

opinion. The plaintiff cannot now stand in a better position, as against the present defendant, than if his original suit had been properly constituted; that is to say, he is bound to give to the defendant an opportunity of redeeming his mortgage, the genuineness of which is not seriously contested by the defendant. We think that the proper decree to make in this case is that the defendant do pay to the plaintiff, within six months from the date of ascertaining the amount due, the sum to which the plaintiff is entitled under his mortgage, and that, in default of such payment, the plaintiff be put in possession of the mortgaged property, and the defendant be for ever foreclosed. When either party applies to the Subordinate Judge for execution of this decree, the Subordinate Judge should, (after notice to the other party,) take an account of the amount due on the plaintiff's mortgage; and the six months within which the payment is ordered, should date from the day on which the amount due may be determined by the Subordinate Judge.

The decree of the District Court is amended accordingly. The parties to bear their own costs throughout.

*Order accordingly.*

## APPELLATE CIVIL.

*Before Mr. Justice Maxwell Melvill and Mr. Justice F.D. Melvill.*

ICHHA'SHANKAR, PLAINTIFF, *v.* KILLA AND ANOTHER, DEFENDANTS.\*

*Limitation—Bond—Act IX of 1871—Act XV of 1877, Sec. 2.*

The defendant executed on the 20th April 1875 a bond to the plaintiff, without making a demand for his money, filed a suit upon it on the 21st 1878.

*Held* that under section 2 of the Limitation Act XV of 1877 the suit was barred, although more than three years had elapsed since the

THIS was an application for the exercise of the extraordinary jurisdiction.

The plaintiff brought a suit in the District Court at Surat to recover Rs. 490 due on a bond.

\* Civil Application, No. 123 of 1878.

1879

CHHA'SHAN-  
KAR  
v.  
KILLA.

defendant on the 20th of April 1875. The bond stipulated for payment on demand. The plaint was filed on the 21st of June 1878, that is, more than three years after the date of the bond.

The defendant contended that the suit was barred by article 73 of section 2 of the Limitation Act XV of 1877, which provides that the limitation of three years upon a bond runs from the date of its execution.

The Judge of the Court of Small Causes, Khán Bahádúr Kaikhoshru Hormasji, allowed the contention, and rejected the plaintiff's claim.

Thereupon the present application was made to the High Court by the plaintiff.

*Nagindás Tulsidás* for the plaintiff.—Under Act IX of 1871 the limitation on a bond payable on demand was three years from the date of making the demand : art. 72, sec. 2. Under Act XV of 1877 the period of limitation is the same, but the legislature by article 73, section 2, provides that it is to begin from the date of the bond. The latter period is shorter than the former, and in such a case section 2 of the present Act gives a period of two years from the date when it came into force, viz., 1st of October 1877, within which the suit could be brought. The present suit was filed on the 21st of June 1878, and was within time : *Omirotlall Dey v. A. Howell*.<sup>(1)</sup>

*Gokuldás Káhándás* for the defendant.

The judgment of the Court was delivered by

M. MELVILL, J.—We think that the intention of the latter portion of section 2 of Act XV of 1877 was to extend for two years the benefit of the old law in cases in which a plaintiff would be prejudiced by the application to his case of the provisions of the new law. In the case of notes payable on demand, the Limitation Act of 1877 prescribes a period of three years from the date of the note, while under the Act of 1871 the period runs from the date of demand. The holder of a note would be seriously prejudiced if the law of 1877 were applied to him, for the period of limitation would expire on the very day after the Act was

passed; while under the old law the period might not even have commenced to run. To meet such cases the Legislature has given to plaintiffs so situated a period of two years from the date of the passing of the Act, and, therefore, the present claim, having been brought in 1878, is not barred. This view of the law is in accordance with that taken by the Calcutta Court in *Omirotlall Dey v. A. Howell*. The order of the Court of Small Causes is reversed, and the case remanded for a decision on the merits. Costs to follow final decision.

1879

ICHHA'SHAN-  
KAR  
v.  
KILLA.

*Order accordingly.*

## APPELLATE CIVIL.

*Before Mr. Justice M. Melvill and Mr. Justice Kemball.*

SAMBHUBHAI KARSANDA'S (ORIGINAL PLAINTIFF), APPELLANT, v. SHIV-LALDA'S SADA'SHIVDA'S DESA'I (ORIGINAL DEFENDANT), RESPONDENT.\*

*January 5.*

*Registration—Regulation IX of 1827—Acts XIX of 1843, XVI of 1864, XX of 1866—Priority of registered over unregistered instruments—Purchaser at Court's sale—Burden of proof—Adverse possession—Limitation.*

On the 18th January 1876, plaintiff became purchaser at a Court's sale of the right, title, and interest of G and N in a shop, and, having been obstructed by defendant in obtaining possession of it, sued to recover it from him. The plaint was filed on the 27th January 1877. Defendant answered that he purchased it from G under a deed of sale dated 5th January 1865, and that he had been in possession since that day. The deed of sale was not admitted in evidence for want of registration, but it was found that defendant had been in possession as owner since 5th January 1865.

*Held* that as the defendant admitted that he had derived his title from G (of whose interest in the shop the plaintiff was assignee) the burden of proof lay upon the defendant, and that he had failed to prove his purchase, inasmuch as his unregistered deed of sale could not be received in evidence, and oral evidence was inadmissible in place of the deed.

*Held*, also, that although the defendant could not prove a title by purchase, it was open to him to establish his title without the aid of the deed of sale; that his possession of the premises for more than twelve years prior to the institution of the suit was adverse both to G and N, and that the claim of the plaintiff, who was assignee of their interest, was consequently barred.

*Balārām Nemchand v. Appá* (1) explained,

*Somu Gurrukul v. Rangamnal and others*(2) referred to and concurred in.

\* Second Appeal, No. 251 of 1879.

(1) 9 Bom. H. C. Rep. 121.

(2) 7 Mad. H. C. Rep. 13.