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with the writ of summons, and sued as the defendant, much inconvenience and some pecuniary loss may thus be entailed upon the defendant, yet he has no remedy. This is a case of *bonâ fide* mistake in which no legal wrong is involved.

The judgment of the court was delivered by

MELVILL, J.:—We are unable to agree with the District Judge in holding that the plaintiff has no cause of action. We think that a judgment-creditor who attaches property which does not belong to his judgment-debtor commits a trespass, for which he is responsible in damages, even though he may have acted without malice and mistakenly. We do not know that there has been any previous decision of this court on the subject, but it has been discussed at length and determined by the Calcutta Court in *Mussamut Subjan Bibi and others* v. *Sheikh Sariatulla* (*b*). We reverse the decree of the District Judge, and remand the case in order that it may be determined what damages the plaintiff has sustained: costs to follow final decision.

Decree reversed and case remanded.

NOV. 24.

Special Appeal No. 358 *of* 1871.

BA'LKRISHNA' GOVIND GA'DGIL.....*Appellant.*

NA'RA'YAN SAKHA'RA'M *et al.* .....*Respondents.*

Mál *Land—Assessment—Survey—Forfeiture.*

A person who fails at the Survey to take up *mál* land, which he held without assessment before the Survey, and allows it to be taken up by another cultivator who pays the assessment upon it, must be held to have forfeited his claim to such land.

THIS was a special appeal from the decision of George Ayerst, Acting Assistant Judge at Thánâ, confirming the decree of the Munsif of Bhivadi.

The plaintiffs sued to prevent the defendants from obstructing them in their enjoyment of a piece of land, Survey No. 66, alleged to be the *mál* attached to a field called "Tullái."

(*b*) 3 Beng. L. R., A. J. 413.

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The defendant, Bálkṛishṇá, answered that the land did not belong to the "Tullái" field; that its original owner was one Kondgá Mhár, who sold it to one Hírásing, from whom the defendant purchased it, and that he had been in possession thereof ever since his purchase in 1865. The other defendants either corroborated the story of Bálkṛishṇá, or denied any knowledge of the sales.

The court of original jurisdiction awarded the claim, and the court of appeal also did the same.

The special appeal was heard by MELVILL and KEMBALL, JJ.

Shántárám Náráyaṇ, for the appellant:—It has been held that *mál* land not taken up at the Survey is forfeited, and may be given away to any one for purposes of revenue: see *Náná Dhogu Pátil* v. *The Collector of Tháṇá and another*, S. A. No. 6 of 1864, decided by FORBES and COUCH, JJ., on the 13th of September 1864.

Bahiravnáth Mangesh appeared on behalf of the special respondent.

The judgment of the court was delivered by

MELVILL, J.:—We do not think that the circumstances of this case have been sufficiently investigated, and, therefore, remand it for reconsideration and a new decision. From the plaint it would appear that the land in dispute, which is *mál* or *ráb* land, and forms a separate Survey number, No. 66, has not been entered in the plaintiff's name since the Survey, but that it was then entered in the name of Kondgá Mhár, through whom the defendant says that he derives his title; and it is now entered in the defendant's name, as appears from the receipt-books put in by him. The defendant also alleges that the plaintiff has never paid the Government assessment (which was for the first time imposed on the *mál* land at the Survey), but that it has been paid by him (defendant) and those through whom he claims. The Assistant Judge has considered this point immaterial, but it is really of great importance. The decision of the Acting Judge of Tháṇá in Appeal Suit No. 413 of 1862, dated 17th July 1863, and which was affirmed by this court in Special Appeal No.

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6 of 1864, shows that a person who fails at the Survey to take up *mál* land which he held without assessment before the Survey, and allows it to be taken up by another cultivator who pays the assessment upon it, must be held to have forfeited his claim to such land. It does not appear whether this had happened in the present case. This is a point into which the Assistant Judge should inquire, and we think that he should also reconsider the other evidence. It is to be observed that the deed of sale, exhibit No. 3, speaks of the *mál* land of the field "Tullái" as being on the south of the field, while in the plaint the land claimed is stated to be to the north of the field "Tullái."

Decree reversed and case remanded.

August 7.

Special Appeal No. 180 *of* 1871.

BA'PU RA'M PARBHU .....*Appellant.*
VISA'JI CHANDO SAKTANEKAR .....*Respondent.*

Joint Kabuláyatdárs—*Exclusive Collection by one* Kabuláyatdár—*Prescription.*

Where a *kabuláyatdár* collected Government revenue for more than thirty years, the *kabuláyat* being signed each year by his co-*kabuláyatdár* as well as by himself, it was hold that by so doing he had not, under the circumstances, acquired a prescriptive right to collect the revenues to the exclusion of his co-*kabuláyatdár*.

THIS was a special appeal from the decision of A. Lyon, Assistant Judge of Ratnágirí, in Regular Appeal No. 462 of 1868, confirming the decree of the Munsif of Kharepátan.

The plaintiff was the hereditary *Kulkarni*, and the defendant the hereditary *Gámkar* or *Mirási*, of the village of A'chrá. The village is partly *inám* and partly the property of Government, and the revenue collected is payable in part to the temple committee, as managers of the *inám*, and partly to Government.

The plaintiff brought this action to recover from the defendant certain money which the plaintiff had a right