1891.

TRIMBAK JIVÁJI DESHAMUKHA v. SAKHÁRÁM GOPÁL.

currency, and the money actually paid to the mortgagor must, therefore, in the absence of evidence to the contrary, be presumed to have been in that currency. The decree must, therefore, be varied by inserting Rs. 435-2-0 for Rs. 450 as the principal mortgage-debt.

As to costs, in order to avoid any doubt, the decree should, we think, be varied by adding the words "except the costs caused by the defendant's denial of the mortgage and the plaintiff's title," as such costs had been already, and we think rightly, thrown on the defendant. In other respects the decree is confirmed with costs.

Decree varied.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Parsons.

GANPAT AND OTHERS, (ORIGINAL PLAINTIFFS), APPLICANTS, *v.* JIVAN AND OTHERS, (ORIGINAL DEFENDANTS), OPPONENTS.*

1891. *December* 11.

Review—Civil Procedure Code (Act XIV of 1882), Secs. 624, 626(c)—Act VII of 1888, Sec. 59—Grant of the application for review—Notice—Hearing by successor.

An application for review of judgment upon grounds other than those mentioned in section 624 of the Code of Civil Procedure (as amended by Act VII of 1888), if presented to the Judge who delivered it, and who has thereupon directed notice to be given to the opposite party, may be heard and disposed of by his successor.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The applicant sued to recover Rs. 602 with interest as money lent and advanced to the defendant. The defendant denied the loan.

The Court of first instance awarded the plaintiff's claim. On appeal, Mr. T. B. Alcock, District Judge, reversed the decree and rejected the claim.

Plaintiff applied for a review of the Appellate Court's judgment, and Mr. Alcock issued notice to the defendant to show cause why the review sought should not be granted.

* Application, No. 180 of 1891.

1891.

GANPAT v. JIVAN.

After the issue of this notice Mr. Alcock was transferred to another district. The petition of review came on for final hearing and disposal before Mr. Whitworth, who had succeeded Mr. Alcock.

Mr. Whitworth rejected the petition on the ground that the review had been sought on grounds other than those specified in section 624 of the Code of Civil Procedure. Hence the present application to the High Court under its revisional jurisdiction.

A rule *nisi* was issued calling upon the opponent to show cause why the lower Court's order should not be set aside.

Ghanashám Nilkanth showed cause:—The grounds upon which the review is sought in the present case are not those mentioned in section 624 of the Code of Civil Procedure. The review cannot, therefore, be granted by a Judge other than the Judge who delivered the judgment.

Mahádev B. Chaubal, contra :—The lower Court has overlooked the clear provisions of section 626(*c*) of the Civil Procedure Code as amended by section 59 of Act VII of 1888. That section embodies the ruling of the Calcutta High Court in *Karoo Singh* v. *Deo Narain Singh*[1]. This ruling is followed in *Fazel Biswas* v. *Jamádár Sheik*[2].

[JARDINE, J. :—Are we to paraphrase the words "an application made under section 624" in section 626(*c*) of the Code as meaning "an application made under section 623"?]

Yes. Section 624 enumerates only two out of the three grounds mentioned in section 623 on which a review may be sought. Section 626, clause (*c*), now empowers a Judge, other than the Judge who delivered the judgment, to grant a review upon any of the grounds set forth in section 623, provided the petition for review has been made to the Judge who delivered the judgment, and that he has issued notice of the review to the opposite party.

JARDINE, J. :—The question we have to decide is the same as has been decided in contrary ways by the High Courts at Allaha-

(1) I. L. R., 10 Calc., 80. (2) I. L. R., 13 Calc., 231.

