

any appeal after the - period of limitation prescribed therefor, subject only to the condition that the appellants satisfies the Court that he had sufficient cause for not presenting his appeal in time. It is obvious that the circumstances contemplated in s. 14 might, and ordinarily would, constitute a sufficient cause in the sense of s. 5. And the reason why s. 14 is limited to Courts of original jurisdiction is merely because the earlier section had given a larger and unfettered power in the same behalf to appellate Courts. Applying the reasonable principle of s. 14 to our unquestioned powers under s. 5, I would over rule the objection under the peculiar circumstances of this case, and would admit the appeal to a hearing.

STRAIGHT, J., concurred.

The appeal having been heard, the Court (STRAIGHT and TYRRELL, JJ.) delivered the following judgment:—

STRAIGHT, J.—We do not think that the decision of the Judge can be upheld. As the plaintiff-respondent deferred bringing his suit for possession until a time when no decree he might obtain could give it him within the stipulated period of nine years, it is obvious that no Court could have power to enforce his rights under a contract that to this extent had expired. The view of the Subordinate Judge was right, and this appeal being decreed without costs, the decision of the first Court will be restored.

Appeal allowed.

Before Mr. Justice Straight and Mr. Justice Oldfield.

ABDUL RAHIM (DEFENDANT) v. ZIBAN BIBI (PLAINTIFF).*

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

Held that a document which was registered under the Registration Act, 1877, took effect, as regards the property comprised therein, as against a document relating to the same property, the registration of which under the Registration Act, 1871, was optional and which was not registered thereunder.

Lachman Das v. Dip Chand (1) followed.

* Second Appeal, No. 61 of 1883, from a decree of Hakim Shah Rahat Ali, Additional Subordinate Judge of Gházipur, dated the 14th September 1882, affirming a decree of Maulvi Azizul Rahaman, Munsif of Sayyidpur, dated the 7th November 1881.

1883

BALWANT
SINGH
v.
GUMANI
RAM.

1883
May 11.

1888

ABDUL
RAHIM
v.
ZIBAN BIBI.

THE plaintiff in this suit claimed the amount due on a bond, bearing date the 25th December 1873, in which certain immoveable property was mortgaged, and asked for an order for the sale of the mortgaged property. Under the terms of this bond the principal amount, Rs. 75, was payable, together with interest at one rupee per cent. per mensem, on the 6th June 1876. The bond was not registered under the Registration Act, 1871. The mortgaged property having been sold under an instrument, dated the 30th July 1877, the plaintiff joined the purchaser, Abdul Rahim, as a defendant with the obligors of the bond. The sale-deed had been registered under the Registration Act, 1877. The defendant Abdul Rahim set up as a defence to the suit that under s. 50 of that Act his sale-deed, being registered, took effect as regards the property in question against the plaintiff's mortgage, and therefore the plaintiff was not entitled to an order for the sale of the property. Both the lower Courts disallowed this defence.

In second appeal the defendant again contended that, having regard to the provisions of s. 50 of the Registration Act, 1877, the plaintiff was not entitled to an order for the sale of the property.

Maulvi *Obaidul Rahman* for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Munshi Hanuman Prasad* for the respondent.

The Court (STRAIGHT and OLDFIELD, JJ.) delivered the following judgment:—

STRAIGHT, J.—Assuming that the hypothecation-bond of the plaintiff-respondent was an optionally registrable instrument, under the Full Bench ruling in *Lachman Das v. Dip Chand* (1), the registered sale-deed of the defendant takes precedence of it as against the property in respect of which the plaintiff seeks to enforce her lien. We must therefore decree the appeal and modify the decision of the lower Courts, in so far as they declare the right of the plaintiff to enforce her lien against the property in the hands of the defendant Abdul Rahim, in respect of whom the suit must stand dismissed. The costs in this and the lower Courts incurred by the appellant will be paid by the respondent.

Appeal allowed.

(1) I. L. R., 2 All., 851.