APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

RANGILDA'S AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* BA'I GIRJA (ORIGINAL PLAINTIFF), RESPONDENT ;

1884
July 14.

AND

BA'I GIRJA (ORIGINAL PLAINTIFF, APPELLANT, *v.* RANGILDA'S AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), *Sec.* 561—*Practice—Filing of objections, time for.*

Objections to a decree under section 561 of the Civil Procedure Code (XIV of 1882) need not necessarily be filed seven days before the day originally fixed for hearing the appeal. When the hearing is postponed, it is sufficient if the objections are filed seven days before the day fixed for the postponed hearing, the object of section 561 being merely to give the appellant timely intimation of proposed objections.

THESE were cross appeals from the decree of G. M. Macpherson, District Judge of Surat.

The original plaintiff Bái Girja sued the original defendant Rangildás, in the Subordinate Judge's Court at Bulsár, to establish her right to receive a yearly allowance of Rs. 41 as part of the family *majumdári* allowance, and to recover Rs. 495, the arrears for twelve years and interest. The Subordinate Judge declared her entitled to one-sixth share in the allowance, and awarded three years' arrears and interest, dismissing the rest of the claim. She appealed to the District Judge of Surat, and on 2nd September, 1881, a notice was sent to be served on Rangildás (the appellant) to appear as respondent, but it was not actually served until 22nd October, 1881. The day fixed for the hearing of the appeal was the 1st of November, 1881. The 22nd day of October and the three following days were Diváli holidays. The hearing of the appeal did not take place till 23rd December, 1882, though the 15th March and the 17th December, 1882, were successively fixed as the days for hearing it. Rangildás on the 19th of June, 1882, applied to the Court to be allowed to file his objections to the decree, but the District Judge rejected his application on the ground that he having failed to file them, as

* Cross Appeals, Nos. 179 and 243 of 1883.

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provided in section 561 of the Civil Procedure Code, seven days before the day first fixed for the hearing of the appeal,—that is, seven days before the 1st of November, 1881, could not then do so. The District Judge, therefore, treated that part of the decree against which Rangildás had proposed to file objections as unappealed against, and gave his decree accordingly.

Both the parties appealed to the High Court. Rangildás contended that he was entitled to file his objections in the lower Appellate Court on the 19th of June, 1882, on which his application to be allowed to do so was rejected by that Court.

Shántárám Náráyan for the appellant.

Mánekshá Jahángirshá for the respondents.

WEST, J.—In the present case the appellant Rangildás desired in the District Court to file objectons to the decree of the Subordinate Judge. His request was rejected by the District Judge on the ground that the objections had not been filed seven days before the day fixed for the hearing of the appeal. That day was the 1st of November, 1881, and the notice to the present appellant Rangildás to appear as a respondent, though sent for service to the Subordinate Judge's Court on the 2nd September, 1881, was not actually served until the 22nd October, 1881. That day and the three following were Diváli holidays; but even if the memorandum of objections could have been filed on the 25th October, Rangildás would thus have had no time, or next to none, in which to consider whether he should file objections, and in what form they ought to be cast. Such a matter requires some reflexion and consultation; and where a respondent is served but a day or so before the last day on which his objections can, with reference to the day fixed for hearing, be received, he may properly ask that the day be altered and a new day fixed for the hearing. Unless this be allowed, a little ingenuity on the part of an appellant will prevent the respondent's filing objections at all. If another day is fixed, that is a postponement; but if the objections be filed seven days before that postponed day of hearing, the ground taken for the refusal in this case would still make the postponement useless, for the objections would still be filed later than seven days before the day (*i. e.* the first day)

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fixed for the hearing. This cannot have been intended. Section 561, Civil Procedure Code, must be construed according to its real purpose of giving the appellant timely intimation of proposed objections. In this case the day of hearing was fixed successively for the 15th March, 1882, and the 13th December, 1882. Either of these might as well be called the day fixed for the hearing as the first day when hearing was impossible because one of the respondents had not been served. On the 19th June, 1882, Rangildás applied to be allowed to file objections; and as the hearing of the appeal on its merits had not then been begun, nor even a day finally fixed for it, we think his application ought to have been granted(1). Had the hearing been begun, or a day fixed which was within seven days after his application, the case might be different. As it is, we reverse the decree of the District Court, and remand the case for retrial of the appeal after respondent Rangildás's objections have been filed within one month. Costs to follow the final decision.

Decree reversed and case remanded.

(1) Comp. *Gibbings* v. *Strong*, L. R., 26 Ch. Dio., 66.

ORIGINAL CIVIL.

Before Mr. Justice Birdwood.

HANMANTRA'M SADHURA'M PITY, PLAINTIFF, *v.* ARTHUR BOWLES, DEFENDANT.*

July 30.

Limitation—Cause of action—Bond—Payment by instalments—Liability for whole amount on failure of payment of instalment—Defendant's absence from India—Act XV of 1877, Secs. 9 and 13.

On the 20th August, 1879, the defendant being indebted to the plaintiff, gave his bond for Rs. 4,000. The bond provided for the payment of monthly instalments of Rs. 80 each, the first of such instalments to become due on the 4th September, 1879. The bond also contained the following clause:—"If the said Arthur Bowles shall—in default of payment of any one of such instalments, or in the event of default being made by him in payment of the premium money when and as the same shall become due in respect of the said policy, *if so required* by the said Hamantrám Sadhurám Pity, his executors, administrators or assigns—pay the whole amount which may then be due under and by virtue of these presents

* Suit No. 141 of 1884.