APPELLATE CIVIL.

efore Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

BHADRA'PPA', (ORIGINAL DEFENDANT), APPELLANT, *v.* MAHANTA'PPA' (ORIGINAL PLAINTIFF), RESPONDENT.*

cedure—Error in procedure—Second appeal—Finding of fact by lower Court ot accepted by High Court where the District Judge in consequence of a mistake to a date was biassed in dealing with the defendant's evidence—Practice.

Where a Judge, under a mistake, thought that a bond which was really dated h November, 1885, was dated 8th November, 1886, and consequently treated the position of the defendant, in which he stated that the bond had been passed by him a fortnight before he signed in the plaintiff's accountbook the acknowledgment sued on dated the 10th December, 1885, as "false."

Held that as the Judge must have been biassed by the strong opinion so formed to the defendant's untruthfulness in dealing with the rest of the defendant's evidence, there was such a substantial error in the procedure as ought to preclude the High Court from accepting the Judge's finding as conclusive upon the point in dispute.

Decree reversed, and the case sent back for fresh decision on the merits on the evidence as it stood.

Hemanta Kumári Debi v. *Brojendro Kishore Roy Chowdry* (1) referred to.

THIS was a second appeal from the decision of J. L. Johnston, District Judge of Dhárwár.

The plaintiff sued to recover a certain amount due on an acknowledgment signed by the defendant in the plaintiff's account book on the 10th December, 1885.

The defendant admitted that he owed the amount claimed, but alleged that he owed it, not to the plaintiff, but to one Chanáppá for whom the plaintiff had been manager. He contended (*inter alia*) that the plaintiff had no right to sue, inasmuch as the transaction in dispute was effected by him (the plaintiff) in his capacity as manager for Chanáppá; that Chanáppá had attained his majority before the institution of the suit; that a portion of the amount claimed was paid by him (the defendant) to Chanáppá, and that for the remainder he had passed a bond to Chanáppá on the 8th November, 1886.

* Second Appeal, No. 858 of 1889.

(1) I. L. 17 Calc., 875; L. R., 17 I. A., 69.

The Court of first instance, (Ráo Sáheb Venkatesh Laksh maya, Subordinate Judge of Gadag), found that the amount su for was due to Chanáppá and not to the plaintiff, and that tl plaintiff had no right to sue for and to recover it. He rejecte the plaintiff's claim.

Plaintiff appealed, and the District Court, in appeal, held that the amount in dispute was due by the defendant to the plaintiff, and reversed the decree of the Court of first instance.

In his judgment the District Judge made the following observations :—

"Chanáppá's own account books do not show anything due to Chanáppá from defendant at the time of the balance entry in suit. The plaintiff's own account books show the amount in suit due to himself. The fact that plaintiff lived sometimes in Chanáppá's house does not prove that plaintiff had no dealings of his own. Chanáppá had a separate kárkún, and plaintiff or his father only wrote a few pages of Chanáppá's accounts. The deposition of defendant shows clearly that his defence of payment and bond passed to Chanáppá are not real transactions. They were after quarrels had arisen between plaintiff and Chanáppá. This deposition shows that defendant is false. He says that he passed the bond for Rs. 450, which is dated 8th November, 1886, to Chanáppá about a fortnight before signing the acknowledgment in suit in plaintiff's *kháta*-book, which is dated 10th December, 1885, or eleven months before the bond. He makes out Chanáppá to be 29 years old now, as he was 16 years old 13 years ago, when defendant borrowed Rs. 300 from Basáwa, mother of Chanáppá, and that when he passed the bond to Chanáppá, the plaintiff was managing, and that all documents were being executed to plaintiff in plaintiff's name, but that plaintiff specially asked him to pass this bond to Chanáppá. He says Chanáppá was then 27, which would make him 29 in 1888, when the deposition was given. There is nothing in the letters from plaintiff to Chanáppá showing that plaintiff was his manager. Exhibit 44 is quite what an elder relative would have written to a younger whom he helped occasionally, and is hardly what a manager would have written to his ward."

Inverarity (with *Shamráo Vithal* and *Ganesh Rámchandra rloskar*) for the appellant:—The District Judge was wrong in olding that the defendant's deposition proved him to be "false." That the Judge found to be a discrepancy in the date was no iscrepancy at all. The District Judge was mistaken in supposing that the bond relied on by the defendant was dated 8th November, 1886. The correct date of the bond is 19th November 1885. The Judge's mind was materially prejudiced by the mistake under which he laboured, and he has in consequence come to a wrong decision.

Náráyan Ganesh Chandávarkar for the respondent:—The Judge was not wrong in holding that the date of the bond, on which the defendant relied in support of his case, was 8th November, 1886, because that was the date given by the defendant in his written statement. The Judge has given reasons for holding that the defendant's deposition shows him to be "false." The judgment of the lower Court clearly shows that, in coming to the conclusion unfavourable to the defendant, the Judge was influenced by all the circumstances involved in the case, and not only by the particular circumstance pointed out by the appellant. The finding of the lower Court, that a certain amount is due by the defendant to the plaintiff, is a finding of fact, and it cannot be disturbed in second appeal.

SARGENT, C. J.:—The District Judge says that the defendant's deposition shows him to be "false," because he stated that he passed the bond for 450 rupees, which is dated 8th November, 1886, to Chanáppá about a fortnight before signing the acknowledgment in suit in plaintiff's *kháta* book, which is dated 10th December, 1885, or eleven months before the bond. An examination, however, of the bond shows that the Judge was under a mistake as to its true date, which was, it is not disputed, the 19th November, 1885, instead of 8th November, 1886, as supposed by the District Judge. As the District Judge must have been biassed by the opinion so formed as to the defendant's untruthfulness in dealing with the rest of the defendant's evidence, we think there has been such a substantial error in the procedure as ought to preclude our accepting the District Judge's

finding as conclusive that the 450 rupees were due to pla and not to Chanáppá—*Hemanta Kumari Debi* v. *Broje Kishore Roy Chowdry*[1].

Without, therefore, intending to suggest that his conclu was wrong, or to express any opinion directly or indirectly the merits of the case, we must, for the reasons above state reverse the decree of the Court below and send back the case f a fresh decision on the merits on the evidence as it stands. Cost to abide the result.

Decree reversed.

(1) I. L. R., 17 Calc., 875 ; L. R., 17 I. A., 69.

APPELLATE CIVIL.

Before Mr. Justice Bayley and Mr. Justice Telang.

RANGA'YA'NA SHRINIVASA'PPA', (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANAPABHATTA, (ORIGINAL DEFENDANT), RESPONDENT.* 1 *Janua*

Hindu law—Alienation—Mortgage by a co-parcener—Liability of his share after his death to satisfy the mortgage.

Where a member of a joint Hindu family makes a mortgage, such mortgage, being good when made, creates a valid charge on the property to the extent of his share, which cannot be defeated by his death.

SECOND appeal from the decision of Gilmour McCorkell, District Judge of Kánara, in Appeal No. 132 of 1889 of the District File.

Timápá, the uncle of defendant No. 1, mortgaged his share in the joint family property to the plaintiff in 1867. On this mortgage the plaintiff obtained a decree, but before it was executed Timápá died. After his death, his share in the joint family property was attached in execution of the mortgage decree.

The defendant No. 1 objected to the attachment, on the ground that Timápá's interest in the property had ceased to exist. His objection was allowed, and the attachment was raised.

* Second Appeal, No. 234 of 1890.