

(1897) 09 CAL CK 0011

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 192 of 1896

Haris Paik

APPELLANT

Vs

Jahuruddi Gazi

RESPONDENT

Date of Decision : 03-09-1897

Acts Referred:

Citation : (1897) 09 CAL CK 0011

Judgement

Maclean, C.J.—I think that the covenant is a valid one. In my judgment there is nothing in it which is contrary to public policy or is likely to injuriously affect the mortgagor. The learned vakil who appeared for the Respondent has not been able to adduce any authority either in the Indian or English Courts which would support the proposition for which he contends, viz., that the covenant is bad. If he had no notice of this covenant in the mortgage deed, he may--I do not say he can--be able to setup that he is a purchaser for value without notice. The question of notice has not been decided by the Court below. The case must therefore be remanded to the lower Appellate Court for retrial upon that question. The costs of the appeal will abide the ultimate result of the trial.

Banerjee, J.

Iconcur.