secure for his own benefit what may be not inaptly described as his ill-gotten gains. The decree appealed from, however just in its results it may be towards the plaintiff and Spencer, cannot be allowed to stand in its present shape.

The plaintiff is quite willing to accept his share of the value of the partnership assets in money, not land. To that relief he is entitled. The decree appealed from, as well as that of Gregory, J., dated the 19th September 1911, must accordingly, in their Lordships' opinion, be reversed, the accounts directed by the decree of the Supreme Court of British Columbia, dated the 11th December 1908, must be taken, and the plaintiff declared entitled to have an inquiry instituted forthwith to ascertain the profits realised by the re-sale of lot 2, and also to ascertain the market value of the lots 10 and 11 at the date of the commencement of the inquiry, and further entitled to recover from Thomas Horne and William S. Holland one-sixth of the profit so realised on the re-sale of lot 2, and one-sixth in money of the value of the lots 10 and 11 so ascertained as aforesaid, subject in both cases to all just credits and allowances (which, however, shall not include any part of the sums paid by W. S. Holland or Spencer for the repurchase of the said lands), together with costs in the present action, including those of the Appeal to the Supreme Court of British Columbia, and also the costs of this appeal. And further, that the interest of the said William Holland in the said lots 10 and 11 shall stand charged, in priority to the mortgage to A. C. Flummerfelt, as a security for the aforesaid sums to which the appellant is declared to be entitled in respect of his share of the partnership assets and also in respect of the amount of the above-mentioned costs when taxed and ascertained.

The judgment and decree appealed against by William S. Holland having been reversed, his appeal must be allowed, but he is not in their Lordships' view, entitled to any costs.

Their Lordships will humbly advise His Majesty accordingly.

Counsel for Gordon—Buckmaster, K.C.—Hon. M. Macnaghten. Agents—Armitage, Chapple, & Macnaghten, Solicitors

Counsel for Holland—E. P. Davies, K.C. (of the Colonial Bar)—Atkin, K.C.—C. H. Sargant. Agents—Timbrell & Deighton, Solicitors.

HOUSE OF LORDS.

Thursday, March 13, 1913.

(Before Lords Atkinson, Shaw, Moulton, and Parker.)

LORD MAYOR AND CORPORATION OF BRISTOL *v.* JOHN AIRD & COMPANY.

(On Appeal from the Court of Appeal in England.)

Arbitration—Reference—Circumstances in which an Ordinary Action is not Excluded.

In an application to stay an action on a contract brought by the respondents on the ground that the contract contained a clause of reference, *held* that though an arbiter need not be independent of the parties, the fact that questions of moment were involved in the case to which he must be a principal witness warranted the Court in refusing to stay proceedings in an action regarding matters falling under the reference.

The *facts* of the case appear from their Lordships' judgment, which was delivered as follows:—

Lord Atkinson—This is an appeal from an order of the Court of Appeal of the 26th February 1912 (28 T.L.R. 278), which affirmed an order made by Scrutton, J., sitting at chambers, which affirmed an order of a Master sitting at chambers. The effect of that order was that he refused to stay the action instituted by the respondents.

That action was brought to recover a sum of £171,000 odd for work and labour done. The work was done under an agreement entered into between the appellants and the respondents to construct docks at Avonmouth. It was a very heavy contract, the contract price as stated amounting to £1,500,000, and the actual operation amounting to £1,750,000. The work has been completed, and it is alleged that this balance remains due. The contract contained a stipulation that all matters in dispute should be referred to Mr Squire, the engineer of the appellants, and an application was made to stay the proceedings and to compel the respondents to go to arbitration under that clause.

I do not think that there is any dispute between the parties as to the law applicable to such a state of things. If a contractor chooses to enter into a contract binding him to submit the disputes which necessarily arises to a great extent between him and the engineer of the persons with whom he contracts, to that engineer to arbitrate upon those matters, then he must be held to his contract; whether it be wise or unwise, prudent or the contrary, he stipulated that a person who is the servant of the persons with whom he contracted shall be the judge to decide upon matters upon which necessarily that engineer or arbitrator has

himself formed an opinion. But though the contractor is bound by that contract, still he has a right to demand that, notwithstanding those preformed views of the engineer, that gentleman should listen to argument, and should determine the matters submitted to him as fairly as he can as an honest man; and if it be shown in fact that there is any reasonable prospect that he will be so biassed as not to decide fairly upon those matters, then the contractor is allowed to escape from his bargain, and to have the matters in dispute tried by one of the ordinary tribunals of the land. But I think that he has more than that right. If without any fault of his own the engineer has put himself in such a position that it is not fitting or decorous or proper that he should act as arbitrator in any one or more of those disputes, the contractor has the right of appealing to a court of law to exercise the discretion which section 4 of the Arbitration Act* vests in them and to say, "We are not satisfied that there is not some reason for not submitting this question to the arbitrator." In the present case the question is, Has that taken place?

