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has been laid down in the Mitakshara and it extends to seven degrees on the father's side and five degrees on the mother's side, including the last owner. Taking the pedigree put forward by the plaintiff, which will be found at page 9 of the paper book, it is clear that Bulaki was one degree beyond the seventh degree counting from the last owner Khairati Rai. We are asked to count the seven degrees from the great grandfather of Khairati who was the common ancestor, and it is said that computing from the common ancestor Khairati is within the seventh degree, but this computation would leave out of consideration altogether Khairati himself and his father. The mode in which relationship should be computed is stated in Sarvadhikari's Tagore Law Lectures (1880) page 707, and that is a mode which the lower appellate court has adopted. We think that the decision of that court is right. We dismiss the appeal with costs.

Appeal dismissed.

FULL BENCH.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Tudball and Mr. Justice Rafiq.

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ASHRAF ALI (DEFENDANT) *v.* KALYAN DAS AND OTHERS (PLAINTIFFS).*

Act (Local) No. III of 1899 *(Court of Wards Act), sections* 16 *and* 20—*Claim not notified—Maintainability of suit—Admissibility of documents.*

Section 20 of the Court of Wards Act, 1909, applies only to cases, where persons who have notified their claims under section 16 of the said Act have failed to produce their documents. Where the property of the debtor was taken over by the Court of Wards at a time when the Court of Wards Act of 1899 was in force and the creditor did not notify his claim under section 16, but brought a suit upon his bonds after the property was released by the Court of Wards, *held* that the bonds were admissible in evidence and the suit was maintainable. *Collector of Ghazipur* v. *Balbhaddar Singh* (1) overruled.

THE facts of the case were as follows:—

Two mortgages were executed by the defendant on the 7th of August, 1907, and the 11th of February, 1909, respectively. The estate of the mortgagors was taken over by the Court of Wards and a notification was duly issued, with effect from the

* First Appeal No. 281 of 1913, from a decree of Banke Behari Lal, Additional Subordinate Judge of Aligarh, dated the 1st of May, 1913.

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27th of July, 1911, under section 16 of the Court of Wards Act, III of 1899. The mortgagees did not, in compliance with the provisions of section 16, notify their claim under the two mortgages against the estate. The plaintiffs brought this suit after the release of the property from the management of the Court of Wards. The defendant alleged that the mortgage deeds could not now be produced in evidence, and the suit was consequently not maintainable. The court below, holding that section 20 of the Act of 1899 did not apply in the case of a suit brought after the release of the property from the superintendence of the Court of Wards, decreed the suit. The defendant appealed.

Mr. *B. E. O'Conor* (with him The Hon'ble Dr. *Tej Bahadur Sapru*), for the appellant.

Section 20 of Act III of 1899 barred the suit. The Act required every claimant to present full particulars to the Collector when notification under section 16 was issued. The words used were "shall present" and the real question was what was meant by those words. Section 20 laid down that documents not produced under section 16 would not be admissible to prove the claim. It nowhere laid down that the documents would not be admitted so long as the property was under the management of the Court of Wards. The object of taking over the management of the property by the Court of Wards was to preserve the estate and the Act should be strictly interpreted. *Collector of Ghazipur* v. *Balbhaddar Singh* (1). The plaintiffs were not entitled to interest during the period between the notification and the suit.

The Hon'ble Dr. *Sundar Lal* (with him Pandit *Shiam Krishna Dar*), was heard only on the question of interest.

RICHARDS, C.J., and TUDBALL and RAFIQ, JJ.:—This appeal arises out of a suit on foot of two mortgages, the first, dated the 7th of August, 1907, for Rs. 6,500, and the second, dated the 11th of February, 1909, for Rs. 1,000. The plaintiff claims Rs. 10,794, on foot of the two mortgages.

The estate of the mortgagors was taken over by the Court of Wards and a notification was duly issued, with effect from the 29th of July, 1911, under section 16 of the Court of Wards Act, III of 1899. The mortgagees did not, in compliance

(1) (1912) 10 A. L. J., 234.

with the provisions of section 16, notify their claim under the two mortgages against the estate.

It appears that there was some notification of one of the mortgages in October, 1912. This, however, may, for the purposes of our judgement, be disregarded. The estate is not now and was not at the time of the institution of this suit under the management of the Court of Wards. The management was given up in November, 1912. The court below has given the plaintiffs a decree for the full amount of the claim.

