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creating obligations on one side, and the other side being merely discharges of these obligations—*Hirada Basappa v. Gadigi Muddappa*<sup>(1)</sup>. As examples of the first class of dealings we may refer to *Shrinathdas v. Park Pittar*<sup>(2)</sup>, *Lakshmayya v. Jagannatham*<sup>(3)</sup> and *Sitayya v. Ranga Reddi*<sup>(4)</sup>, and of the latter class, *Hajee Syud Mahomed v. Mussamut Ashrufoonnissa*<sup>(5)</sup>. The dealings in the present case clearly fall within the first class. Both parties claim to have the balance in their favour. Both admit they borrowed from each other, and charged interest on such loans. They were besides partners in forest contracts, and the shares of profit and loss falling to each partner's share were debited and credited in their accounts. In this state of things, the District Judge has very properly decided that the dealings between the parties fell within article 85, and that the respondent's claim was not time-barred. We must confirm the decree of the District Judge and reject the appeal with costs on appellant.

*Decree confirmed.*

(1) 6 Mad. H. C. Rep., 142.

(3) 1. L. R., 10 Mad., 109.

(2) 5 Beng. L. R., 550.

(4) 1. L. R., 10 Mad., 259.

(5) 1. L. R., 5 Cal., 759.

## APPELLATE CIVIL.

*Before Sir C. F. Farnan, Kt., Chief Justice, and Mr. Justice Parsons.*

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January 18.

PANDURANG SHESHAGIR (ORIGINAL PLAINTIFF), APPELLANT, v. BHIMRAV KESHAV HIRALIKAR AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Vendor and purchaser—Sale of land—Trees standing on land—Transfer of Property Act (IV of 1882), Sec. 8.*

Trees being attached to the earth are included in the legal incidents of the land and pass to the transferee under a deed of sale of the land on which they stand, unless a different intention is expressed or necessarily implied. No such intention is necessarily implied because the trees are mortgaged prior to the sale and no mention of the mortgage is made in the sale-deed.

SECOND appeal from the decision of G. Jacob, District Judge of Sholapur-Bijapur, reversing the decree of Rao Bahadur K. N. Kher, First Class Subordinate Judge of Sholapur.

\* Second Appeal, No. 599 of 1896.

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Plaintiff sued for possession of certain mango trees standing on certain land which had been sold to him by defendant No. 2.

Defendant No. 1 pleaded that he had been in possession of the trees as mortgagee of defendant No. 2.

The lower Court held that the trees had been mortgaged to defendant No. 1, and that subject to the mortgage the trees had been sold by defendant No. 2 to the plaintiff. It, therefore, passed a decree directing possession of the trees to be given to the plaintiff on his paying defendant No. 1 the amount of the mortgage-debt (Rs. 100), together with costs of suit.

The District Judge reversed the decree and dismissed the suit, holding that the parties to the plaintiff's deed of sale did not contemplate the conveyance of the trees to him. In his judgment he said:—

“Further I am of opinion that under the circumstances an intention to convey the trees with the land cannot be read into the deed of sale under which the plaintiff claims. His vendor himself had not exclusive title to the trees, and the omission to refer to his half share in them is almost conclusive evidence of the fact that they were outside the contemplation of the parties to the transaction, especially as it is clear that possession of the trees was not given to plaintiff or to Apparao Shreshgir, his predecessor in title to the land, but was continued with the mortgagee, to whom no reference is made in the deed of sale though he held under a registered mortgage-deed.”

The plaintiff preferred a second appeal.

*G. S. Dandivate* and *N. G. Palwardhan* for the appellant (plaintiff).

*Mahadev V. Bhut* for respondent No. 1 (defendant No. 1).

PARSONS, J.:—Section 8 of the Transfer of Property Act, which merely confirms a previously existing rule of law, provides that, “unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.” The question in the present case is whether certain mango trees which stood on the land sold passed under the deed of sale of the land to the plaintiff. Trees being attached to the earth are included in the legal incidents of the land and they would, therefore, pass un-

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less a different intention is expressed or necessarily implied. No such intention is expressed in the sale-deed; but it is argued that it is necessarily implied because the trees had been prior to the sale mortgaged to the defendant and no mention of the mortgage is made in the deed of sale. We do not think that from this any necessary inference arises that the intention of the parties was that the vendor's interest in the trees should not pass to the plaintiff.

We must, therefore, reverse the decree of the lower appellate Court and restore that of the Court of first instance. Costs in this and the lower appellate Court to be on the defendant Bhimrav. The six months' time allowed for redemption will run from this date.

*Decree reversed.*

## MATRIMONIAL JURISDICTION.

*Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Tyahji.*

A (HUSBAND), PLAINTIFF, v. B (WIFE), DEFENDANT.\*

1898.  
January 14.

*Divorce—Decree absolute—Appeal, right of—Limitation for such appeal—Indian Divorce Act (IV of 1869), Secs. 55, 56 and 57 (1)—Section 7, construction of—Limitation Act (XV of 1877), Art. 151.*

Under the Indian Divorce Act (IV of 1869) an appeal lies from a decree absolute although the decree *nisi* has been left unchallenged.

An appeal against a decree absolute must be filed within twenty days from the date of decree, that being the period proscribed for appeals from decrees made on the original side of the High Court under the law for the time being in force (see section 55 of the Divorce Act (IV of 1869).)

\* Suit No. 514 of 1896.

(1) Indian Divorce Act (IV of 1869), Secs. 55, 56 and 57;—

“55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under the laws, rules and orders for the time being in force :

“ Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage : nor from the order of the High Court confirming or refusing to confirm such decree.

“ Provided also that there shall be no appeal on the subject of costs only.