I have listened with great attention to the arguments, but I am utterly unable to get rid of the notion that in two of the most important matters in dispute — namely, the filling of the rubble in the embankments and slopes of the dock, and the excavations between the monoliths at the entrance piers—Mr Squire will necessarily be in a position of judge and witness. I cannot imagine any position more untenable or unpleasant for any gentleman acting as arbitrator to be in than to be really a witness in the cause; that he must be examined, so to speak, before himself and cross-examined by himself; that he must decide on his own veracity or trustworthiness; and there can be no stronger ground to induce a court of law to exercise their discretion and refuse to stay the action than that any gentleman who has taken upon himself the duties of arbitrator should be placed in such an entirely anomalous position. [*His Lordship here entered into details of the contract.*]

It seems to me impossible to say that Mr Squire would not be a most important witness to determine whether in fact what was promised was a gratuity, or whether his principals took upon themselves a legal obligation, the measure and amount of which was a matter for further consideration. For these reasons I think that it is not right that this gentleman should arbitrate upon these matters, and that full and sufficient reason has been given for saying—"We will exercise the discretion entrusted to us, and we will retain this action in the courts."

It has been suggested that those are matters of dispute spread over an enormous area, and embracing a great many different items, and I am as fully conscious as anyone can be of the great objection to referring these matters to the ordinary tribunal of a judge and jury, or a judge sitting alone, to decide. It would be expensive, and it cannot be supposed that a judge, or a judge and jury, would bring to the decision of such questions the trained experience and knowledge of a gentleman in the position of Mr Squire. No doubt that is so, and it has been pressed upon us that it would be such a great evil to take away from a decision by the arbitrator all these matters, that we should not stay the action as to the two matters to which I have referred, but should allow the rest to be referred to arbitration. No authority has been cited to the House to justify any position such as that. The case of *Ives and Barker* v. *Willams*, (1894) 2 Ch. 478), which came before Lindley, Lopes, and Kay, L.JJ., was a case of an entirely different character. In that case the plaintiffs chose to join in the same action claims which could be referred to arbitration and claims which could not be so referred, and Lord Lindley's observations, which have been so much relied upon, dealt entirely with that state of things. He said that where the claims which could not be referred were trifling in amount, it would be a sad thing if arbitration were altogether prevented; and on the other hand, if the claims which could be referred to arbitration were vast in amount, and material portions of the claim, it would be very irrational that they should not go to arbitration by reason of this adjunct which could not be referred. But that is not this case. Here the claims which are objected to are claims which could be referred; and what the appellants have pressed upon your Lordships is that you should take out of a number of claims, all of which could be referred, certain of them because the arbitrator is not in a position to decide them properly, and allow the rest to be adjudicated upon in the arbitration. That is a new departure in this system of law so far as I have been able to ascertain. There is also another objection to it, and that is that this point was not raised below, so that we have not the advantage of the decision of the Court of Appeal in regard to it. It is quite possible that if it had been raised below it would have been found that there are several other items of the claim in which exactly the same question arises, and we were informed that it was so. There is this also to be borne in mind, that the two claims which are matters of controversy in his argument are themselves very wide, and cover over £41,000 between them, which is a very substantial part of the entire claim. Therefore I do not think that it is possible to yield to the application which has been so much pressed upon us.

There is another matter which was dwelt upon at some length. It is said that it must have been contemplated by the parties that questions of this character would be raised, and that therefore they must be assumed to have contracted that they would go to arbitration, notwithstanding the fact that in that arbitration the arbitrator would be put in the position

* Arbitration Act 1889 (52 and 53 Vict. cap. 49), section 4 (not applicable to Scotland).

of judge and witness. I cannot read anything in the contract to that effect. The parties must be held to have contemplated that they would have to go before a man with views already formed; but to say that they contemplated that he would have put himself in a position of becoming a witness, and that they would submit to his adjudication under those circumstances, is, I think, pushing matters to an extreme which is unwarranted.

