

against the plaintiff in point of law. The plaintiff should therefore not have been put out of possession at the instance of the defendant in his suit. But although nothing passed to the defendant by the sale, yet as the purchase by plaintiff of the right and interest of the mortgagor was subject to the mortgage to the defendant, and as the defendant was not a party to plaintiff's mortgage suit, the right of the defendant as mortgagee is not affected by the sale to the plaintiff. We cannot give effect to that mortgage in this suit, and must leave the defendant to assert his rights on foot of it as he may be advised. This second appeal must be dismissed with costs.

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INNES, J.—The issues were sent to the District Munsif on a misconception as to the facts, which has since been cleared.

I agree with Mr. Justice Kernan in the result. The defendant took nothing by his purchase of the rights and interests of the mortgagors, which had already been sold to plaintiff, and plaintiff is entitled to be replaced in possession of the land of which he was wrongly dispossessed by Court process issuing in execution of defendant's decree.

I do not wish to offer any opinion upon the other question of whether defendant's mortgage is still on foot and capable of being enforced. Recent legislation in regard to procedure has contracted the capacity to enforce several remedies by several suits, and it may be that defendant's mortgage right, if still existing, is barred of any further remedy. The second appeal will be dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

*Before Sir Charles A. Turner, Kt., Chief Justice, and
Mr. Justice Innes.*

APPASÁMI, PLAINTIFF, v. AGHILANDA, DEFENDANT.*

*Act XV of 1877, Sch. II, Act 73—Shorter period of limitation.—Act XV of 1877,
Sec. 2—Act IX of 1871.*

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The period of limitation prescribed by Article 73 of the Second Schedule to Act XV of 1877 is a "shorter period of limitation" within the meaning of the last

* Referred Case No. 22 of 1878, stated under Section 617, Act X of 1877, by the District Munsif of Chidambaram.

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clause of Section 2 of that Act than the period prescribed by Article 72 of the Second Schedule to Act IX of 1871.

The language of Acts IX of 1871 and XV of 1877 leads to the conclusion that by each of these enactments the starting point and period given in its schedule were to take the place of those given by the Act which preceded it, in the case of all suits instituted after the date of the Act coming into force, and that the expiration of the period, calculated with reference to the Act in force at the date at which the note was executed, does not necessarily affect the remedy.

THIS was a case stated under Section 617, Act X of 1877, by the District Munsif of Chidambaram.

The following is taken from the case referred—

“The plaintiff sues to recover money lent on a note payable on demand. The note is dated 4th July 1870. Under the Act then in force the plaintiff had time to sue till the 4th July 1873. The Limitation Act of 1871 came into operation on 1st April 1873.

The plaintiff did not sue on the agreement till the 29th November 1878, and he alleges that he made a demand on the defendant for payment of this debt on the 10th September 1876.

The question raised is whether the plaintiff's suit is barred by the Limitation Act of 1877.

It is now settled that the plaintiff could have enforced his claim under the Act of 1871 within three years from the date of demand, although under the earlier Act of 1859 he was compelled to sue within three years from the date of the bond. The effect of the provision of the Act of 1871, thus interpreted, was to extend the period within which the plaintiff had to sue from three years from the date of the note to an indefinite time, though the number of years prescribed be the same in both Acts.

The time thus extended by the Act of 1871 has been curtailed by the present Act, because the starting point has been altered by requiring the plaintiff to bring his action within three years from the date of the note.

Is the curtailment thus arising a shortening of the period within the meaning of the proviso contained in the 3rd paragraph of Section 2 of the present Act? The expression ‘the period of limitation prescribed’ does not, I think, refer merely to the number of years but includes cases where the time is actually shortened by the adoption of a different mode of calculating the period also.”

The Munsif, doubting if his construction was correct, referred the case.

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Pārthasārādhi Āyyangar and *Kistnasāmi Chetti* for the plaintiff.

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B. Balaji Rāu for the defendant.

The Court (TURNER, C. J., and INNES, J.) delivered the following

JUDGMENT :—The question is whether the suit is barred by the law of limitation. To determine this, it is necessary, first, to look at Act XV of 1877, the Act in force at the date at which the suit was instituted (29th November 1878). Section 4 of this enactment provides that “subject to the provisions contained in Sections 5 to 25 inclusive,” which need not be considered here, “every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed.”

This refers us to the second schedule for the determination of the period of limitation in regard to all suits instituted after the Act is in force. The note is payable on demand, and Article 73 of the second schedule prescribes three years from the date of a note so payable.

It was executed on the 4th July 1870, and, therefore, the period would have expired on the 4th July 1873, and this suit is barred unless the remedy is saved by some other provisions of the Act.

Section 2 says “any other suit” (*i.e.*, any suit other than those of the kind provided for in Article 146 of the second schedule) “for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.”

Now, the period allowed by the Act of 1871 is also three years, but the point from which the period was calculated was in the Act of 1871 the date of demand, while in that of 1877 the old rule was reverted to of making the date of the cause of action the starting point; such date in notes payable on demand being the date of the debt, not the date at which demand may be

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made. The Act of 1871 was thus more favorable to creditors than the new Act, as the starting point of the limitation period might be postponed indefinitely, and in the present case the demand having been made on the 10th September 1876, if the Act of 1871 were still in force, a suit might be instituted at any date within 10th September 1879.

It is obvious that the provisions of Section 2 of the present Act were intended to prevent the sudden extinction of rights of action which had arisen under the more favorable provisions of the Act of 1871, and the "shorter period" mentioned, when applied to the present and like cases, must, therefore, be taken to mean not merely the period of so many years or months allowed by the schedule, but also the point at which that period, according to the provisions of the schedule of the old Act, would terminate, and within which, therefore, a suit might have been instituted under it had it remained in force.

In this view the period allowed by the Act of 1877 is clearly shorter than that of the old Act, and the suit is within the indulgence of Section 2 of the Act of 1877.

Then Section 2 gives two years after the 1st October 1877 or as much of two years as is required to make up three years from the starting point.

This would admit of the suit being instituted at any date within the 10th September 1879, so that it is clearly in time.

If the starting point for the period of limitation and the period itself must necessarily be determined by the enactment in force at the date of the execution of the instrument, the note in question would be barred under the provisions of Act XIV of 1859 and not saved by the provisions of Act XV of 1877, but the language of Acts IX of 1871 and XV of 1877 leads to the conclusion that by each of these enactments the starting point and period given in its schedule were to take the place of those given by the Act which preceded it, in the case of all suits instituted after the date of the Act coming into force, and that the expiration of the period, calculated with reference to the Act in force at the date at which the note was executed, does not necessarily affect the remedy. Our opinion is that the note is not barred.
