that part of the case on which he succeeds, because, when that is done, the defendant has an opportunity, under s. 540, to appeal against that part of the decree which is prejudicial to his interest. Where that has not been done, where the decree of the Court is simply one dismissing the suit, there I apprehend the defendant is not entitled to appeal; but of course the question will afterwards arise whether the plaintiff, where the decree is in such terms, is entitled to the benefit of any expression favorable to him which may occur in the judgment upon which the decree is founded. This of course will be a question which may hereafter be of great importance with reference to the terms of s. 13, expl. ii (1). We express no opinion on that point at present. We dismiss this appeal, but, under the circumstances, without costs.

Appeals dismissed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

UGGRAKANT CHOWDHRY AND OTHERS (PLAINTIFFS) *v.* HURRO CHUNDER SHICKDAR AND OTHERS (DEFENDANTS).*

1880 *April* 29.

Evidence—Documents upwards of Thirty years old—Proof of—Evidence Act (I of 1872), s. 90.

A Court is not bound to accept as genuine the signature on a document upwards of thirty years old, even though it be produced from proper custody. Before accepting such document as proof of title, the Court must satisfy itself that the person who purports to have affixed his signature to the document was a person who at the time was entitled to grant such a document.

THIS was a suit for the recovery of possession of certain lands and for setting aside an alleged miras ijara potta set up by the defendants. The defendants did not question the plaintiffs' taluqdari right; they, however, contended that they had for some considerable time been holding the lands in dispute as part and parcel of lands granted them by the plaintiffs under a miras potta, dated the 25th October 1774.

* Appeal from Appellate Decree, No. 2486 of 1879, against the decree of J. R. Hallett, Esq., Judge of Furreedpore, dated the 29th July 1879, affirming the decree of Baboo Mohima Ghose, Munsif of Madaripore, dated the 20th November 1876.

(1) See *Niamut Khan* v. *Phadu Buldia*, *post*, p. 319.

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Both the lower Courts gave decrees dismissing the suit.

On appeal to the High Court the case was remanded to the lower Court, the learned Judges (JACKSON and MCDONELL, JJ.) being of opinion that, under the circumstances of the case, it lay upon the defendants in the first instance to prove the miras tenure set up by them, or a possession of the disputed lands adverse to that of the plaintiffs for upwards of twelve years.

On remand the defendants produced certain documentary evidence in support of their case, *viz.*, the miras potta and certain receipts for rent alleged to have been received from the plaintiffs' ancestors by the defendants' ancestors as mirasdars, and the Court was of opinion that these documents, being professedly more than thirty years old, and therefore not requiring any attestation, were receivable in evidence, and on such documentary evidence found that the defendants had established their claim.

The plaintiffs appealed to the High Court.

Baboo *Doorga Mohun Das* for the appellants.

Baboo *Srinath Das* and Baboo *Gyanendro Nath Das* for the respondents.

The judgment of the Court (JACKSON and TOTTENHAM, JJ.) was delivered by

JACKSON, J.—We find ourselves obliged very reluctantly to order a second remand in this case. The order with which the case was sent back to the lower Appellate Court in January 1879 was sufficiently precise. The Judge, on the case going back, appears to have done that which was perhaps not absolutely open to him, *viz.*, to admit fresh evidence, and the plaintiffs contend that, owing to the manner in which that was done, they were put at a certain disadvantage. However that may be, the Judge, we find, refused credit to the witnesses whom the defendants called to prove that the plaintiffs had knowledge of their claim to the miras tenure, and he relies altogether upon certain documents which the defendants have put in. He says:—"It remains to be seen what the documentary evidence shows. The potta certainly does not show by itself that the

plaintiffs knew for more than twelve years of the title set up by defendants. There is nothing to show that it came to their notice before 1866, which is only ten years before the institution of the present suit in the Munsif's Court. As to its genuineness, I see no reason to doubt that." Now a potta which is an instrument purporting to confer on the defendants an absolute right to hold land for ever at a fixed rate is a very important instrument, and a Judge does not discharge himself of his duty in regard to that when he simply looks at it and says he sees no reason to doubt the instrument. This is a matter of which the proof lay wholly upon the defendants, and they had to satisfy the Court that this was a genuine valid instrument. The provision of the Evidence Act which relates to documents of thirty years of age is one which requires great care in its application, especially in this country. It would be very serious indeed for persons owning land if the mere production of an instrument purporting to be thirty years old absolutely entitles the person producing it to a decision that it is a genuine valid instrument. All that s. 90 says is:—"Where any document purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court *may* presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting;" that is to say, if in this case the Court was satisfied as to the production of this instrument from what it considered to be proper custody, it would not be *bound* to presume that the signature attached to it was in the handwriting of the person whose handwriting it purported to be; and still, much would be left before the defendants would be entitled to the benefit of that instrument as establishing their title. They would have to show that the person whose handwriting the signature was, was a person entitled to grant such a document. And in like manner, as to the dakhillas, the Judge says: "I see no reason to doubt the genuineness of those upwards of thirty years old, of which no attestation is required." Here again, the utmost that the Court would be entitled to presume, and that it could only do with considerable caution, is, that

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they were signed by the person whose signature they purported to bear. It would still remain to be shown that the person signing was authorized to sign, and that his signature bound the plaintiffs. In these circumstances the Judge says:—"The plaintiffs producing no evidence at all, I consider that the potta is genuine, and that the receipts admitted are genuine, and I consider that between them they prove both the validity of the claim set up by defendants, and the plaintiffs' knowledge of it for more than twelve years prior to suit." This, as I have already said, was a case in which the burden of proof as regards this issue lay upon the defendants. They were bound to prove the case. The lower Appellate Court had not sufficient materials before it for coming to the conclusion either that the potta was genuine, or that the receipts, if genuine, were binding on the plaintiffs. It is said no doubt that this potta had been already put in evidence in a previous suit between the parties in the year 1866, and the respondents rely upon the result of that suit as being a decision in their favor that they had a valid miras tenure. It appears to us that the decision is far from going that length. The potta put in by the defendants was in answer to a suit by the plaintiffs claiming enhanced rent, and the result of the suit was that the plaintiffs failed to obtain the enhanced rent; but, although the respondents' pleader read to us such parts of the decision as he thought fit, we find nothing in it like a decision, still less a conclusive decision, between the parties that the plaintiffs had a valid miras. Under these circumstances, we think the case must go back. Of course it may be that the defendants may fail to make out a valid miras tenure, and yet the plaintiffs may not be entitled to a decree, because the defendants may be holding this land under such a tenure that they are not liable to be ousted, possibly at all, at any rate without sufficient notice. These points will have to be considered by the Court when it disposes of the question of miras. No application being made before us for leave to admit fresh evidence, the case must be disposed of on the evidence as it stands. The costs of this appeal will abide the result.

Case remanded.