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memoranda? I cannot think it was intended that entries made simply to serve as memoranda should be treated as falling within s. 17 of the Act, and requring registration before being used in evidence. How, in such a case, is the mortgagor, whose interest it might be to put such entries in evidence, to get the custody of the mortgagee's books in order to have the entries registered? He probably would not even know of such entries until he obtained discovery in an action. These indorsements are not, in my opinion, within the four corners of s. 17, and therefore cannot be objected to on the ground that registration was necessary before they could be admitted in evidence.

STRAIGHT, J.— I cannot say I am altogether without doubt in regard to the question put by this reference and to what the answer to it should be. But as it has been very fully threshed out in the course of the arguments, and as the rest of the Court are quite clear upon the point, no useful purpose would be served by my delaying a reply to the reference, in order to enable me further to consider the matter.

OLDFIELD, J.—I concur with the learned Chief Justice in holding that the indorsements referred to are not such as required to be registered, in order to make them admissible in evidence.

BRODHURST, J.—I concur with the learned Chief Justice in the answer he has given to this reference.

TYRRELL, J.—I am of the same opinion as the learned Chief Justice.

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1886
*November* 20.

*Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

NAUBAT RAM (DEFENDANT) *v.* HARNAM DAS (PLAINTIFF).*

*Appeal under s. 10, Letters Patent—Limitation—Rules of practice of High Court.*

It must be assumed that Rule I of the "Rules of Practice adopted by the High Court for the North-Western Provinces on the 21st May, 1873, regarding the admission of appeals under s. 10 of the Letters Patent," which provides that such appeals must be presented to the Assistant Registrar within ninety days of the judgment appealed from, had a legal origin, and was not *ultra vires* of the Court.

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* Appeal No. 2 of 1886 under s. 10, Letters Patent.

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*Harrak Singh* v. *Tulsi Ram Sahu* (1) and *Fazal Muhammad* v. *Phul Kuar* (2), referred to.

THE plaintiff in this case, Harnam Das, sued for a declaration that the transfer of a decree by the defendants 1 and 2 to him was valid, and that he was entitled to execute the decree. The Court of first instance (Subordinate Judge of Bareilly) gave a decree in accordance with this prayer. From this decree one of the defendants, Naubat Ram, a minor, under the guardianship of one Dharam Das, appealed to the High Court on a court-fee of Rs. 10. Upon the memorandum of appeal the Registrar, as taxing officer, passed the following order, dated the 29th January, 1886 :—

"The decree in respect of which the transfer was made was for Rs. 20,000, and there can be no doubt that the prayer amounts to a claim for a decree involving consequential relief; such relief as prayed being the execution of the transferred decree. This relief was valued in the lower Court by the plaintiff at Rs. 20,000, and court-fees were paid on that amount, and the defendants, who now appeal against this consequential relief, must pay a similar amount in this Court. They have paid only Rs. 10, and must make good the difference (Rs. 765) within one month."

On the 13th March, 1886, an order was passed by Brodhurst, J., concurring in the opinion expressed by the Registrar, and allowing one month to make good the deficiency. On the 17th April, 1886, Brodhurst, J., passed the following order :—

"The deficiency not having been made good up to this date the appeal is rejected."

On the 26th May the appellant filed an application for a certificate under s. 600 of the Civil Procedure Code that the case was a fit one for appeal to Her Majesty in Council. On the 24th June the application came for hearing before Brodhurst, J., who, observing that the appellant could appeal from the judgment of the 17th April to the Full Bench, under s. 10 of the Letters Patent, passed an order granting a request made by the appellant's pleader for leave to withdraw the application.

On the 29th July the appellant filed his appeal under s. 10 of the Letters Patent from the judgment of the 17th April to the

(1) 5 B. L. R., 47. (2) I. L. R., 2 All. 192.