All charges against this gentleman have been withdrawn, and it appears to me, speaking for myself, that he has unfitted himself, not because he is dishonest, not because he is prejudiced, not because there is any reason to think that he would not decide the question fairly, but because he has placed himself in this anomalous and embarrassing position, in which it is not fitting that the duty of arbitrating in these should be upon him.

For these reasons, I think that the order appealed from is right, and that it should be affirmed, and this appeal dismissed, and I move accordingly.

LORD SHAW—In the case of *Hickman* v. *Roberts* * I expressed my opinion with reference to the delicacy of the position of an arbitrator under a contract of this character, and I do not repeat the observations which I then made.

Where parties have agreed that the undertakers' engineer, whose judgment on details, such as additions, alterations, measurements, &c., may, of course, have to be indicated in the course or at the conclusion of a contract, is, nevertheless, to be arbitrator, then by that contract the parties stand bound, for the arbitrator is thus accepted by them as one who will be so guided by the dictates of justice and professional honour as to put aside the bias which is natural in favour of all his preconceived opinions, and to act judicially. I do not hesitate to say—and I say it with the less hesitation as I am following in the steps of those very eminent judges Lord Bowen and Lord Davey—that I view such a position as one invoking, and possibly involving on occasions, considerable trouble. *Prima facie* a judge ought to be entirely apart from the subject-matter upon which he adjudicates; *prima facie* in a contract of the kind which I have sketched he is the very opposite of what he ought to be. But the law is now settled in the sense which I have mentioned, and I turn with relief to the action of the Legislature, which I think affords an opening for relief. By section 4 of the Arbitration Act 1889, where proceedings are taken on a contract containing an arbitration clause, the Court, if satisfied that there is no sufficient reason why the matter should not be referred, may make an order staying the proceedings. Upon that it is always open to the Court to affirm that upon the whole there does appear to be sufficient reason why the matter should not be referred.

That was the situation of affairs when these proceedings were brought before the Master, and in my humble opinion he exercised his judgment soundly and wisely in declaring that this was a case in which sufficient reason appeared why the matter should not be referred.

[*After consideration of a question of fact arising under the contract, his Lordship continued*]—Who can settle that in fact? It can only be settled by one side and the other being put into the box.

But one side is the engineer himself, who must give testimony going to this, that a new contract to the effect which I have stated did in point of fact come into existence. It appears to me that a clearer case could not arise for relief being granted under section 4 of the Act of 1889, for this is more than a mere embarrassment of procedure. It is a contradiction in terms to say that a judge can appear as his own witness, be examined and cross-examined, and pronounce judgment upon his own memory, credibility, or evidence. Such a thing is a travesty of all ideas of judicial decorum.

[*His Lordship here discussed another question under the contract*]—As in the former case, so now it is not a question of construing the agreement. It is a question whether in point of fact an agreement upon that subject was or was not in existence. The engineer and the contractors are at arm's length upon that fundamental issue, and it can only be cleared up by the testimony of the engineer being crossed by the testimony of the contractors. That again appears to me to supply those elements, to put it very moderately, of great embarrassment, amounting almost to a denial of justice, if justice is to be secured by proceedings attended by the ordinary means.

But while I thus concur in the judgment to be pronounced, I desire for myself to say that I am not prepared, without further argument, to bind myself to the proposition that in a contract of large dimensions an objection to the arbitration of the engineer upon one item is to be considered as affording ground for his entire disqualification as arbitrator under the contract. Cases may be figured in which some items are completely separable from the rest of the contract and in which the arbitrator might proceed to decide upon the main body of the case, leaving only for determination by someone else the small remaining items. I do not bind myself one way or the other upon that

* *May 9th*, 1911. — Reported in a foot-note, 108 L.T.R. 436. This case was an action under a contract by which the defendants' architect was constituted arbiter in any dispute that might arise. The defence was that the architect had given a certificate for the amount due and his decision was final.

The passage in his judgment to which his Lordship refers reads as follows:—The position of an architect in a building contract is one of great delicacy He is placed in that position to act judicially, when to the knowledge of both parties the person who is his master and his paymaster is one of the parties to the contract. It has been affirmed by courts of law, however, that that being the case his judicial position must be accepted, and it follows from that that in the peculiarly delicate situation in which such a man stands the courts of law must be very particular to see that his judicial attitude is maintained.

subject, except to say that when the proper time comes and it is argued, no doubt this House will have to express an opinion upon it.

