conclusion that this appeal may be disposed of without further delaying the proceedings by directing defendants Nos. 2 and 3 to be joined as parties to the appeal.

On these grounds I would allow this appeal, set aside the decree of the lower appellate Court and restore the decree of the trial Court with costs of this appeal and in the lower appellate Court on defendant No. 1.

CRUMP, J. :—I concur.

Appeal allowed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

SHIVAJIRAO NARAYANRAO THORAT (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* HARI NARAYAN TAGARE AND ANOTHER (ORIGINAL PLAINTIFF), RESPONDENTS*.

1920. *January* 13.

Indian Limitation Act (IX of 1908), section 19—Acknowledgment—Court of Wards Act (Bom. Act I of 1905) section 16, proviso—Offer made by Collector in settlement of claim—Whether the offer can be used as an acknowledgment of debt.

In 1886, the defendant's family passed in favour of the plaintiff a simple mortgage bond for Rs. 9,500 for a period of ten years. The defendant was a minor and a ward of the Collector under the Court of Wards Act (Bom. Act I of 1905). In 1916, the plaintiff sued to recover the amount due on the bond of 1886. Interest on the bond was paid regularly till 1903. On the 24th May 1913, the Collector wrote a letter to the plaintiff by which the Collector offered to pay Rs. 17,000 in instalments in satisfaction of the "whole of the amount due" to the plaintiff. The plaintiff relied upon this letter as an acknowledgment of debt to save the bar of limitation. On behalf of defendant it was contended that under the proviso to section 16 of the Court of Wards Act, the letter could not be proved,

Held, that the proviso did not prevent the plaintiff from using the letter as an acknowledgment so as to start a fresh period of limitation under section 19 of the Limitation Act, 1908.

* First Appeal No. 251 of 1917.

1920.

SHIVAJIRAO NARAYANRAO v. HARI NARAYAN.

FIRST appeal against the decision of V. G. Kaduskar, additional First Class Subordinate Judge at Satara in Suit No. 292 of 1916.

Suit to recover money.

This action was instituted by the plaintiff to recover amounts due on three mortgage bonds passed by the defendant's family. The three bonds had been passed (1) in 1886 for Rs 9,500 on a simple mortgage for ten years; (2) a bond in 1887 for Rs. 500; and (3) a bond in 1891 for Rs. 3,200 which purported to be a mortgage with possession for two years, but possession was not given to the mortgagee. Till 1903, payments were made to satisfy interest on the debt of Rs. 9,500.

The defendant was a minor and a ward of the Collector under the Court of Wards Act. On the 24th May 1913, a letter was written to the plaintiff by the Collector of Satara intimating that according to the compromise arrived at regarding the whole of the amount due to the plaintiff, it was decided that Rs. 17,000 were to be paid in certain instalments. On behalf of the defendant it was pleaded that this letter should not be taken into account.

The Subordinate Judge found that the plaintiff's claim in respect of Rs. 500 was time-barred; but the debt due on the bonds for Rs. 9,500 and Rs. 3,200 was not time barred on the ground that the suit in respect of these bonds was a suit by a mortgagee for sale of the mortgaged property falling under Article 147 of the Limitation Act and secondly, because the Collector acknowledged the liability within twelve years under the bond for Rs. 9,500. He, therefore, decreed that the defendant do pay Rs. 17,480 on the bond of Rs. 9,500 (Rs. 9,500 principal plus Rs. 7,980 interest); and Rs. 6,400 on the bond for Rs. 3,200 by damdupat.

The defendant appealed to the High Court.

1920.

SHIVAJIRAO NARAYANRAO v. HARI NARAYAN.

Coyajee, with the *Government Pleader*, for the appellant.

Dhurandhar, with *G. B. Phansalkar*, for the respondents.

MACLEOD, C. J.:—The plaintiff sued to recover in this suit the amounts due on three mortgage bonds passed by the defendants' family. The defendant was a minor and a ward of the Collector under the Court of Wards Act (Bom. Act I of 1905). Three bonds had been passed (1) a bond in 1886 for Rs. 9,500 on a simple mortgage for ten years; (2) a bond in 1887 for Rs. 500; and (3) a bond in 1891 for Rs. 3,200, which purported to be a mortgage with possession for two years. It is admitted that the mortgagee has not got possession. It is also clear that the bond of 1887 for Rs. 500 is barred. The plaintiff has obtained a decree on the other two bonds of 1886 and 1891. The learned Subordinate Judge considered that Article 147 applies, but in doing so he seems to have overlooked or misunderstood the decision of the Privy Council in the case of *Vasudeva Mudaliar* v. *Srinivasa Pillai* [1]. It cannot be disputed that it is not Article 147 but Article 132 which applies. However the Subordinate Judge has considered the question whether Exhibit 53, which was a letter written to the plaintiff by the Collector of Satara on the 24th May 1913, saved the bar of limitation as regards the bond of 1886, and came to the conclusion that it did. It has been argued before us that under the proviso to section 16 of the Court of Wards Act that letter could not be proved. Sections 13, 14, 15 and 16 deal with the duties of the Collector when the Court of Wards assumes superintendence of the property of any landholder under the Act. Under section 14 a notice was issued inviting claims, and

[1] (1907) 30 Mad. 426.

1920.

