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open vessel to a closed in space on the upper deck in a decked vessel. If temporary alterations had been intended to be included, the Act would have said so.

[176] But the prosecution rely on the rules of 1873. They are not issued under any Act. They appear in the *Government Gazette* of 13th October, 1873, as rules issued by the Marine Department for the measurement of open native boats. The power to make rules does not authorise the making of a rule which goes beyond the power given by the Act. We think those rules are *ultra vires* so far as they insist on the measurement being taken from the top of a temporary addition to the upper strake. To enforce such a rule would be to legislate by the addition to the Act of the words "temporary or otherwise."

We, therefore, differ from the Courts below, and hold that the defendant was not obliged to renew his registration. The conviction and confirming order must, therefore, be reversed, and fine returned.

Conviction and sentence reversed.

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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

PUTAPPA (*Original Defendant*), Appellant *v.* TIMMAJI, deceased BY HIS HEIRS (*Original Plaintiffs*), Respondents.* [18th July, 1889.]

Mortgage—Redemption—Equity of redemption—Adverse possession—Limitation.

In 1845 the plaintiff's grandfather Appanna mortgaged the house in dispute to Dyavapa with possession. Appanna died in 1849, leaving him surviving his daughter K., (the plaintiff's mother), and a daughter-in-law Narsubai, the widow of his predeceased adopted son. In 1856 the mortgagee Dyavapa brought a suit on his mortgage against Narsubai, and obtained a decree against her, directing (*inter alia*), a sale of the house in the event of the non-payment of the mortgage-debt. Narsubai in consequence sold the house in the same year (1856) to Ramappa, and paid off the mortgagee, who thereupon at her instance gave up the house to Ramappa. He held possession from 1856 to 1884. In 1881 the defendant Putappa obtained a decree against Ramappa for Rs. 2,000. In execution of this decree the house was sold, and Putappa bought it himself, and obtained possession on 17th January, 1884. While that suit was pending, the plaintiff Timmaji, the grandson of Appanna, brought a suit (No. 247 of 1881) against the son of Dyavapa, (the original mortgagee), and Ramappa to redeem the mortgage of 1845 and recover possession. The plaintiff obtained a decree against Dyavapa's son for redemption, and proceeded to execute the decree. He was obstructed by Ramappa's son, who, however, in suit No. 205 of 1882 was found to have no right to the house. The [177] present suit was brought in 1884 by the plaintiff to recover the house from the defendant.

Held, that the suit was barred. The defendant in 1884 purchased the house from Ramappa, who had bought it in 1856 from Narsubai. Ramappa's possession since that time had been adverse to the plaintiff. There can be adverse possession of the equity of redemption, and Narsubai's possession had been adverse up to the sale in 1856.

[F., 6 C.W.N. 601; R., 15 Ind. Cas. 146=(1912) M. W. N. 669; 17 O.C. 294; 1914 M.W.N. 417 (423); Expl., 18 B. 51; 27 B. 43; 21 M. 153 (165)=8 M. L. J. 92 (103); 5 Bom. L.R. 146; D., 21 B. 793; 25 M. 507 (512).]

THIS was a second appeal from a decision of J. L. Johnston, Acting District Judge of Dharwar.

* Second Appeal No. 480 of 1886.

Suit for possession. The plaintiff's grandfather Appanna was the original owner of the house in question, and in 1845 he mortgaged it with possession to one Dyavapa. Appanna died in 1849, and left him surviving his daughter Rindowa, (the plaintiff's mother), and a daughter-in-law Narsubai, the widow of his deceased adopted son.

In 1856 the mortgagee Dyavapa brought a suit on his mortgage against Narsubai and obtained a decree against her, directing a sale of the house in the event of the non-payment of the mortgage-debt. Narsubai in consequence of this decree sold the house in the same year (1856) to Ramappa and paid off the mortgagee, who thereupon at her instance gave up possession of the house to Ramappa, the purchaser. He remained in possession from 1856 to 1884.

In 1881 the defendant Puttappa sued Ramappa for Rs. 2,000 and got a decree. In execution the house was sold, and Puttappa bought it himself and obtained possession on 17th January, 1884. While that suit was still pending, the present plaintiff Timmaji, the grandson of Appanna, the original owner and mortgagor brought a suit (No. 247 of 1881) against the son of Dyavapa (the original mortgagee), and Ramappa to redeem the mortgage of 1845 and to recover possession. That suit was dismissed as against Ramappa, who was held not to be a necessary party, but the plaintiff obtained a decree against Dyavapa's son for redemption. In attempting to execute that decree the plaintiff was obstructed by Ramappa's son (Gururav), who, however, in suit No. 205 of 1882 was found to have no right to the house.

