of 24 and 25 Vict., c. 104, the High Court will not interfere with the decisions of the Courts below in cases in which a special appeal is forbidden by s. 27 of Act XXIII of 1861." He also contended that the High Court will not interfere in the exercise of its extraordinary jurisdiction when the petitioner

(1) 2 W. R., 250.

(2) W. R., Gap No., 1864, 243.

(3) 9 B. L. R., 229; S. C., 18 W. R., 11.

(4) I. L. R., 1 Calc., 180.

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applying has his remedy by regular suit: *Mahashankar Harishankar* v. *Valibhai Umanji* (1), *In the matter of A. B. Miller* (2), and *Hurrehur Mookerjee* v. *Nobin Chunder Doss* (3).

The learned Counsel then questioned whether s. 15 of the Charter gave power to the High Court to call for the record of a suit already decided, citing *Karim Sheikh* v. *Mukhoda Soondery Dossee* (4), *In the matter of Munnoo Singh* (5), *In the matter of the Petition of Durga Charn Sirkar* (6), and distinguishing the case of *Omar Chund Mahater* v. *the Nawab Nazim of Bengal* (7). He further argued that although a tenant or person claiming under him cannot dispute his lessor's title to demise, yet he may show that, since the demise, the lessor's title has expired, or been duly determined or defeated, or that he had since assigned it by way of sale or otherwise; and that, therefore, he was not estopped from setting up an adverse title; Cole on Ejectment, p. 164.

The *Advocate-General* (officiating) Mr. *Paul*, in support of the rule, contended, that the case had not been tried as to the points in issue, and that the Judge was bound to try them, and by not doing so had refused his duty, and thus called for the exercise of the extraordinary jurisdiction of the High Court; and that the Supreme Court had, on several occasions, issued a mandamus compelling a Judge to do his duty when there was no other means of compelling him to do so. The learned *Advocate-General* further contended that the meaning of the section did not apply to the position of the master and servant, and cited in support of the powers of superintendence of the High Court *In the matter of Juggut Chunder Chuckerbutty* (8), *Girdhari Singh* v. *Hurdeo Narain Singh* (9), *In the matter of the Petition of Syed Abdool Ali* (10), *Mussamut Mitna* v. *Syed Fuzl Rub* (11).

The following judgments were delivered:

MARKBY, J.—In this case the plaintiff sued to recover pos-

(1) 6 Bom. H. C. Rep., 174.
(2) 12 W. R., 103.
(3) 20 W. R., 202.
(4) 15 B. L. R., 111; S. C., 23 W. R., 268.
(5) 19 W. R., 306.
(6) 2 B. L. R., A. C., 165.
(7) 11 W. R., 229.
(8) I. L. R., 2 Calc., 110.
(9) 3 L. R., I. A., 230.
(10) 15 B. L. R., 206.
(11) 15 W. R., P. C., 15.

session of certain property under s. 15, Act XIV of 1859. The District Judge gave the plaintiff a decree. The defendant then applied to this Court to set aside that decree under the powers of general superintendence conferred upon it by s. 15 of 24 and 25 Vict., c. 104. Upon that application a rule was issued, calling upon the plaintiff to show cause why the decision of the District Judge should not be set aside, upon the ground that the defendant was entitled to have a decision upon the question whether or no possession of the plaintiff was in law the possession of the defendant, and whether that being so, the plaintiff was estopped from setting up an adverse title.

I am certainly not prepared to say that I agree altogether with the view of the law taken by the District Judge. It would seem to go to the length of laying down that a mere agent, who was put into possession of property by his employer upon his employer's behalf, might, if he chose to deny his employer's right to possession, not only hold the property against his employer, but turn his employer out, even although his employer had committed no breach of the peace, or committed any act of which the agent could complain other than that of returning upon his own property. I do not say, that is what has actually occurred in this case; but the refusal of the District Judge to consider the terms under which the plaintiff obtained and held possession seems to be based upon considerations which go to that length.

But I do not think it follows, because I do not agree with the view of the law taken by the Court below, that we ought, in such a case as this, to interfere under the special powers of superintendence conferred upon us by s. 15 of 24 and 25 Vict., c. 104. Whatever difficulties there may be in the construction of this section, I think it is quite clear that every erroneous decision is not to be set right under the powers conferred by it. For if every erroneous decision can be set right under it, then every decision may be questioned under it upon grounds both of fact and law. The result would be that no Court subordinate to the High Court would be capable of giving an unappealable decision upon any question whatsoever. No one could seriously

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maintain such a proposition as that; and it is, therefore, necessary to consider further, whether, admitting the decision of the Court below to be questionable, this Court ought to interfere in order to nullify that decision.