SHIVAJIRAO NARAYANRAO v. HARI NARAYAN.

it appears that the plaintiffs made an application through the Mamlatdar on the 13th May 1913, and they also sent in a petition to the Collector on the 23rd May in which are recited the three bonds I have referred to. On the 24th May the Collector wrote to the plaintiff "An application dated 13th May 1913 was made through the Mamlatdar of Walwa stating that proceedings were going on regarding the amount due from the minor Shivajirao Narayanrao and that its result was not known. On this, he is informed that according to the compromise arrived at regarding the whole of the amount due we have decided that Rs. 17,000 are to be paid and they are to be paid in the following manner:—Rs. 4,000 are to be paid for the first instalment, and thereafter Rs. 2,000 each year, and Rs. 1,000 for the last instalment. So you and Balwant Narayan are to be present either personally or through Mukhtyar in our office and then the amount of the first instalment would be paid by me". The word "compromise" seems to be wrongly used. What the Collector did was to consider the claim under section 16. The letter amounted to an offer of a settlement of the claim sent in by the petitioners. Sub-section (2) of section 16 lays down what should be done by the claimant. Sub-section (3) provides that nothing in this section shall be construed to bar the institution of a suit in a civil Court for the recovery of a claim against a Government ward or his property which has been duly submitted to the Court of Wards. Then comes a proviso: "provided that no decision of the Court of Wards under this section shall be proved in any such suit as against the defendant."

The plaintiffs contend, that although what amounted to an offer by the Collector under section 16, cannot be proved in a suit filed by the claimant if he does not accept the offer, yet the proviso does not prevent the

claimant from using the letter as an acknowledgment so as to start a fresh period of limitation under section 19 of the Indian Limitation Act. That appears to us to be the proper interpretation of the proviso read in conjunction with the previous sections. It must be restricted to meaning that if the claimant files a suit on his claim, the Collector's offer cannot be proved as an admission, the claimant must prove his case *de novo*, and the Collector is not bound by any offer which he may have made under section 16. But we do not think that the proviso bars the claimant from using the offer as an acknowledgment that the debt exists. As it has not been distinctly provided that such a decision or proposal or offer by the Court of Wards shall not be used as an acknowledgment, we think it is open to the claimant to make use of such a decision merely for the purposes of an acknowledgment. Otherwise it would work very great injustice, and certainly in this case would operate as a very great hardship on the petitioners. But the acknowledgment will only save limitation with regard to the bond for Rs. 9,500. It is admitted that nothing was paid on the bond for Rs. 3,200, and a suit on that bond was clearly barred before the 24th May 1913. The plaintiffs have obtained a decree for the amount of that bond and interest from the Subordinate Judge on his finding that Article 147 applies. We think, therefore, that the decree must be amended and that the direction on the defendants to pay Rs. 6,400 with costs by annual instalments must be struck out. The decree will, therefore, stop at the figure "9,500". The respondents will be entitled to the costs in proportion to the extent to which they have succeeded.

HEATON, J.:—I agree. The matter of importance and of some difficulty which has been argued at the hearing of this appeal, relates to the meaning of the

1920.

SHIVAJIRAO NARAYANRAO v. HARI NARAYAN.

proviso to section 16 of the Court of Wards Act (Bom. Act I of 1905) There was a decision, what is called a decision in the section, by the Collector, and that decision undoubtedly amounts to an acknowledgment of certain mortgage debts. But it is said that in virtue of the proviso to the section the decision cannot be proved against the defendant. Now I admit quite frankly that if you take the words of the proviso, away from the rest of the section, and consider them by themselves, they do undoubtedly mean that the decision is not to be proved against the defendant. If that is what the words say, it is argued we must presume that the words mean that. Of course, it is to be presumed that the words mean what they say, and if they mean that, then it is further argued that this decision cannot be proved against the defendant. It does not matter for what purpose you wish to use it. But when you have a proviso of this kind, when you have something which is a portion of a larger whole, then to discover the purpose of its existence you have to look to that larger whole. The purpose of the whole section is very clear. It is to enable the Collector to have an absolutely free hand in making compromises on behalf of a ward, with the ward's creditors. In order that he may have an absolutely free hand, and that he may not be fettered by fears of what may be said afterwards as to what he has done, it is provided that these offers, or decisions as they are called, cannot be proved against the defendant in a suit subsequently brought. Clearly the meaning is that whatever the Collector has asserted or admitted shall not be used as proof of any claim by the plaintiff in a suit against the defendant; and that the plaintiff has to prove his claim fully by evidence altogether outside anything that the Collector in the course of the discussion or negotiation may have written in his decision or offer.

1920.

SHIVAJIRAO NARAYANRAO v. HARI NARAYAN.

But if we go beyond this, if we say not only that the decision shall not be proved for the purpose of establishing the plaintiff's claim, but also that it shall not be proved even for the purpose of showing that the Collector acknowledged the claim: then I think we should be going right outside the intention and purpose of the section as a whole. That is why I think this decision can be proved as an acknowledgment, because I think not only does the section as a whole, having regard to its purpose and intention, not prohibit such a thing, but all that it does prohibit is the use of the decision for the purpose of substantiating and establishing the plaintiff's claim. I agree to the order proposed.

Decree amended.

J. G. R.

APPELLATE CRIMINAL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

In re SIKANDARKHAN MAHOMEDKHAN.*

1920.

January 15.

Criminal Procedure Code (Act V of 1898), section 195 (6)—Sanction to prosecute—Refusal of sanction by First Class Magistrate—Additional Sessions Judge can grant it on appeal—Jurisdiction.

Under section 195, clause 6 of the Criminal Procedure Code, 1898, an Additional Sessions Judge has jurisdiction to hear an application or an appeal from an order passed by a First Class Magistrate refusing or granting sanction.

THIS was an appeal from an order passed by K. B. Wassoodew, Additional Sessions Judge at Ahmedabad, granting sanction to prosecute on appeal from an order passed by D. M. Kothawalla, First Class Magistrate at Ahmedabad, refusing to grant sanction to prosecute.

* Criminal Appeal No. 709 of 1919.