LORD MOULTON—I have come to the same conclusion. It has long been a recognised principle of the common law of this country that no man can effectually withdraw himself from the protection of the courts of law any more than he can effectively deprive himself of his personal freedom, but for many years it has been recognised that there are cases in which a well-selected domestic tribunal, in which the judge is one with a special acquaintance either with the facts of the case or with the subjects to which the litigation mainly relates, may give more complete and speedier justice than the more elaborate procedure of the courts of law, based as they are upon the principle of complete independence of the tribunal from the parties and the facts of the case itself, are ever in a condition to render, and therefore submissions to arbitration have been more and more respected by the Legislature and by the courts which administer that legislation during the last half-century. The great step which gave the present status to arbitration proceedings was taken in the Common Law Procedure Act 1854. Up to that time a man could repudiate submission to arbitration, no matter how plainly he had contracted to submit, the only remedy against him being an action for damages, which might be utterly ineffective because no damages could be proved. Since the Act of 1854 matters have been in a very different position, when the Legislature permitted submission to arbitration subject to the indirect decree of the court and to specific performance. That is, that the court has a discretion to refuse its assistance to a person who has bound himself to go to a domestic tribunal if nothing has happened which would make it unjust for him to keep his bargain.

In that way the right of the Court was preserved, and at the same time a contractor was bound to keep the bargain which he had made as to the settlement of disputes. No one who has had experience of the contracts under which the great engineering works of the last half-century have been carried out can doubt that no well-advised corporation would accept the offer of a contractor to carry out important works which it desired to execute without having an arbitration clause in the contract, and probably without insisting that the engineer who was employed to superintend the works should be the arbitrator over disputes. I look on this arbitration clause, from a business point of view, as a substantial portion of the contract, and I think that the courts have acted rightly in requiring that good reasons should be shown why that part of the contract should not be fulfilled.

But it must be remembered that these arbitration clauses have been inserted with due regard to the existing law of the land, and the law of the land as applicable to them is, as I have said, that they do not prevent the parties from coming to the courts, but they only give to the courts the power of refusing their assistance in proper cases. Therefore when it is said that if we refuse to stay an action we are not carrying out the bargain between the parties, that does not describe the position fairly. We are carrying out the bargain between the parties because that bargain, to substitute for the courts of the land a domestic tribunal, was a bargain into which it was written, by reason of the existing legislation, the condition that it should only be enforced if the courts thought it a proper case for so enforcing it. Therefore the task which is before the Court on an application of this kind appears to me to be this—Here is a portion of the contract which has influenced the conduct of the parties throughout the whole of the execution of the works. Were it not expected that the engineer would be the tribunal to decide on points arising in the execution of the works much more elaborate precautions would be taken in the way of recording what happened; the whole conduct of the parties would then be changed, and things would be done in a strictly legal form. But so long as the parties have full confidence in the engineer, and are satisfied that he makes himself cognisant of all that happens in the construction of the works, much of that is unnecessary. Therefore I think that the courts should start with an earnest desire to keep the parties to the domestic tribunal which was contemplated both in the contract and throughout the execution of the works. But, on the other hand, I do not think that the Legislature has ever made it incumbent on a court to drive a man to a tribunal which would presumably be unfair, however much he may have bound himself to accept it, and therefore I think that they must ask themselves whether it is fair for this man to be refused the assistance of the court in settling his dispute. But they must take into consideration that the parties themselves are estopped from saying that the tribunal is unfair in its constitution because it is the one which he accepted as the basis of the contract.

