through the hereditary patel, or village accountant, as required by section 85, and they had refused, he would have become at once entitled to his ordinary civil remedy. No objection was taken by the written statement, or by the issues, to the plaint on the ground that no legal demand had been made; and the suit was, therefore, properly tried by the Subordinate Judge on the merits. As to the *inámdár* being a necessary party, although the point was taken in the written statement, it must be considered to have been abandoned at the trial, as no issue was raised respecting it; and it was not even made a ground of appeal. It was, therefore, certainly not open to the appeal Court to dismiss the plaint on that ground, although it might have made him a party had it considered it necessary for the proper adjudication of the suit. This would have been, in our opinion, the more advisable course. We must, therefore, reverse the decree of the Court below, and send back the case for a re-trial on the merits, after making the *inámdár* a party to the suit as co-plaintiff; or, in the event of his refusing to be joined as such, then as a defendant. Costs to abide the result.

Decree reversed and case sent back.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1891.
October 7.

GHANASHA'M LAKSHMANDA'S, (ORIGINAL PLAINTIFF), APPELLANT, *v.* KA'SHIRA'M NAROBA, (ORIGINAL DEFENDANT), RESPONDENT.*

Decree, adjustment of—Bond—Civil Procedure Code (Act XIV of 1882), Sec. 258 amended by Act VII of 1888, Sec. 27—Recognition of adjustment by a Civil Court, except in execution.

Where under a bond a decree was adjusted by making a small deduction, and by providing for the payment of the balance as part of the entire amount of the bond,

Held, that since the amendment made in section 258 of the Civil Procedure Code (Act XIV of 1882) by section 27 of Act VII of 1888 (Act amending the Civil Procedure Code of 1882) such adjustment may be recognized by a Civil Court, except in execution.

*Second Appeal No. 628 o 1890.

1891.

GHANASHÁM LAKSHMANDÁS v. KÁSHIRÁM NAROBA.

THIS was a second appeal from the decision of J. B. Alcock, District Judge of Khándesh.

This action was instituted by plaintiff, Ghanashám Lakshmandás, against the defendant, Káshirám Naroba, to recover the sum of Rs. 334, including interest, due on an instalment bond.

The defendant, Káshirám Naroba, pleaded *(inter alia)* that the bond was void for want of sanction, under section 257A of the Civil Procedure Code (Act X of 1877).

The Subordinate Judge (Ráo Sáheb V. V. Tilak) found that the plaintiff was not entitled to recover anything from the defendant on account of the bond, and rejected the claim on the following ground :—

"The bond sued on, Exhibit A, was executed on 10th August, 1881. Act X of 1877 as amended by Act XII of 1879 was then in force. The bond is a security for Rs. 300, which sum is made up of the following items :—

	Rs.	a.	p.	
	175	0	0	due by me on account of my share of the loss sustained by a firm of which you, I, and some other persons were partners.
	25	0	0	borrowed by me from the said firm.
	64	0	0	due for the claim in Suit No. 387 brought by you against me.
	48	14	0	due for the claim in another suit, No. 423 of 1881.
	20	0	0	due under the decree in *darkhást* No. 934 of 1881.
Total ...	332	14	0	
Deduct ...	19	14	0	remitted by you.
And also...	13	0	0	debited against me in the account book.
Balance ...	300	0	0	

"This balance was payable by monthly instalments of Rs. 3 each, and the defendant promised to pay interest at 12 per cent. on every overdue instalment.

"Thus, then, the bond had the effect of giving time for the satisfaction of the judgment-debt, and it clearly required the sanction of the Court under section 257A. Hence the bond is *void*, in so far as it relates to the judgment-debt (Rs. 20); and, as this part cannot properly be separated from the other parts, the whole bond

is *void; vide Davlatsing* v. *Pándu*[1]. The several debts are treated as a lump sum, and that sum is made payable by monthly instalments of Rs. 3 each. Plaintiff is now willing to relinquish his right to recover Rs. 20 (judgment-debt) and Rs. 13 (debited in the account books). But this will not have the effect of making the bond valid."

The plaintiff appealed to the District Court, which confirmed the decree.

Against the decree of the District Court the plaintiff appealed to the High Court.

Ganesh Krishna Deshmukha for the appellant:—Both the lower Courts have, in rejecting our claim, taken an erroneous view of the case. They held that, as we accepted an instalment bond from the respondent for the decretal as well as other debts, it has the effect of giving time for the payment of the judgment-debt; but the result would not have been very different if we had accepted an ordinary bond instead of one for instalments. By merely taking a bond, a decree-holder cannot be supposed to have agreed to give time to the judgment-debtor for the satisfaction of the decree—*Náráyan Jagrup* v. *Bába*[2]. Besides this, the bond itself does not contain any provision as to time.

The section applicable to the present case is section 258 of the present Civil Procedure Code (Act XIV of 1882 as amended by section 27 of Act VII of 1888). The decree was adjusted by making remission, namely, rupee one *pro rata*, and, therefore, the ruling in *Swámiráo Náráyan Deshpánde* v. *Káshináth Krishna*[3] is on all fours. The lower Courts were wrong in applying section 257A of the old Code (Act X of 1877) to the present case.

There was no appearance for the respondent.

SARGENT, C. J.:—In this case there has been no express agreement to give time for the satisfaction of the decree for Rs. 20—see *Náráyan Jagrup* v. *Bába*; but the decree has been adjusted by making a small deduction (*viz.*, the *pro rata* portion of the 19 rupees remitted from the total amount of all the debts due by the

(1) I. L. R., 9 Bom., 176. (2) P. J. for 1883, p. 340.
(3) I. L. R., 15 Bom., 419.

1891.

GHANASHÁM LAKSHMANDA'S v. KÁSHIRÁM NAROBA.

obligor of the bond), and by providing for the payment of the balance as part of the entire amount of the bond. Since the amendment made in section 258 of the Civil Procedure Code by section 27 of Act VII of 1888 such adjustment may be recognized by a Civil Court, except when executing the decree—*Swámiráo Náráyan Deshpânde* v. *Káshináth Krishna*(1). We must, therefore, reverse the decree, and send back the case for a decision on the merits.

Costs to abide the result.

Decree reversed and case sent back.

(1) I. L. R., 15 Bom., at p. 421.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1891. *October* 8.

CHUNILA'L FULCHAND AND OTHERS, (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* MANGALDA'S GOVARDHANDA'S, (ORIGINAL DEFENDANT), RESPONDENT.*

Easement—Enjoyment as of right for twenty years—Limitation Act (XV of 1877), Sec. 26—Right of ownership—Right of easement as distinguished from a right of ownership.

In order to acquire an easement under section 26 of the Limitation Act (XV of 1877), the enjoyment must have been by a person claiming title thereto as an easement as of right for twenty years. Evidence of immemorial user adduced in support of a right founded on ownership, does not, when that right is negatived, tend to establish an easement.

Quære—whether upon a correct construction of section 1 of Regulation V of 1827, which applies to the acquisition of easements, the mere use would be sufficient to establish the right to the easement claimed.

THIS was a second appeal from the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge of Ahmedabad with Appellate Powers.

Suit for a perpetual injunction.

This action was instituted by the plaintiffs—(1) Chunilál Fulchand, (2) Maganlál Fulchand, and (3) Shakra *alias* Mansuk Fulchand, a minor, by his next friend, Maganlál Fulchand—against

* Second Appeal, No. 570 of 1890.