APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Telang.

BHOGILA'L, (ORIGINAL PLAINTIFF), APPELLANT, *v.* AMRITLAL (ORIGINAL DEFENDANT), RESPONDENT.* 1892. *March* 30.

Limitation Act (IX of 1871*), Art.* 148*—Acknowledgment—Acknowledgment by one of several mortgagees as agent for the others—Acknowledgment by one of several heirs of the mortgagee—Not sufficient—Mortgage—Redemption.*

Under article 148 of the Limitation Act (IX of 1871), an acknowledgment of the mortgagor's title by one of several mortgagees as agent for the others is wholly ineffectual, and does not bind the rest. So, too, is an acknowledgment by one of several heirs of the original mortgagee without effect. The expression "some person claiming under him" in article 148 of the Act means some person claiming under him the *entirety* of the mortgagee's rights.

The property in dispute was mortgaged by Hari Bhagti to the firm of Kasandás Bechardás in 1816. In 1830 Jagjivandás, one of the sons and heirs of Kasandás, who was then manager of the firm on behalf of the whole family, sub-mortgaged the property in dispute to a third party, under a bond which recited the original mortgage by Hari Bhagti to Kasandás. In 1885 the defendant, who was a descendant of Kasandás, redeemed the sub-mortgage effected by Jagjivandás. In 1887 the plaintiff, having purchased the equity of redemption from Hari Bhagti's descendants, filed the present suit for redemption of the mortgage of 1816. The plaintiff relied on the acknowledgment made by Jagjivandás in 1830 as giving a fresh starting point to limitation.

Held, that the suit was barred by limitation. The acknowledgment by Jagjivandás, whether as manager of the firm or as one of the heirs of the original mortgagee, was not sufficient under article 148 of the Limitation Act (IX of 1871).

SECOND appeal from the decision of Venkatráo R. Inámdár, Acting Joint Judge of Ahmedabad, confirming the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge, in Suit No. 1124 of 1887.

This was a suit for the redemption of certain property which was mortgaged in 1816 A.D. by the firm of Hari Bhagti to the firm of Kasandás Bechardás.

Kasandás Bechardás had three sons—Gangádás, Jagjivandás and Raghunáth. On Kasandás's death Jagjivandás became the manager of the firm and also manager of the family estate. And in 1830 he sub-mortgaged the property in dispute to Narbherám

* Second Appeal, No. 192 of 1891.

1892.

BHOGILA'L v. AMRITLA'L.

Sukhmal by a mortgage-bond, which recited the fact of the mortgage by Hari Bhagti to Kasandás Bechardás.

In 1885 A.D. the defendant, who was a grandson of Raghunáth, the third son of Kasandás, redeemed the sub-mortgage effected by Jagjivandás in 1830.

In 1887 the plaintiff, having purchased the equity of redemption from Hari Bhagti's descendants, filed the present suit to redeem the mortgage of 1816.

The plaintiff contended that the acknowledgment of the original mortgagor's title made by Jagjivandás in the mortgage-deed of 1830 gave a fresh starting point to limitation, and that the suit was, therefore, within time.

The defendant pleaded *(inter alia)* that the suit was barred by limitation, and that the acknowledgment in question was not binding on him, or sufficient to save the bar of limitation.

Both the lower Courts rejected the plaintiff's claim as barred under the Limitation Acts XIV of 1859 and Act IX of 1871.

Against this decision the plaintiff preferred a second appeal to the High Court.

Gokuldás Kahándás Párékh for appellant. :—The acknowledgment by Jagjivandás of the original mortgagee's title operates under article 148 of Act IX of 1871 to give a fresh starting point for limitation. At the date of the acknowledgment Jagjivandás was a managing partner in the firm to which the property in suit was mortgaged. And as a partner in a going concern Jagjivandás must be presumed to have an implied authority to make the acknowledgment on behalf of the whole firm. The acknowledgment, therefore, binds the firm—*Premji Ludha* v. *Dossá Doongersey*[1]. Jagjivandás was, moreover, a manager of the family, and in this character also he had authority to make the acknowledgment in question so as to bind his co-sharers—*Chinnaya* v. *Gurunatham*[2].

[TELANG, J., referred to *Richardson* v. *Younge*[3] as showing that, in the case of a mortgage to two persons jointly, there must be a joint acknowledgment.]