I admit no secondary rules beyond the two considerations to which I have referred. I think that the Court is bound to consider all the circumstances of the case. There may be something in the arbitrator which makes him an unfit person. It may be his personal conduct and character; it may be the position in which his actions have placed him; they are bound to consider it, but in considering it they are bound to say that nothing known at the time of the contract—nothing to be fairly expected from the position of the engineer as arbitrator—nothing of that kind can be alleged as a ground why they should not keep the parties to their bargain, because those things must be supposed to have been in their contemplation at the time when they entered into the contract. Or again, there may be questions which, though they are included in the wide and almost unlimited

words of the arbitration clause—for I regret to see that those clauses are getting more and more complex, wider and wider words are added until they are almost shapeless and incapable of a reasonable construction, as the clauses to which they are accustomed in bills of lading and things of that type—there may be questions which, although included in the arbitration clause were clearly not in the contemplation of the parties, and are not suitable from their nature to come before this domestic tribunal. But that does not exhaust the considerations to which it is legitimate for a court to pay attention in a case like this. They must consider all the circumstances of the case. It may be that they will have to consider the magnitude of the questions, the way in which they have been raised, the circumstances with regard to the claims made, and everything else. They ought to consider them, in my opinion, with a strong bias in favour of maintaining the special bargain between the parties, and at the same time with vigilance to see that they are not driving either of the parties to a tribunal where they will not get substantial justice.

In the present case I am not prepared to say that either of the two cases is such that a court would necessarily be bound to refuse to stay the action. I cannot only conceive, but I think that I should expect, that in the progress of a long contract many questions would be raised in which matters were settled directly between the engineer and the parties, whether as to the payment for a particular kind of work or as to the plan to be pursued in its execution, or perhaps as to the setting off of one piece of work against another, all these things being small details which are arranged in the course of the execution of works; and I should turn a deaf ear to the assertion that in the arbitration the engineer would be, with regard to such things, to some extent in the position of a witness. I think that one of the reasons why he is chosen is because he has a personal knowledge of the circumstances of the work. Of course there may be differences of memory with regard to things which have occurred in the course of the execution, and therefore I should not be prepared to say that either of these two items as a matter of course drives us to refuse to stay the action. But I look at the type, and to a certain extent I look at the importance of it, not so much because I think that a different law is to be applied to a large item from that to be applied to a small item, but from the fact of the way in which the importance of the item must weave its history into the whole of the matters which have gone on during the execution of the works, raising questions of the effect of the conduct of the engineer upon what I might call the reasonable understanding of the contractors, and in many other ways making an item of this importance one which it is not suitable to have tried before this particular tribunal, whereas if it was a mere detail I should say that it might well be so tried, and it might have been within the intention of the parties that it should be so tried. But there are other things besides the magnitude of the questions, to which, after all, I only attribute a secondary importance. The way in which the disputes arose and what has happened in connection with them make me feel that a court may well take the view that there is good reason why this matter should not be referred to arbitration. I agree with cases like *Walmesley* v. *White* (67 L.T.R. 433) and *Joplin* v. *Postlethwaite* (61 L.T.R. 629) that this is a matter of judicial discretion in the courts. I find that the Court of Appeal has, after a very long hearing, unanimously come to the conclusion that there are reasons why this matter should not be referred to arbitration, and the able arguments which your Lordships have heard have not convinced me that the Court of Appeal was wrong in coming to that conclusion, and therefore, not only from my own opinion, but also from a feeling that on a question of judicial discretion one ought not to grant an appeal lightly from a Court which has not proceeded on wrong judicial lines, I have come to the conclusion that the appellants have not made out their case, and I concur in the motion which has been made.

LORD PARKER—I agree. The application in the present case was an application to stay proceedings under section 4 of the Arbitration Act 1889, which confers on the Court a discretionary power in that behalf, but before exercising this power the Court has to be satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission. In making up its mind on this point the Court must, of course, give due consideration to the contract between the parties; but it should, I think, always be remembered that the parties may have agreed to the submission precisely because of the discretionary power vested in the Court under the Act. They may very well, for instance, have said to themselves—"If in any particular instance it would be unfair to allow the arbitration to which we are agreeing to proceed, we shall have the protection of the Court." It appears to me that it is absolutely impossible to define, and certainly undesirable to attempt to define with any precision, what circumstances will prevent the Court from exercising its discretionary power. It will certainly not be enough to allege that the arbitrator is not an independent person, if the parties, with knowledge that it is so, have nevertheless agreed to accept him as arbitrator. But it may be a different matter altogether if, by some action of his own, the arbitrator has already committed himself irrevocably to some particular view; and I think that it is certainly a different matter altogether if there be a *bona fide* dispute involving substantial sums, and a probable conflict of evidence on matters as to which the arbitrator himself will, in the normal course, be the principal witness on one side. In such a case

it might lead to a miscarriage of justice if the arbitration were allowed to proceed, and one of the parties were in consequence deprived of the chance of testing the truth by means of cross-examination, or if the arbitrator had to determine whether he had himself done anything by which one of the parties might be estopped from raising any particular point.

