

He failed to appear on the day fixed for the hearing of the objection, and the objection was struck off for default of prosecution. The carriage was subsequently sold. The defendant set up as a defence to the suit that the plaintiff was bound under s. 283 of Act X. of 1877 to bring a suit to establish his right to the carriage, and was not at liberty to sue for compensation for its wrongful attachment until he had done so, as his right was concluded by the determination of the objection. The Judge of the Court of Small Causes disallowed this defence, holding that s. 283 only applied when orders had been passed by the Court after investigation under ss. 280, 281, and 282 of Act X of 1877, and no such order had been passed on the plaintiff's objection, which had been simply struck off for default of prosecution. The defendant applied to the High Court to revise the proceedings of the Judge of the Small Cause Court, under s. 622 of Act X of 1877, on the ground that the plaintiff was bound under s. 283 to sue for the establishment of his right before he could sue for damages.

Munshi *Kashi Prasad*, for the defendant.

Mr. *Hill*, for the plaintiff.

The following judgment was delivered by the Court (SPANKIE, J., and OLDFIELD, J.) :

OLDFIELD, J.—We are of opinion that the view taken by the Judge of the Small Cause Court is correct, and we dismiss this application with costs.

Application rejected.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.

RAM BARAN RAI (PLAINTIFF) v. MURLI PANDEY AND ANOTHER
(DEFENDANTS). *

*Registered and unregistered documents—Act XVI of 1864—Act III of 1877
(Registration Act), s. 50.*

An unregistered document, executed before Act XVI of 1864 came into force, is not invalidated or postponed to a document registered under Act IX of 1871 under the *Explanation* given in s. 50 of Act III of 1877.

* Second Appeal, No. 1223 of 1879, from a decree of J. W. Power, Esq., Judge of Ghazipur, dated the 12th August, 1879, reversing a decree of Maulvi Mir Badshah, Munsif of Saidpur, dated the 19th April, 1879.

1881

KALLU MAJ
v.
BROWN.

1881
January

1882
 SAM BARAN
 RAI
 v.
 MURLI
 PANDEY.

THE plaintiff in this suit claimed, *inter alia*, a declaration that he was the mortgagee of certain land by invalidation of a mortgage of such land to the defendants. The plaintiff claimed to be the mortgagee of the land under two deeds dated the 12th February, 1875, and the 24th October, 1876, respectively. The defendants claimed to be the prior mortgagees of the land under a deed dated the 24th November, 1864, the consideration for the mortgage being under Rs. 100. The plaintiff's deeds of mortgage were registered. The deed of the defendants was not registered. On second appeal to the High Court by the plaintiff it was contended on his behalf that the deed of the defendants being unregistered should be postponed to his registered deed.

Munshi *Hanuman Prasad*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*), for the respondents.

The judgment of the Court (STUART, C. J., and PEARSON, J.), so far as it related to the contention set out above, was as follows:—

PEARSON, J.—The defendants' unregistered deed, having been executed before Act XVI of 1864 came into force, is not invalidated or postponed to the deeds recently executed in the plaintiff's favour and registered, under the *Explanation* given in s. 50, Act III of 1877.

1881
 January 31.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

PAKHANDU (PETITIONER) v MANKI AND OTHERS (OPPOSITE PARTIES).*

Custody of minor—Minor wife—Act IX of 1861.

P, whose minor wife had refused to return to cohabitation with him on the ground that he was out of caste in consequence of having committed a criminal offence, applied to the District Court under Act IX of 1861 for the custody of her person. *Held* that that Act did not apply to such a case (1).

PAKHANDU on the 30th June, 1880, preferred a petition to the District Judge of Benares, under Act IX of 1861, for the custody of his wife Manki aged sixteen years. He stated in this petition, amongst other things, that he had been married to Manki during

* First Appeal, No. 150 of 1880, from an order of M. Brodhurst, Esq., Judge of Benares, dated the 19th August, 1880.

(1) See also *Balmakund v. Janki*, ante p. 403.