(1) I. L. R., 10 Bom., 358. (2) I. L. R., 6 Mad., 169.
(3) L. R., 6 Ch. A., 478.

1822.

BHOGILA'L v. AMRITLA'L.

Under article 148 of the Limitation Act IX of 1871 the acknowledgment need not be by all the heirs of a mortgagee. It is sufficient if it is made by "*some* person claiming through the mortgagee." Jagjivandás was admittedly one of the heirs of the original mortgagee. His acknowledgment was, therefore, sufficient.

Ganpat Sadáshiv Ráo for the respondent:—This suit is governed by Act IX of 1871. The case of *Premji Ludha* v. *Dossá Doongersey*[1] does not apply, as it was decided under the present Act XV of 1877, which has made a material alteration in the law as to acknowledgment. Under the former Act IX of 1871 an acknowledgment by an agent of the mortgagor's title was absolutely ineffectual to give a fresh starting point—*Rahmani Bibi* v. *Hulasa Kuar*[2]. As a managing partner in the firm, Jagjivandás' acknowledgment cannot be put on a higher footing than that of an agent. It is, therefore, ineffectual. As a manager of the family, his acknowledgment is equally invalid—*Náranji* v. *Bhagvándás*[3]. The case of *Richardson* v. *Younge*[4] is in point. It clearly lays down that one of several mortgagees has no authority to bind the others by his sole acknowledgment, and that is also the principle adopted in section 21 of Act XV of 1877. Refers to *Mussummat Mah Bibi* v. *Motan Mal*[5]. As laid down in this case, the expression "some person claiming under the mortgagor" in article 148 of Act IX of 1871 means some person claiming the *entire* interest of the mortgagee. Jagjivandás, being one out of three heirs of the original mortgagee, could not be said to be a person claiming the entire interest of the mortgagee. This acknowledgment is, therefore, ineffectual.

JARDINE, J.:—It is admitted that the mortgage to Kasandás took place in A. D. 1816: and that the present suit for redemption would be barred by the expiry in 1876 of the sixty years' period of limitation prescribed by Act IX of 1871, article 148, unless the acknowledgment made in 1830 by Jagjivan gives a new starting point. The Court below has found on the facts that Jagjivan was the son of Kasandás, who admittedly had

(1) I. L. R., 10 Bom., 358.
(2) I. L. R., 1 All, 642.
(3) P. J. for 1881, p. 238.
(4) L. R., 6 Ch. Ap., 478.
(5) 12 Punjaub Records, 162.

1892.

BHOGILA'L v. AMRITLAL.

other heirs, and that Jagjivan was then manager of the mortgagee firm for and on behalf of the Hindu family to which the firm belonged, and was not sole owner thereof, but like the present defendant only one of several co-parceners—a co-parcener in his own right.

Under Act XIV of 1859, section 1, clause 15, there was a fresh starting point "if in the meantime an acknowledgment of the title of the depositor, pawner or mortgagor, or of his right of redemption, shall have been given in writing signed by the depository, pawnee or mortgagee or some person claiming under him." Under Act IX of 1871, article 148, also the date of the acknowledgment is the starting point "where an acknowledgment of the title of the mortgagor or of his right of redemption has, before the expiration of the prescribed period, been made in writing signed by the mortgagee or some person claiming under him."

The only question argued is whether the written acknowledgment signed in 1830 by Jagjivan is sufficient. The contention of the plaintiff is twofold: first, that as Jagjivan was manager of a firm, a going concern, his acknowledgment was binding on the defendant, and for this *Premji Ludha* v. *Dossá Doongersey*(1) was cited. This case, I may remark, construes the provisions of the Limitation Act, XV of 1877, and so do *Rávji* v. *Náráyandás*(2) and *Gadu Bibi* v. *Parsotam*(3), which follow the Bombay case. The Courts below have noticed that section 19 of the present Act has changed the law so as to include an acknowledgment signed by the agent of a mortgagee, whereas the similar provisions about agents in section 20 of the law of 1871 extended only to debts and legacies. In *Rahmani Bibi* v. *Hulasa Kuar*(4) it was held that under Act IX of 1871 the signature of an agent was not sufficient. This decision is based on that of the Privy Council in *Luchmee Buksh Roy* v. *Runjeet Roy Panday*(5), which interpreted the similar words of Act XIV of 1859. See also *Náranji* v. *Bhagvandás*(6), which cites

(1) I. L. R., 10 Bom., 358.
(2) P. J., 1888, 147.
(3) I. L. R., 10 All., 418.
(4) I. L. R., 1 All., 642.
(5) 13 Beng. L. R., 177.
(6) P. J., 1881, 238.