In the present case, after what has been said, I do not think that I need go into the particular circumstances, but, in my opinion, the matters at issue are of substance, and the arbitrator is not unlikely to be a proper and necessary witness, and questions of estoppel are not unlikely to be raised. Not only, therefore, am I not satisfied that there is no reason why the matters at issue should not be referred, but I think, on the whole, that such reference might be very unfair to the respondents. With regard to the contention of the appellants that the action should be allowed to proceed only with regard to the two points which were dealt with by the Court of Appeal, that contention was not put forward in the Court below, and the appellants have not given us any details of the other matters in dispute, so as to enable us to judge whether or not they can in fairness be left to the arbitrator. I do not think, therefore, that we ought to accede to that contention, more especially as it would involve a multiplicity of proceedings, in one of which the arbitrator would be judge, and in others of which he would probably be subject to cross-examination by one of the litigants.

I should like to add one thing more, and that is, that without expressing any definite opinion, I do not think it advisable that any doubt should be thrown upon the Courts below with regard to exercising their discretion under the Arbitration Act. It is, I know, a common thing to stay an action as to one matter in dispute and at the same time to allow it to proceed as to another, notwithstanding that both points are within the reference; and I think that it is obviously a desirable course in many cases for this reason, that very often the matters subject to the reference include both the true construction of the instrument containing the submission and also various matters of detail, and it may be of account. Everybody knows that with regard to the construction of an agreement it is absolutely useless to stay the action, because it will only come back to the Court upon a case stated; therefore it is more convenient on a question of construction to allow the action to proceed, and at the same time, with regard to accounts and matters of detail, to allow the arbitration to proceed. I say this because, not having considered the point definitely, I do not wish to determine any question definitely, but at the same time I think that it is inadvisable to throw doubt at present upon what I know personally to be the existing practice of the courts.

Judgment appealed from affirmed and appeal dismissed with costs.

Counsel for the Appellants—Sir R. Finlay, K.C.—Gore-Brown, K.C.—Inskip. Agents—Robins, Hay, Waters, & Hay, for E. J. Taylor, Town Clerk, Bristol, Solicitors.

Counsel for the Respondents—Sir A. Cripps, K.C.—Upjohn, K.C.—Lynden Macassey, K.C.—C. H. G. Campbell. Agents—Beale & Company, Solicitors.

PRIVY COUNCIL.

Wednesday, March 19, 1913.

(Before the Right Hons. Lords Atkinson, Shaw, and Moulton.)

LOKE YEW *v.* PORT SWETTENHAM RUBBER COMPANY, LIMITED.

(On Appeal from the Court of Appeal for the Federated Malay States).

Sale of Land—Registration of Title—Fraudulent Registration—Power of the Court to Order Rectification.

Under Federated Malay States law, by the Registration of Titles Regulation 1891, section 7, a certificate of title to land issued by the registrar is conclusive evidence that the holder is absolute owner of the land. Section 4 declares all unregistered conveyances invalid. The respondents purchased, *inter alia*, lands possessed by the appellant on an unregistered title with notice of his rights, fraudulently obtaining the conveyance from the grantor by an assurance that they would arrange the matter with the appellant. *Held*, on the grounds (*a*) that the respondents' title was obtained by fraud, (*b*) that the respondents were bare trustees for the beneficial owners and as such bound to denude, that the appellant was entitled to have the register rectified.

The *facts* appear from their Lordships' judgment, which was delivered by

Lord Moulton—This is an action of ejectment brought by the Port Swettenham Rubber Company, Limited, against Loke Yew, to recover possession of a piece of land situated in the State of Selangor. The statement of plaint alleges that the plaintiff company is the registered owner of the land, that there is no incumbrance upon it, and that the defendant has no title to occupy it. It admits that the defendant is in fact in occupation, but alleges notice to quit and refusal by the defendant to go out. The statement of defence alleges title in the defendant, and that the registered title of the plaintiffs was obtained by fraud, and also possession for twelve years before the commencement of the suit, so that the plaintiff's right of action is barred by the Limitation Enactment V of 1896. The meaning and significance of the allegations in the defence can only be understood by a reference to the history of the land in question and the transactions relating to it.

On the 4th January 1894 the Resident of