

1880
DOORGA
CHURN DOSS
v.
NITTOKALLY
DOSSIE.

intention of the Legislature to allow a pauper defendant the privileges accorded to a pauper plaintiff.

Mr. J. D. Bell for the Government contended, that Government should not be called upon to appear, but should only be called upon when a plaintiff seeks to institute a suit in order to see that the revenue is not defrauded. He also contended that there the Court has no power under the Code to allow a defendant to appear *in formâ pauperis*. [WILSON, J.—The Code binds the Court so far as it goes, but if the Court had power before the Code was passed to allow a defendant to appear *in formâ pauperis*, and that power is not expressly taken away by the Code, the power must remain. In Courts of Common Law the defendant was not allowed to defend *in formâ pauperis*, because the power was statutory; but in the Court of Chancery, the defendant was allowed so to defend because the power was not statutory.]

March 15th.—On this day the Court made an order allowing the defendant to defend the suit *in formâ pauperis*.

Application granted.

Attorney for the plaintiff: Mr. Moses.

APPELLATE CIVIL.

Before Mr. Justice Prinsap and Mr. Justice Maclean.

1880
March 1.

NOBAN NUSYA AND ANOTHER (DEFENDANTS) v. DHON MAHOMED
(PLAINTIFF).*

Registration—Period within which Document may be registered—Conduct of Parties—Registration Act (III of 1877), s. 17, cl. b, and ss. 23, 77.

By an agreement entered into between the parties, the vendor bound himself to execute within thirty days a deed of conveyance, and in default that the agreement should be considered as itself the deed of conveyance of certain

* Appeal from Order, No. 183 of 1879, against the order of F. J. G. Campbell, Esq., Officiating Judge of Rungpore, dated the 25th June 1879, reversing the order of Baboo Kartick Chunder Pal, Munsif of Nilphamari, dated the 7th of December 1878, remanding the case to the Munsif.

lands mentioned in the agreement. The vendor having failed to execute, such deed, the vendee, more than four months after the date of the agreement presented it for registration. *Held*, that the conduct of the parties concerned could in no way affect the period of limitation within which such agreement could have been registered under the Act, and that the agreement could not be registered.

1880
 NOBAN NUSTA
 v.
 DEON
 MAHOMED.

Baboo *Nullit Chunder Sen* for the appellants.

Baboo *Sreenath Dass* for the respondent.

THE facts of this case appear sufficiently from the judgment of the Court (PRINSEP and MACLEAN, J.J.), which was delivered by

PRINSEP, J.—This was a suit brought under s. 77 of the Registration Act, III of 1877, to obtain a decree, directing the registration of a document which had been refused by the Registrar.

The document in this case was one falling within s. 17, cl. (b), and was a bynauama, declaring the right of the plaintiff to receive a conveyance within thirty days from the execution of that deed, or in default the bynauama should be considered as such conveyance.

The defendants, apparently, refused to execute the conveyance, and the plaintiff, more than four months after the date of the execution of the deed, applied for registration of the bynauama.

The District Judge, on appeal, considers that the right to obtain registration dated from the default of the defendants to execute the conveyance, and that the bynauama having then become a conveyance, the time for applying for registration commenced on that date. It is quite clear, however, that the view taken by the District Judge is erroneous, because s. 23 declares that, ordinarily, no document except a will "shall be accepted for registration, unless presented for that purpose to the proper officer within four months from the date of its execution."

No conduct of the parties, however much that might alter the character of the document, could affect the term of limitation laid down by this section. The deed not having been presented for registration within four months from the date of its execution, clearly could not be registered. The order of the District Judge is, therefore, set aside.

Appeal allowed.