Full Bench. The following report was made by the office upon the memorandum of appeal :—

"As regards limitation, I beg to submit that if calculation is made from the date of the rejection of the appeal, this appeal, which has been filed after 102 days, is beyond time. If, under s. 14 of the Limitation Act, the appellant be allowed 29 days' deduction, during which time he was prosecuting his application for leave to appeal to the Privy Council, this appeal will be in time."

On the 4th August the appeal was admitted by Straight, J., subject to any objection that might be taken at the hearing.

The appeal came on for hearing before the Full Bench on the 20th November.

Lala *Jokhu Lal*, for the appellant.

Pandit *Sundar Lal*, for the respondent.

A preliminary objection was taken on behalf of the respondent that the appeal had been preferred beyond the period allowed by Rule I of the "Rules of Practice adopted by the High Court for the North-Western Provinces on the 21st May, 1873, regarding the admission of appeals under s. 10 of the Letters Patent."—("Appeals to the High Court under s. 10 of the Letters Patent shall be presented to the Assistant Registrar within ninety days after the date of the judgment appealed from, unless the Court in its discretion, on good cause shown, shall grant further time.")

In reply to this objection it was contended on behalf of the appellant that the above Rule was *ultra vires* of the Court, which had no power to frame rules of limitation as to the filing of appeals, and that the hearing of the appeal was therefore not barred by the rule.

EDGE, C.J.—A preliminary objection to the hearing of this appeal has been taken by Pandit *Sundar Lal*, and we are of opinion that it must prevail. The objection is, that the appeal has not been filed within the period of ninety days required by the rule of this Court. No reason has been shown why the rule in question should not be construed strictly, but it has been suggested that the rule is *ultra vires* of the Court. Now this Court, in framing the rule in question, appears to have followed the practice of the

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Calcutta High Court, and a case arose there—*Harrak Singh* v. *Tulsi Ram Sahu* (1)—first before the Division Bench, and afterwards before the Court in appeal, in reference to the number of days within which an appeal would be in time. In that case it was never suggested that the Calcutta High Court had no power to make the rule applied there. Again, in 1879, *Fazal Muhammad* v. *Phul Kuar* (2), the Full Bench of this Court had to consider what was the period of limitation which should be computed according to this rule, and in that case also it was never suggested that the rule was *ultra vires*. No such question was raised, and under the circumstances, although the ultimate origin of the rule cannot be traced, we must assume that it had a legal origin, and was not *ultra vires* of the Court. The appeal must be dismissed with costs.

STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, JJ., concurred.

*Appeal dismissed.*

## APPELLATE CIVIL.

1886
*November* 25.

*Before Mr. Justice Oldfield and Mr. Justice Tyrrell.*

BALDEO (PLAINTIFF) *v.* BISMILLAH BEGAM AND OTHERS (DEFENDANTS).*

*Appeal—Death of defendant-respondent—Civil Procedure Code, ss.* 368, 582—*Act XV of* 1877 (*Limitation*), *sch.* ii, *No.* 171B.

ART. 171B, sch. ii of the Limitation Act (XV of 1877), applies to applications to have the representative of a deceased defendant-respondent made a respondent.

THIS was a second appeal from a decree of the District Judge of Aligarh, affirming a decree of the Subordinate Judge dismissing the plaintiff-appellant's suit. While the appeal was pending the respondent died, and, upon the application of the appellant, the representatives of the deceased, namely, his widow and minor children, were made respondents in his place. This application was not made until after sixty days from the date of the respondent's death.

At the hearing of the appeal a preliminary objection was taken on behalf of the respondents, that the appellant's application to have them substituted for the deceased as his representative had

* Second Appeal No. 1597 of 1885, from a decree of W. R. Barry, Esq., District Judge of Aligarh, dated the 20th May, 1885, confirming a decree of Maulvi Sami-ullah Khan, Subordinate Judge of Aligarh, dated the 25th April, 1885.

(1) 5 B. L. R., 47. (2) I. L. R., 2 All. 192.