bad and Calcutta in *Pancham* v. *Jhinguri*[1] and *Karoo Singh* v. *Deo Narain Singh*[2], which last case is followed in *Fazel Biswas* v. *Jamádár Sheik*[3]. That question is whether an application for review of judgment upon grounds other than those mentioned in section 624 of the Code of Civil Procedure, (which are the existence of new and important matter or evidence, or of some apparent clerical error), if presented to the Judge who delivered it, and who has thereupon directed notice to be given to the opposite party, may be heard and disposed of by his successor. I agree in the view expressed in *Sarangapani* v. *Nárayana Sami*[4] that section 624, which relates to the jurisdiction of the Judge, is to be read as a proviso to section 623, which deals more generally with the jurisdiction of Courts to entertain reviews. So far as we have to place an interpretation on section 624, I concur with the view expressed by Mr. Justice Mitter in *Karoo Singh* v. *Deo Narain Singh*[5] that the word "made" is not to be construed to include a hearing and determination, as was held by Mr. Justice Straight in the Allahabad case. I think that, as the law stood at the time the above judgments were passed, the only Judge having jurisdiction to receive an application for review, not based on new matter or evidence or apparent clerical error, was the Judge who delivered the judgment. As remarked by Mitter, J., the effect of section 626A is to require the Judge who delivered the judgment to consider judicially the merits of the application, and, unless he is satisfied that there are *primâ facie* grounds for review, he should not direct notice to issue. I may add that, in my opinion, he should consider the policy of the law, as stated by the Privy Council, that "after a decision was passed unquestioned by appeal, its finality should be left in doubt no longer than the requisites of justice imperatively demanded"—*Mahárájah Moheshur Sing* v. *The Bengal Government*[6]; and if the Judge were about to retire, or to be transferred, he would not lightly give advantage to delay, intended under cover of review, to get a virtually new trial before the Judge's successor. The requirement that the original Judge shall exer-

(1) I. L. R., 4 All., 278.
(2) I. L. R., 10 Calc., 80.
(3) I. L. R., 13 Calc., 231.
(4) I. L. R., 8 Mad., at p. 563.
(5) I. L. R., 10 Calc., 80.
(6) 7 Moo. I. A., at p. 304.

1891.

GANPAT v. JIVAN.

cise his own mind judicially before issuing notice is the safeguard against disturbance of judgments on which the Legislature has relied as sufficient.

The Code of 1882 has been amended by Act VII of 1888: and we have to consider the effect of section 59 of the amending Act which adds to section 626 of the Code this proviso—

"(c) An application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor."

Mr. Chaubal in support of the rule argues that the first words of this proviso should be construed as meaning "an application made under section 623." At first sight it is startling to assume that the Legislature meant section 623 when it made use of the figures 624. But while the result is the same, the construction appears less violent if the first words of the proviso (c) are paraphrased as follows:—"An application which under the provisions of section 624 can only be made to the Judge who delivered the judgment." Construed in this manner, the amendment is merely declaratory of the law as it stood before, according to the interpretation of the learned Judges at Fort William, with whom I concur.

For these reasons we make the rule absolute. Costs to be costs in the review.

PARSONS, J.:—I concur.

Proviso (c) of section 626 of the Code of Civil Procedure enacts that "an application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor." The language used is not felicitous, for section 624 does not provide for the making of any application to the Judge who delivered the judgment; it only forbids the making of certain applications to any Judge other than the Judge who delivered the judgment. The intention, however, of the Legislature in inserting the proviso by Act VII of 1888 is plain. Under section 623 there are three grounds upon which applications for review can be made:—

(1) New and important matter or evidence;

(2) Mistake or error apparent on the face of the record; and

(3) Any other sufficient reason.

When, therefore, section 624 provides that no application, except on grounds (1) and (2), can be made to a Judge other than the Judge who delivered the judgment, while tacitly allowing that to the Judge who delivered the judgment applications on all three grounds can be made, it in effect enacts that to him alone applications on ground (3) shall be made. It is in this sense of construction that proviso (c) to section 626 must be read. The words "an application made under section 624 to the Judge who delivered the judgment" must mean "an application not forbidden by section 624 to be made to any Judge other than the Judge who delivered the judgment, and made to the Judge who delivered the judgment." Such an interpretation is necessary, not only to carry out the evident intention of the Legislature, but also to give meaning and effect to the proviso itself. Any Judge can issue notice in, and dispose of, applications made on grounds (1) and (2). The Judge alone who delivered the judgment can issue notices in applications made on ground (3). He also can dispose of them, but under the Code as it stood before its amendment by Act VII of 1888 it was doubtful if his successor could. The only object of the insertion of the proviso (c) was to empower his successor to dispose of such applications, and if this object is not attained, the proviso is absolutely useless, and its words are meaningless.

Rule made absolute.