provisions of the Code of Civil Procedure apply to the presentation of a plaint in a suit under the Estates Land Act. Under section 121 of the Code of Civil Procedure, the rules in the first schedule have effect as if enacted in the body of the Act. Order IV, rule 1, provides that every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf. It is therefore open to the Collector to appoint an officer to whom plaints may be presented, but this, we understand, has not been done.

It is clear that rule 14 of the Civil Rules of Practice does not apply to proceedings before a Revenue Court, and we cannot accept the contention that, when the plaintiff sought to present his plaint in this case, the Court was closed with the meaning of section 4 of the Limitation Act.

We must accordingly answer the question in the affirmative.

APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., Chief Justice, Mr. Justice Miller and Mr. Justice Oldfield.

MUTHUKRISHNIER AND THREE OTHERS (PLAINTIFFS), APPELLANTS,

v.

VEERARAGHAVA IYER AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1912. August 6 and 30 and 1913 April 18 and 22.

Transfer of Property Act (IV of 1882), ss. 130 and 134—Mortgage in writing of a promissory note—Assignees' right and liability to sue on the promissory note.

By virtue of sections 130 and 134 of the Transfer of Property Act (IV of 1882), a mortgage in writing of a promissory note, executed in favour of the mortgagor by a third party for a debt, creates an assignment of the promissory note in favour of the mortgagee even without an endorsement, and as the right of the promisee to sue on the note becomes vested in the mortgagee, the mortgagee alone is entitled to sue on the note and in taking accounts of the mortgage, the mortgagee is liable to be debited with the amount of the note if he without any justification allows the recovery of the debt barred by limitation.

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* Letters Patent Appeal No. 147 of 1912.

MUTHU-KRISHNIER v. VEERA-RAGHAVA IYER.

Mulraj Khataw v. *Viswanath Prabhuram* (1913), I.L.R., 37 Bom., 198 (P.C.) followed.

Shyam Kumari v. *Rameswar Singh* (1905) I.L.R., 32 Calc., 27 P.C., followed.

APPEAL under article 15 of the Letters Patent Act against the decision of SUNDARA AYYAR and SADASIVA AYYAR, JJ., in *Muthukrishnien* v. *Veeraraghava Iyer*(1) preferre dagainst the decree of the District Judge of Madura in Appeals Nos. 409 and 391 of 1910 presented against the decree of the Principal District Munsif of Madura in Original Suit No. 715 of 1909.

The plaintiffs in this case sued to recover the amount due to them on a mortgage bond (Exhibit A) executed in favour of their father by the first defendant by which a house, a promissory note and two simple mortgage bonds executed in favour of the first defendant by the third parties were hypothecated. There was no assignment of the promissory note by way of endorsement. The portions of the defence material for the purpose of this report were that the plaintiff being the assignee of the promissory note by virtue of the mortgage was not only entitled, but was also bound to sue on the note before it became time-barred and that he not having sued the third party before the promissory note became time-barred was liable to be debited while taking accounts, with the amount of the promissory note.

The Lower Courts upheld the pleas of the defendant and debited the plaintiff with the amount of the promissory note. In *Muthukrishnien* v. *Veeraraghava Iyer*(1) filed by the plaintiff SUNDARA AYYAR, J., *held*, (*a*) that this mortgage did not create any assignment of the mortgage in favour of the mortgagee, (*b*) that even if it created any assignment he was not bound to sue on the note and that he, the plaintiff, ought not to be debited with the amount of the promissory note.

SADASIVA AYYAR, J., differing from SUNDARA AYYAR, J.,on all these points, confirmed the decree of the Lower Court. Thereupon the above Letters Patent Appeal was filed by the plaintiffs.

