right of redemption and puts the appellant into possession "by virtue of his right as mortgagee." In every essential it is a deed of mortgage and not of assignment, and it is quite clear that by it defendant No. 1 did not make over his whole interest to the appellant.

We must, therefore, hold that the appellant was not the assignee, but the sub-mortgagee of defendant No. 1, and this being so on the death of defendant No. 1 no cause of action survived to the respondent as against the appellant, and the suit abated under section 368 of the Civil Procedure Code (Act XIV of 1882). We reverse the decree of the lower appellate Court, and order that the respondent's suit do abate and that he pay the appellant's costs throughout.

Decree reversed. Suit ordered to abate.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

VA'NI AND OTHERS (ORIGINAL DEFENDANTS NOS. 1—3), APPELLANTS, *v.* BA'NI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Registration Act (III of 1877), Sec. 17, Cls. (b) and (h)—Instrument creating a charge in the nature of a mortgage—Admissibility of documents compulsorily registrable—Evidence.

A *karárnáma* (agreement), dated 11th day of June, 1885, was passed by A. to B. to the following effect:—

"As my father Shivrám valad Keshav is dead, it has been arranged that I should succeed to his estate. . . . . Part of this estate at Vágoda, consisting of a house, fields, cattle and a cart, has been given into your possession for use and enjoyment. The reason thereof is that you have undertaken to pay Rs. 450 found due on an adjustment of *khátu* from my father to Ganpatdás Khusháldás. I am unable to pay off this debt; and so you have been put into possession of this property. I shall pass to you a sale-deed in respect of this property, and shall transfer the fields to your name from the year 1888-89."

Held, that the *karárnáma* required registration. It did not fall within the exception provided for by clause (*h*) of section 17 of the Registration Act (III of 1877). It was not a document which merely created a right to demand another document. It created as between the parties to it a charge in the nature of a mortgage. The document of itself declared a right, and the mention of an intention to execute a deed of sale made no difference.

* Second Appeal, No. 774 of 1893.

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An unregistered mortgage-bond for one hundred rupees and upwards may be admissible in evidence to prove the simple debt or a personal obligation, but it is inadmissible in evidence to prove any right to the property affected by it.

SECOND appeal from the decision of Ráo Bahádur N. N. Nánávati, First Class Subordinate Judge, A. P., at Dhulia, in Appeal No. 99 of 1892.

The plaintiffs sued to recover by partition their two-thirds share of certain property belonging to their father Shivrám valad Keshav Vágodekar. Defendant No. 3 was the son of defendant No. 2 and the husband of defendant No. 1. They pleaded (*inter alia*) that after Shivrám's death the plaintiff No. 1 had assigned by a *karárnáma* the property in dispute to defendant No. 2 on his undertaking to pay Shivrám's debts; that he had accordingly paid those debts, and taken possession of the property as absolute owner.

The *karárnáma* was dated 11th day of June, 1885, and was to the following effect:—

"As my father Shivrám valad Keshav is dead, it has been arranged that I should succeed to his estate..... A part of this estate at Vágode, consisting of a ho fields, cattle and a cart, has been given into your possession for use and enjoy The reason thereof is that you have undertaken to pay Rs. 450 found due on adjustment of *khátu* from my father to Ganpatdás Khushaldás. I am unable pay off this debt; and so you have been put in possession of this property. I s pass to you a sale-deed in respect of this property and shall transfer the fig your name from the year 1888-89."

The Subordinate Judge held that the *karárnáma* not having been registered was inadmissible in evidence, and he passed decree awarding the plaintiffs' claim.

This decree was varied, in appeal, by inserting a direction that plaintiffs should pay to defendant No. 2 Rs. 228, which he had paid on plaintiffs' behalf on account of their father's debt.

From this decision the defendants preferred a second to the High Court.

The sole question argued at the hearing of this appeal was whether the *karárnáma* of the 11th June, 1885, required registration.

Dáji A'báji Khare for appellants:—The first part of the *karárnáma* was a mere recital of a fact which had occurred in the

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past. The last portion contemplates a deed of sale to be executed in the future. It does not of itself purport to create or transfer any interest in immoveable property of the value of one hundred rupees and upwards. It only gives a right to obtain another document which when executed will create or transfer such interest. It does not, therefore, require registration—*Burjorji* v. *Muncherji* (1); *Chunilál* v. *Bomanji*(2); *Sakhárám* v. *Madan*(3).

Mánekshán Jehángirshán for respondent:—The document does not fall within section 17, clause (*h*) of the Registration Act. The document of itself declares a right. It is sought to be used for establishing a right to the immoveable property affected by it. It, therefore, requires registration—*Basáwa* v. *Kalkápa*(4); *The Bengal Banking Corporation* v. *Mackertich*(5).