The present suit was brought by the plaintiff in 1884 to recover possession from the defendant. The Subordinate Judge held that [178] the suit was barred. The following is an extract from his judgment:—

" * * * Rindowa's (i. e., the mother of the plaintiff) cause of action accrued on the day on which Dyavapa made over possession of the house in suit to Narsubai, who was not the proper heir of the original owner Appanna. As she did not institute a suit to recover possession of the house within twelve years from that time, her right was barred, and it follows that the plaintiff's remedy too, was barred when he instituted original suit No. 247 of 1881 * * *"

The plaintiff appealed to the District Judge, who reversed the decree of the lower Court and passed a decree for the plaintiff. The defendant now appealed to the High Court.

Branson (Narayan Ganesh Chandavarkar with him), for the appellant:—The appellant claims through Ramappa, whose right, title and interest were purchased by him at a Court sale in execution of a decree. Ramappa had derived his title from Narsubai, whose possession began to be adverse since 1856. By his purchase the appellant acquired an absolute right to the property in question. Narsubai gave possession to Ramappa, and after the execution sale the appellant obtained possession, which he has retained ever since—*Cholmondeely v. Clinton* (1). The mortgagee on being paid off, put Ramappa in possession at Narsubai's instance. The plaintiff's suit is barred.

Ganesh Ramchandra Kirloskar and *Shamrao Vithal*, for the respondents:—The possession of the appellant was not adverse to the plaintiff, and the right to redeem still exists. Before Ramappa's possession could

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become adverse it should have been brought to the knowledge of the mortgagor. The possession of Ramappa was consistent with that of the mortgagor or mortgagee.

JUDGMENT.

SARGENT, C. J.—The owner of the property in dispute was one Appanna who died leaving a daughter Rindowa, the mother of the plaintiff, and Narsubai, the widow of a deceased adopted son. Appanna had mortgaged the property before his death with possession [179] to Dyavapa, and after his death a suit was brought to enforce the mortgage against Narsubai and the house, and a decree was obtained in 1856. Narsubai in consequence sold the house to Ramappa for Rs. 400, of which Ramappa paid Rs. 211-7-1½ to the mortgagee and satisfied the mortgage. Ramappa was put into possession, and remained in possession from December, 1856, until 1884. In 1881 defendant sued Ramappa for Rs. 2,000, and in execution of the decree got the house sold, and bought it himself, and obtained possession on 17th January, 1884. In 1881 plaintiff by suit No. 247 sued Dyavapa's son and Ramappa to redeem the house and to obtain possession. In that suit Ramappa was held not to be a necessary party, and the plaint was dismissed as against him, and a decree passed for redemption against Dyavapa's son, in execution of which plaintiff was obstructed by Ramappa's son, who, however, was found in suit No. 205 of 1882 to have no right.

The District Judge has held that the decision in suit No. 247 of 1881 was *res judicata* under s. 13 of the Civil Procedure Code (XIV of 1882) against defendant, who claims through Ramappa; but we think that view of the above suit is not sustainable. The Court in suit No. 247 of 1881 held apparently that Ramappa was not a necessary party to the suit for redemption, as there was no cause of action against him;—in other words, Ramappa was under no obligation to make any defence, and this was not appealed against.

It is contended, however, that the plaintiff's suit is barred by Ramappa's possession since 1856. Narsubai was then in possession of the equity of redemption adversely to the rightful heirs of Appanna and acting as if she were the owner of the property and receiving the rent which the mortgagee had agreed to pay by the mortgage-bond. Ramappa derived his title as purchaser from Narsubai, and although possession was probably given him directly by the mortgagee it must be deemed to have been at the desire of Narsubai on his discharging the mortgage-debt. We think, therefore, that the Subordinate Judge was right in considering Ramappa as deriving his possession from Narsubai and his possession as being adverse to the plaintiff from that time. [180] *Cholmondeely v. Clinton* (1) shows that there can be an adverse possession of the equity of redemption as against the true owner, and such was, in our opinion, the case here up to 1856 when the house was sold by Narsubai to Ramappa. The case of *Nando Coomar Lal v. Brojo Bhookun Singh* (2) shows how persons claiming under an adverse holder of the equity of redemption under somewhat analogous circumstances to those here can protect themselves by such adverse possession. We must, therefore, reverse the decree of the Court below and restore that of the Subordinate Court, with costs on respondent here and in the lower Court of appeal.

Decree reversed.

(1) 2 J. & W. 1.

(2) 4 Wym. 36.