Kumarsami Nadan v. *Pala Nagappa*[1] as to a manager's powers in a Hindu family and the discussion in West and Bühler, 612, 613. I think the authorities are against the first contention. Secondly, it was contended that the defendant is now the sole owner of the mortgagee's rights, and that as he becomes such by succession to the estate of Jagjivan and others, who were co-parceners in 1830, he is "a person claiming under" the mortgagee, and being, as to part of the mortgagee's rights the successor of Jagjivan, he is estopped from denying that Jagjivan's acknowledgment binds him.

The present case is one of first impression, and in the absence of Indian decisions on the words of article 148 of the Act of 1871 about the acknowledgment by the mortgagee, or some person claiming under him, I may refer to the case of *Richardson* v. *Younge*[2]. Vice-Chancellor Malins affirmed—at p. 278—interpreting the Statute of Limitation 3 and 4, Will. IV, c. 27, s. 28, which is the authority given in Coote on Mortgage for the proposition that "where there is a mortgage to two jointly, there must be a joint acknowledgment." The case differs from the present, in that the two joint mortgagees were trustees, and the decision is confined by Lord Justice James to the case of mortgagees who are trustees: and also that there were two joint trustees as defendants before the Court, while here the whole right of the mortgagees is now vested in one defendant, so that there is not apparently the same difficulty in taking a complete account. The reasoning applied seems to me, in spite of these differences, applicable to the construction of the Act of 1871. It is as follows:—see 6 Ch. Ap., at p. 480. The provision as to acknowledgment, which only refers to an acknowledgment by the mortgagee, would, if it stood alone, require an acknowledgment by all the mortgagees where there are more than one, it being provided by the General Clauses Act, I of 1868, that words in the singular shall include the plural. The distinction drawn between party and agent about debts and legacies in section 20 shows that the question of agency was before the mind of the Legislature, but there is no provision in article 148 or elsewhere as to signature by an agent for a mortgagee. A signature, there-

(1) I. L. R., 1 Mad., 385. (2) L. R., 10 Eq., 275.

1892.

BHOGILA'L v. AMRITLAL.

fore, by one of several mortgagees *as agent* for the others would be ineffectual, and it appears unsafe to hold that the acknowledgment of one binds all the others. The conclusion that the Legislature in 1871 omitted to provide for signature by a mortgagee's agent seems affirmed by the fact that this was done in 1877 by the general provision of section 19 of the Act of that year. The above reasoning leads to the same result as the Privy Council decision in *Luchmee Buksh Roy* v. *Runjeet Roy Panday*(1), where their Lordships follow Tyndal, C. J., in *Hyde* v. *Johnson*(2), and interpret the Act of 1871 "according to its plain words" and exclude the signature of a mortgagee's agent.

The above conclusion is not, however, sufficient for the determination of the present case. It is contended that Jagjivan's interest as a co-parcener in 1830 brings him within the words "some person claiming under him," *i.e.*, under his father Kasandás the mortgagee, and that the acknowledgment signed by Jagjivan is, therefore, sufficient under the Act of 1871. It being found, as a fact, that Jagjivan was only one of several heirs, and not sole owner of the mortgagee's rights, the argument requires that the words be read as meaning "some one or more of the persons claiming under him", or "any one or more of the persons claiming under the mortgagee the whole or any part of the rights conferred on him by the mortgage." We have then to determine whether these paraphrases embody the true construction, or whether the phrase means "some person or persons claiming under him the entirety of the mortgagee's rights." After considering the arguments I come to the opinion that the last is the real meaning. I leave out of consideration the case of joint tenants, of whom it is said in *Richardson* v. *Younge* at p. 481 of the Report—"if a joint tenant dies, there is no transmission of interest, and no person claims anything under him." If as settled by that case where there is a mortgage to two jointly there must be a joint acknowledgment, I think it would be anomalous, in the absence of precise words, if an acknowledgment signed by one of many holding collectively the mortgagee's rights were sufficient. I lay more stress on this view, because the doctrine