There being no limitation expressed in the language of the section itself which confers these extraordinary powers, the only limitation upon the exercise of these powers is the discretion of the Court to which the application is made, and such principles as the Judges have themselves laid down for their own guidance in the exercise of that discretion.

There is some difficulty in extracting any very clear rules from the decisions, and it is not surprising that the decisions upon such a subject are not wholly uniform. There would always naturally be a strong inclination to interfere where an erroneous decision has been brought to the notice of the Court, and the choice lies between two evils — between leaving an erroneous decision to have its effects, and between weakening to an extent which would be most injurious the powers of the subordinate Courts. One consideration, however, has always as a matter of course it ought, weighed strongly with this Court,—namely whether the party aggrieved will be remediless if the superintending Court refuses to interfere. If he has another remedy provided him by the law, his claim to the extraordinary interference of the Court is much weakened, even though the remedy may not be quite complete. I am not prepared to say that in this case the remedy which the defendant has, by way of regular suit, is complete, but he can bring such a suit, and, if successful, it will go a long way towards preventing any wrong which may have done him by the decision of the District Judge.

Another matter which this Court will always consider is any charge of judicial misconduct in the Court below; and by this I do not mean misconduct of a moral kind only, but an entire misconception by the Court below of the duty which it had to perform. I consider this to be the ground upon which this Court interfered in the case of *Girdhari Singh* v. *Hurdeo Narain Singh* (6). The Subordinate Judge in that case had revoked a previous

(1) 3 L. R., I. A., 230.

order made by himself upon grounds which he had himself previously overruled, and without any notice to one of the parties interested. But this is a very different case. There was no misconduct here. The District Judge did, no doubt, refuse in this case to consider a question which he was asked to consider, and I think he was wrong in doing so. But he did so upon a careful and deliberate examination of what, according to his view, was his duty in this respect, and after the parties had been fully and patiently heard. There is nothing in this which can be called judicial misconduct in any sense whatever.

On the other hand, it is admitted that the District Judge neither exceeded his jurisdiction, nor declined jurisdiction in this case, unless his refusal to consider the question of how the plaintiff came into possession can be so called. But, in my opinion, no determination of the Judge as to the materials upon which he thinks he ought to base his judgment can be called a question of jurisdiction. To refuse to look at a document or to consider an issue tendered arbitrarily, and without assigning any reason, might, under some circumstances, be misconduct, but could not be a refusal of jurisdiction.

Under these circumstances, I think that a case has not been made out for the exercise of the extraordinary powers of the Court, and that the rule ought to be discharged with costs.

MITTER, J.—I am also of the opinion that this rule ought to be discharged with costs. I also concur with my learned colleague that the District Judge is in error in refusing to consider the effect of the alleged *urponnamah*, on the ground that it is not relevant in this enquiry. This document, if established as genuine, might show that the possession of the plaintiff was the possession of a servant on behalf of his master, *viz.*, the defendant. The District Judge is, therefore, wrong in excluding this document wholly from his consideration. The question, therefore, that we have to determine in this rule is, whether, for this error of law, this Court, under the provisions of s. 15 of 24 and 25 Vict., c. 104, ought to interfere with the decision of the District Judge.

It is not disputed that, by s. 26 of Act XXIII of 1861, the

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decision of the District Judge in this case is final, and cannot be interfered with by way of appeal; and I think it has been now settled by a uniform current of decisions in this Court, that, under s. 15 of 24 and 25 Vict., c. 104, it will not interfere with the judgments, decrees, or orders of the lower Court on the bare ground that they are erroneous in law, or are based upon a wrong conclusion of facts. These cases are all collected in a foot-note in page 104 of Volume 1 of the Indian Law Reports (Allahabad Series). An applicant moving the Court to interfere under the extraordinary powers given by this section must establish something more than a mere error of law, or a wrong conclusion on evidence.

In this case, I do not think that the petitioner has succeeded in establishing any special ground upon which this Court would be justified in interfering with the judgment of the lower Court, which is admittedly final by the provisions of the Indian Legislature. He has a remedy by a regular suit; and he will have an ample opportunity in that regular suit of establishing the particular fact which the lower Court, in this proceeding he complains, has erroneously declined to enter into. It has been said that if the decision of the lower Court in this case be allowed to stand, he would be compelled to occupy the disadvantageous position of a plaintiff. But it seems to me that, in the investigation of the particular question which he asks the Court to investigate, it makes no difference to him whether he occupies the position of a plaintiff or defendant. The apparent previous possession of the plaintiff being admitted, the applicant must, whether in this proceeding or in a regular suit, show that it was really possession on his behalf.

I think, therefore, that, beyond establishing a bare error of law in the decision of the lower Court, the petitioner in this case has failed to make out any special ground upon which this Court would be inclined to interfere under the provisions of s. 15 of 24 and 25 Vict., c. 104.

Application refused.