RA'NADE, J.:—The only point that was urged in this appeal relates to the admissibility or otherwise of the *karárnáma* which was produced in support of the defence, and which both the lower Courts held to be inadmissible for want of registration. The *karárnáma* purports to have been executed in June, 1885, by respondent (plaintiff No. 1) to the appellant No. 2. In consideration of his (appellant No. 2's) undertaking to pay off the debts due by respondent's father, respondent made over to appellant No. 2 her father's house and lands for use and enjoyment, and she agreed to pass a deed of sale for the same, and transfer the *khóta* in 1888-89. It was contended for the appellant that in so far as this last agreement of sale and transfer of the *khóta* was concerned, the instrument was one which fell within the exemption provided for by clause (*h*) of section 17 of Act III of 1877. That clause excepts from the operation of clauses (*b*) and (*c*) all documents which do not themselves create, declare, assign, &c., any right, title or interest of the value of one hundred rupees and upwards in immoveable property, but *merely* create a right to obtain another document which will, when executed, create such a right. The appellant urges that the first portion of the document only recited a fact, and created or declared no

(1) I. L. R., 5 Bom., 143.
(2) I. L. R., 7 Bom., 310.
(3) I. L. R., 5 Bom., 232.
(4) I. L. R., 2 Bom., 489.
(5) I. L. R., 10 Cal., 315.

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right, and that the last portion about the sale and transfer merely created a right to obtain another document.

After a careful consideration of the authorities cited on both sides, we see no reason to differ from the lower Courts in the view they have taken of the scope and legal effect of the document. It is certainly not a document which merely created a right to demand another document. The first portion of the agreement is not a mere recital of a fact. It creates as between the parties to it a charge in the nature of a mortgage. In consideration of appellant No. 2's undertaking to advance a large sum which respondent No. 1 was unable to pay herself, she made over certain property to appellant No. 2 for use and occupation. There is no further consideration to proceed from the appellant to the respondent. She apparently stipulated for three years' time to enable her to raise the money, after which she was to effect the formal and regular transfer of *khála*. This circumstance of the absence of any fresh consideration distinguishes the facts of this case from those of the documents recited in *Burjorji* v. *Muncherji*[1] and *Chunilál* v. *Bomanji*[2]. In both those cases, the documents were only bargain papers, which recited the sale agreement for the full consideration, part of which was received as earnest-money, and the remaining sums were to be paid within a certain time, and sale-deeds executed. It was held in those cases that the bargain paper only created a right to obtain the sale-deed, and that, therefore, it fell within clause (*h*). In *Sakhárám* v. *Madan*[3] the document recited the fact of a *past* partition, and declared no right in immoveable property. Here the transfer of house and lands was contemporaneous with the execution of the document. Defendant No. 2 himself in his written statement rested his claim of ownership on this same document, Exhibit A. The facts of the present case closely resemble those reported in *Rámásámi* v. *Rámásámi*[4]. Like the letter in that case, the *karárniáma* here of itself declares a right. The mention in both cases of an intention to execute a deed of sale can make no difference, because the documents did not *merely* create a right to demand another document.

(1) I. L. R., 5 Bom., 143.
(2) I. L. R., 7 Bom., 370.
I. L. R., 5 Bom., 232.
(4) I. L. R., 5 Mad., 115.

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Of course documents which require registration, and are unregistered, may be admissible in evidence for some purposes, and not admissible in evidence for other purposes. An unregistered mortgage-bond for more than one hundred rupees may be admissible in evidence to prove the simple debt or a personal obligation, but it is inadmissible in evidence to prove any right to the property affected by the instrument—*Ulfatunnissa* v. *Hosáinkhán*(1); *Tukárám* v. *Khandoji*(2); *Sangáppa* v. *Basságpa*(3); *The Bengal Banking Corporation* v. *Mackertich*(4) and *Faki* v. *Khotu*(5). These cases do not help the appellant, inasmuch as he seeks to use the *karárnáma* for the purpose of claiming the whole property for himself. He seeks no personal remedy. Under these circumstances the appellant's chief contention before us must be disallowed. As the contract was reduced to writing, no secondary evidence about its terms was admissible.

We accordingly confirm the decree of the lower Court with costs.

Decree confirmed.

(1) I. L. R., 9 Cal., 520.
(2) 6 Bom. H. C. Rep., O. C. J., 134.
(3) 7 Bom. H. C. Rep., 1.
(4) I. L. R., 10 Cal., 315.
(5) I. L. R., 4 Bom., 591.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Parsons.

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GANESH MAHA'DEO BHA'NDA'RKAR AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* RA'MCHANDRA SAMBHA'JI MHA'SKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Limitation Act (XV of 1877), Sch. II, Art. 137—Mortgage—Mortgage of joint property—Share of co-owner sold in execution of decree—Subsequent sale of the mortgaged property by all co-owners—Redemption of mortgage—Suit for partition and redemption by purchaser at Court sale—Adverse possession.

Three undivided brothers (Bábáji, Rámchandra and A'tmárám) mortgaged part of their joint property (plot 1) in 1870 and the rest (plot 2) in 1874. In 1875 Bábáji's share in both plots was sold in execution of a decree against him and was purchased by the plaintiff. In 1877 Bábáji and his two brothers sold plot 1 to the defendants No. 3—6, who at once paid off the mortgage of 1870 and took possession. On the

* Second Appeal, No. 658 of 1893.