(1) 13 Beng. L. R., 177. (2) 2 Bing. N. C., 776.

that one mortgagee can be treated as agent for the others in the matter of acknowledgment has, as determined by the authorities cited above, no place in the Acts of 1859 and 1871. In construing a statute we must not look to cases of very rare and singular occurrence, but to those of every-day experience—*Hyde* v. *Johnson*(1), and remember that Statutes of Limitation are in their nature strict and inflexible enactments, intended to quiet long possession and to extinguish stale demands—*Luchmee Buksh Roy* v. *Runjeet Roy Panday*(2). These principles would, I think, be imperilled if any owner of a mere fraction of the mortgagee's rights could by means of an acknowledgment exceed the powers of a joint mortgagee or an agent in regard to giving the mortgagor a new starting point for his claim

No English case has been cited, nor any decision of an Indian High Court found, on the present question. Possibly it might have been, but in fact it was not raised in *Daia Chand* v. *Sarfraz* (3). The facts are not clear, and it is to be noted that it is said (at page 123) that the actual parties, the defendants-appellants, had signed the acknowledgments, and it cannot be gathered that there were any other owners of the mortgagee's right. The question was, however, determined by the Chief Court of the Punjab in *Mussummat Mah Bibi* v. *Motan Mal* (4) The views stated by Fitzpatrick, J. (Boulnois, J., concurring) are clearly, and I think correctly, expressed. He says:

"The question is one of considerable difficulty, and I give my opinion on it with considerable diffidence; but on the best consideration I have been able to bestow on it, I come to the conclusion that the suit is altogether barred. The 148th article of the Indian Limitation Act, 1871, is not new. It is copied, with some alterations which are immaterial for the purposes of the present question, from the 15th clause of the 1st section of the former law, Act XIV of 1859, and that, again, is taken with certain alterations and omissions, one at least of which seems to me important for the purposes of the present question, from the 28th section of the 3rd and 4th Wm. IV, c. 27.

(1) 2 Bing. N. C., at p. 780.
(2) 13 Beng. L. R., 177.
(3) I. L. R., 1 All., 117.
(4) 12 Punjaub Records, 162.

1891.

HOGILAL v. AMRITLÁL.

"The 28th section of the 3rd and 4th Wm. IV, c. 27, provides that the mortgagor's suit to redeem shall be barred within a certain period reckoned from the date on which the mortgagee obtained possession, "unless in the meantime an acknowledgment of the title of the mortgagor or of his right of redemption shall have been given * * * * in writing *signed by the mortgagee or person claiming through him*," in which case the period shall be reckoned from the date of such acknowledgment.

"Up to this point, our Acts have followed the English Act, but here comes the important difference. The English Act goes on to provide for the case of an acknowledgment by one of a number of mortgagees or persons claiming under a mortgagee, enacting that such acknowledgment shall be binding only as against the person making it, and providing for the apportionment of the mortgage-debt between him and the others, but no similar provision is to be found in our Acts. It is hardly conceivable that the Indian Legislature, having copied the English Act so far as they did, would not, if they intended that an acknowledgment by one of several mortgagees should have so peculiar an effect as that of breaking up the mortgage into portions; I say it is hardly conceivable that they would not have followed the English Act here, too, and enacted something more or less similar to its provisions on this point. I have no doubt that the omission to do so was deliberate, and I can well understand that it may have been thought as well to avoid the difficulties and complications which there is reason to apprehend would, in many cases, arise from allowing to an acknowledgment by one of several mortgagees the effect in question. However this may be, it seems to me impossible, by any effort of construction, to get from the Indian Acts, as they stand, anything similar in effect to the provisions of the English law on this point. There may be a transaction (and such transactions are not uncommon in this country), which, though spoken of as a single mortgage, is really a number of mortgages of different properties to different persons executed in the same sheet of paper. Such a transaction would, I presume, for the purposes of the 148th article of the Limitation Act, as I believe it usually is for all

other purposes, be treated on its proper footing, *viz.*, as a number of different mortgages, and if one of the mortgagees had given an acknowledgment in respect of the property mortgaged to him, the mortgagor might take advantage of that acknowledgment to redeem that property from him, the mortgage of it being really separable from or rather separate from that of the other properties.