[The judgments of SUNDARA AYYAR and SADASIVA AYYAR, JJ., are reported in *Muthukrishnien* v. *Veeraraghava Iyer*(1) and are not herein reported in view of the later decision of the Privy Council in *Mulraj Khataw* v. *Viswanath Prabhuram*(2) and in

(1) (1913) 23 M.L.J., 430. (2) (1913) I.L.R., 37 Bom., 198 (P.C.).

view of the concurrent opinion of the three Judges in this Letters Patent appeal based on the above Privy Council decision and the Privy Council decision *Shyam Kumari* v. *Rameswar Singh*(1).

C. V. Ananthakrishna Ayyar for the appellants.

K. N. Aiya for the first respondent.

WHITE, C.J.

WHITE, C.J.—Under Exhibit A the defendants mortgaged to the plaintiffs a house and a promissory note which had been executed to the defendants, by a third party as security for money owing by the defendants to the plaintiffs. The promissory note was not endorsed to the plaintiffs. It became time-barred, and the question is whether on the taking of accounts the plaintiffs should be debited with the amount due on the note. It was not suggested that the plaintiff could sue on the note. It was contended that the note was evidence of a pre-existing debt due by the third party to the defendants, that that debt was by the mortgage assigned to the plaintiffs, and that the plaintiffs being the parties who were entitled to sue for the assigned debt were under an obligation to the defendants, to do so before the right to recover the debt became barred by limitation. The promissory note refers to a pre-existing debt due by the third party to the defendants, but I have had some doubt whether on the documents alone, coupled with the fact that the maker of the note attested the mortgage to the plaintiffs and that is all we have to go on—there is evidence of a pre-existing debt. No attempt appears to have been made to show that there was no debt (in the Court of First Instance the defendants sought to show that the amount due on the note had been paid) and I think we are warranted in holding that there was a debt. The mortgage thereof was, in my opinion, a transfer of an actionable claim within the meaning of section 130 of the Transfer of Property Act, which vested in the transferee the rights and remedies of the transferor, subject to the equities which remained in the transferor by reason of the fact that the transfer was by way of security. This is in accordance with the decision of the Privy Council, in the recent case of *Mulraj Khataw* v. *Viswanath Prabhuram*(2), which does not appear to have been reported when this appeal was argued before SUNDARA AYYAR, J., and SADASIVA AYYAR, J. In

(1) (1905) I.L., 32 Calc., 27 (P.C.).(2) (1913) I.L.R., 37 Bom., 198 (P.C.).

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WHITE, C.J.

the Privy Council case the contest was between a party who held an assignment in writing of a policy and parties holding a deposit of the policy by way of security which was earlier in date than the assignment in writing. Their Lordships held in favour of the parties holding the written instrument. In the judgment they observe with reference to the assignment in writing "It may well be that although absolute in form it was intended to be only by way of security so as to be subject to a right of redemption, but this does not affect the rights of the parties under the circumstances of the present case." And again "He (the party claiming under the instrument) has an absolute right to the proceeds of the policy."

The rights of the transferor being vested in the transferee by the express words of the section, the transferee is the only party entitled to sue, and this being so, he is, I think, accountable to the transferor for having allowed the remedy to become time-barred.

I do not think any useful purpose would be served by a discussion of the English authorities. The cases turn on the language of section 25 (6) of the English Judicature Act, 1873. In the Privy Council decision to which I have referred, their Lordships observe "The error (of the Court in India) arose from the learned Judges not having appreciated that the positive language of the section precluded the application in India of the principles of English law on which they based their decision."

I only propose to refer to one authority, the decision of the Privy Council in *Shyam Kumari* v. *Rameswar Singh*(1). There, the mortgagors assigned to their mortgagee a debt due to them from a third person, and in taking the account of what was due to the mortgagee, the Courts in India debited him with the amount of the debt, though he had not received it. It was held, that it lay upon the mortgagee to use reasonable diligence to recover it from the debtor, and it appearing that no serious attempt had been made to do so it was held that it had been rightly debited in the account.

I think this appeal fails and should be dismissed with costs.

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(1) (1905) I.L.R., 32 Calc., 27 (P.C.).