In appeal it is contended that the plaintiffs having failed to produce their documents before the Collector, the same are inadmissible in evidence, having regard to the provisions of section 20. Of course if the plaintiffs are unable to adduce their mortgage-deeds in evidence they cannot sustain their suit. On the other hand it is contended that section 20 only applies to the case of persons who have notified their claims under the provisions of section 16 but have failed to produce their documents. It seems to us that the latter contention is clearly correct. Section 17 of the Act provides that, notwithstanding the provisions of the section, any person who has a claim, whether it be allowed or disallowed by the Court of Wards, is entitled to institute a suit, and that notwithstanding that the claim has not been notified. It may possibly be said that this provision only applies to the matters mentioned in the earlier part of the same section. But section 18 makes the matter abundantly clear. In section 18 the penalties for not notifying a claim are set forth. Interest is to cease to run from the date upon which the claim should be notified. Clause (2) provides that all claims not notified are postponed to all claims that have been notified. If section 20 applied to cases where there had been no notification, it would, practically speaking, amount to an enactment that no suit could be brought where a claim had not been notified. If no claim had been notified no documents would be produced. But the words of section 20 themselves show that it only deals with cases where there has been a notification under section 16. The new Act, which was not in force at the time the estate was taken over by the Court of Wards, has laid down entirely new penalties for the

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failure to notify. Section 18 provides as follows: —"Subject to the provisions of section 20, every claim of the nature specified in section 17, against the ward or his property, other than debts due to or liabilities incurred in favour of the Government, which is not notified under section 17, shall be deemed, for all purposes and on all occasions, whether during the continuance of the superintendence of the Court of Wards or afterwards, to have been duly discharged." On behalf of the appellant the case of *Collector of Ghazipur* v. *Balbhaddar Singh* (1) is relied upon. At page 242 of the judgement there is the following passage:—"It was suggested that the obligation to produce documents is laid upon creditors who notify their claims. The argument is that a creditor who does not notify his claim at all may make himself liable to the provisions of section 18 already quoted, but cannot be held liable to the further disability laid down by section 20. There is nothing in the wording of the Act to support this contention, indeed it appears contrary to the clear intention of the provisions under consideration." We cannot agree with these remarks. It seems to us that the wording of the Act shows that the contention is correct.

The only question which remains is the question of the amount of interest allowed. This is a point which is not taken in the memorandum of appeal. We think, however, that we ought to give effect to the clear provisions of section 18. This provides that every claim, save as in the section mentioned, shall cease to bear interest from the date of the expiry of the period prescribed by this section. It is true that one of these mortgages was not payable for a period of five years. It was, however, nevertheless a" claim "against the estate, and we think that under the provisions of the section it ceased to bear interest from the 29th of January, 1912, that is to say six months after the notification. At the same time we think that the plaintiffs ought to have their costs proportionate to their success in both courts, the point not having been taken in the memorandum of appeal to this Court.

We accordingly vary the decree of the court below by directing that interest shall be disallowed on both mortgages from the 29th

(1) (1912) 10 A. L. J., 234.

of January, 1912, up to the date of the institution of the present suit. From that date the plaintiffs will have simple interest at the rate of 6 per cent. per annum up to the date of payment. We extend the time for redemption for a period of six months from this date.

Decree varied.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Rafiq.

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June, 19.

KALYAN SINGH AND OTHERS (DECREE-HOLDERS) *v.* JAGAN PRASAD, (JUDGEMENT-DEBTOR)*

Res judicata *Execution of decree—Failure of judgement-debtor to raise objection to an amount erroneously set forth in an application for the execution of a decree—Civil Procedure Code* (1908), *section* 11, *explanation IV.*

Held, that if a judgement-debtor does not take exception to the amount erroneously set forth in an application for the execution of a decree as being the sum due, he is not prevented by the principle of *res judicata* from doing so on a subsequent application for the execution of the same decree.

THE facts of this case were as follows :—

A decree was passed for Rs. 20,200 ; it awarded future interest at the rate of 6 per cent. per annum, but did not specify whether the interest was awarded on the principal sum alone or also on the amount of the costs. The decree was put into execution, the decree-holder including in the decretal amount interest on the amount of costs. The judgement-debtor did not then raise any objection. After some time the decree-holders put in another application for execution seeking to recover a certain sum as balance of the decretal amount still remaining due. The judgement-debtor replied that according to correct accounts nothing remained due, and pointed out for the first time that all along interest had been calculated on the sum awarded as costs as well as on the principal sum, although the decree, truly construed, had not awarded interest on costs. The court allowed the judgement-debtor's objection and dismissed the application for execution. The decree-holders appealed to the High Court and their appeal, coming before a single Judge, was dismissed. They then preferred the present appeal under section 10 of the letters Patent.

Babu *Durga Charan Banerji*, for the appellants.

*Appeal No. 15 of 1915, under section 10 of the Letters Patent.