

(1869) 03 CAL CK 0025

Calcutta High Court

Case No: None

Peari Mohan Das and Others

APPELLANT

Vs

Nilkant Chatterjee

RESPONDENT

Date of Decision: March 23, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to me that this decision ought to be affirmed. The executors, treating them as managers of the estate, having joined in the mortgage with the devisees, the charge was a valid one. In this case two of the executors were the devisees. Although the payment of debts is said to be a charge on the property of the deceased, that charge is not a charge on any specific portion of the estate any more than the charge for payment of debts is a charge on any specific portion of the goods and chattels in the hands of an executor, or of real estate in the hands of an heir-at-law, when the debt is a charge on the heir and on the assets which he takes by inheritance. If an executor were to mortgage or pledge a portion of the assets of an estate, or an heir-at-law were to mortgage any portion of the real estate, which came to him by inheritance, a creditor, who should purchase, under an execution against the general assets, either real or personal, would take only subject to the charge made by the executors in the one case, or of the heir in the other. But if the mortgagee of real assets from the heir-at-law should, after purchase by a creditor, under execution subsequent to the mortgage, wish to foreclose the estate, he would be fully justified in making the heir-at-law, as well as the purchaser under the execution who took subject to the mortgage, parties to the suit. It appears to me, therefore, that the appellant in this case was properly made a party to this suit; that he was bound by the charge of the 15th of May 1863; and consequently that the judgment of the learned Judge is correct. Whether the plaintiffs were entitled to recover upon the allegations in their plaint, or upon the grounds upon which the Judge allowed them to recover, appears to me not to be material. I am of opinion that, under the plaint, the plaintiffs were entitled to show that the charge made by the executors was a valid charge. The decree is affirmed with costs to be taxed

according to scale No. 2.

Macpherson, J.

I concur.