"But where there is but one single mortgage to a number of persons, an acknowledgment by one of those persons cannot, under the 148th article, give a new period of limitation in respect to a portion or a share of the property mortgaged. It must either be absolutely without effect, or give a new period of limitaton in respect of the whole property.

"I have, as I have already said, come to the conclusion that it is absolutely without effect. In *Richardson* v. *Younge* [1], a case in which some of the difficulties of the English law were brought out, Lord Justice Mellish in commenting upon that Act (at page 489) makes an observation to the effect that, if it had stopped short at the point down to which, as I have shown, our Acts have followed it, it could not have been contended that the acknowledgment of one of several mortgagees would bind the others.

"Of that, I think there can be little doubt. But there is a slight difference in the wording of the Indian Acts to which I have not before adverted, and, which it may be contended, would afford ground for a distinction.

"The acknowledgment which the English Act requires is 'an acknowledgment in writing signed by the mortgagee or *the* person claiming through him;' while what the Indian Act requires is an acknowledgment 'in writting signed by the mortgagee or *some* person claiming under him.'

"It would hardly be disputed that, as observed by Mellish, L. J., in the case I have just referred to, 'the mortgagee' in the English Act means 'the mortgagee *or* mortgagees,' and similarly that 'the person claiming through him' in that Act

(1) L. R., 6 Ch. Ap., 478.

1892.

BHOGILAL v. AMRITLÁL.

means 'the person *or persons* for the time being claiming through him.'

"In like manner, it would hardly be disputed that 'the mortgagee' in the Indian Act means 'the mortgagee *or mortgagees*,' but it may possibly be suggested that the Indian Legislature, in using the words *some* person claiming under 'him,' may have intended to include an acknowledgment like that in the present case given by one of several heirs or purchasers to whom different shares of the mortgagee's interest in the property or the mortgagee's interest in different portions of the property may have passed.

"But, in the first place, it is not likely that a change in this direction would have been made by the Indian Legislature, for the recognition of such acknowledgments would infallibly lead to collusion (such as is alleged to have occurred in the present case) between the mortgagor and one of the heirs or purchasers, and again it is hardly conceivable that one of several mortgagees who had together entered into the mortgage transaction should be unable to bind one another, and that one of several purchasers from a mortgagee should be given power to bind the others who might be perfect strangers to him. If a result of this sort was intended, we may be sure very clear words would have been used.

"It is accordingly natural to look out for some other construction of the words used, and I do not think there is any difficulty in finding a very reasonable one. I think 'some person claiming under the mortgagee' means some one of the persons or aggregates of persons who, from time to time, by purchase, inheritance or otherwise may have been in a position to claim under, *i.e.*, to represent the mortgagee.

"This, I think, though as I have already said with some diffidence, is the proper construction of the Act; and I accordingly hold that an acknowledgment (such as that in the present case) by one of several heirs of the mortgagee is altogether without effect."

I think that if the Indian Legislature in 1871 or 1859 had intended to give effect to acknowledgments by persons claiming

only a fraction of the mortgagee's rights it would, to avoid the disquieting of titles and the revival of stale demands, as well as to secure its other object, have used plain words, as in section 28 of 3 and 4 Wm. IV, c. 27.

For these reasons, I am of opinion that the decree under appeal should be confirmed with costs.

TELANG, J. :—I cannot say that I am entirely satisfied with the reasoning contained in the judgment of Fitzpatrick, J., concurred in by Boulnois, J., in the case of *Mussummat Mah Bibi* v. *Motan Mal* (1), which was cited to us by Mr. Ganpatráo. Nor do I think that the case of *Richardson* v. *Younge*(2), to which I referred during the argument, has, except only to a certain extent, any very close application here, having regard to the actual language of the Act we have to construe. But as that language has, in fact, been construed by two learned Judges in one way, and as Mr. Justice Jardine is satisfied with that construction, I think it would be right for me to follow it—especially in the case of an Act which is not any longer in force. And I do so the more readily, because I cannot say that I have myself formed any strong or clear opinion in favour of any other construction. According to the construction, then, which has been placed on Act IX of 1871, the claim of the plaintiff in this case was barred while that Act was in force, and the Act of 1877 could not, therefore, revive it. The Courts below were consequently right in deciding against the plaintiff, and the decree must be confirmed with costs.

Decree confirmed.

(1) 12 Punjaub Records, 162.

(2) L. R., 6 Ch. Ap., 478.