MILLER, J.—I am of the same opinion. After the recent decision of the Privy Council in *Mulraj Khataw* v. *Viswanath Prabhuram*(1), it seems impossible to contend that a hypothecation of a debt is not a transfer of an actionable claim within the meaning of section 130 of the Transfer of Property Act. Their Lordships held that by that section a writing is required to effect a charge on an actionable claim. It follows that the remedies of the mortgagor are transferred to the mortgagee of the debt and he is entitled to recover the sum due from the debtor and if so entitled then he is rightly made liable if he without justification allows the debt to become irrecoverable *Shyam Kumari* v. *Rameswar Singh*(2).

In the present case an attempt was made in the Court of First Instance to show that by agreement the first defendant was to recover the amount of the debt, but the District Munsif held that the provisions of Exhibit A were clear, and there was no need to consider the oral evidence: and it seems that point was not pressed either in the District Court or here at the hearing of the Second Appeal, and we were not asked by the appellant to re-open the question on the evidence and must therefore proceed on the footing that there was no contract altering the position of the parties. We must deal with the case on the provisions of section 130 apart from any contract. The plaintiffs endeavoured, but failed, to prove that the debt mortgaged had been paid to the first defendant and did not, so far as I can see, ever allege that the promissory note which was handed over to the plaintiffs did not represent a debt which could be assigned. I find no difficulty therefore in accepting the view taken by all the Courts which have dealt with the matter so far, that what was mortgaged was a debt evidenced by a promissory note.

That being so, it lay upon the plaintiffs to show that they were not in fault in allowing the recovery of the debt to be barred by limitation, and they made no attempt to show that. Then it was contended that the first defendant was equally entitled to recover the debt and therefore the plaintiffs cannot be made liable: the default was as much that of the one as of the other.

But the remedy open to the first defendant as creditor had passed by the section 130 of the Transfer of Property Act to the

(1) (1913) I.L.R., 37 Bom., 198 (P.C.). (2) (1905) I.L.R., 32 Calc., 27 at p. 35.

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plaintiffs: what was retained by the first defendant was his right to redeem the mortgage. This contention is therefore of no avail, and moreover was not, so far as I can see, raised at any previous stage of the case.

MILLER, J.

I concur in dismissing the appeal with costs.

OLDFIELD, J.

OLDFIELD, J.—I concur in the decisions of my learned colleagues for the reasons given by them and have nothing to add.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling.

1913. July 15.

Re V. BATI REDDI AND FIFTEEN OTHERS (ACCUSED), PETITIONERS.*

Criminal Procedure Code (Act V of 1898), ss. 255 and 342—Indian Evidence Act (I of 1872), sec. 30—Confession of co-accused, admissible under—Separate trials not necessary where confession made during trial.

When before a magistrate in a statement under section 347, Criminal Procedure Code, certain accused confessed the crime and implicated their co-accused and further under section 255 (1), pleaded guilty to the charges:

Held, that it was not necessary to try the co-accused separately to enable the confessions to be used against them under section 30, Indian Evidence Act.

Queen-Empress v. *Lakshmayya Pandaram* (1899) I.L.R., 22 Mad., 491, dissented from.

Queen-Empress v. *Pirbhu* (1895) I.L.R., 17 All., 524 and *Queen-Empress* v. *Pahuji* (1895) I.L.R., 19 Bom., 195, distinguished.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the judgment of A. DURAISWAMI AYYAR, the Deputy Magistrate of Jammalamadugu, in Criminal Appeal No. 1 of 1913, presented against the conviction and sentence of S. SUBRAHMANYA AYYAR, the Stationary Sub-Magistrate of Jammalamadugu, in Calendar Case No. 182 of 1912.

In this case the accused, 17 in number, were charged with offences under sections 147 and 342, Indian Penal Code, and section 22 of the Cattle Trespass Act (I of 1871) by the Stationary Second-class Magistrate of Jammalamadugu. The fourteenth and the seventeenth accused in a statement made

*Criminal Revision Case No. 297 of 1913 (Criminal Revision Petition No. 642 of 1913).