1874. August 12. R. C. No. 29 of 1874.

that Act at the time the new Limitation Act (IX of 1871) came into force, the period of limitation ought to be computed from the date of the note or from that of the demand.

This case differs from *Referred Case No.* 52 *of* 1873 (*a*) by the circumstance that the action was not barred when the new Act came into force. The difference however does not affect the principle upon which that case was decided.

The new Act differs from the old merely as to the period at which, for the purposes of prescription, the action is to be considered born.

It does not on this point differ in any way, either as to the period of prescription itself, or as to the modes by which the period can be extended.

A demand by the creditor can have no such effect. When it was made the statute was already operating upon an action born previously to the new law coming into force, and that law could not, and did not, destroy that action for the purposes of limitation. If the new Act had made a demand a mode of extending the period the case would be different. It merely alters the point of time as to notes executed after its enactment from which the period is to be reckoned. The point of time had already been fixed by the law applicable to it and this suit is clearly barred.

Appellate Jurisdiction.(*b*)

SCOTT *v.* SCOTT.

In a suit for a Judicial separation and alimony, decided under the Indian Divorce Act (IV of 1869), the only basis for the estimation of pleaders' fees is ten time the amount of alimony for one year.

1874. November 20.

THIS was a case stated under Section 9, Act IV of 1869, by J. R. Cockerell, Judicial Commissioner, Nilgiris, in Suit No. 1 of 1874.

The suit was brought by a wife against her husband for a Judicial separation and alimony. The suit was decided in plaintiff's favor, she was allowed alimony at the rate of Rupees 150 a month, and the question arose as to the basis on which the pleader's fees were to be calculated.

(*a*) See ante p. 298.

(*b*) Present: Morgan, C. J. and Holloway, J.

1874.
November 20.

The Court delivered the following

JUDGMENT:—The High Court are of opinion that a suit decided under the Indian Divorce Act (IV of 1859) is clearly a suit decided on the merits.

The value of the suit, in this case ten times the amount of alimony for one year, is the only basis for the estimation of the pleader's fees, because the only one prescribed by the regulation.(*a*)

The case cannot be altered by a special provision of the Divorce Act authorizing a particular stamp, whatever the value.

Appellate Jurisdiction.(*a*)

Special Appeal No. 551 *of* 1874.

SAMATHAL ... ... *Special Appellant* (*2nd Plff.*)

HER HIGHNESS THE MAHARAJA MATHOOSRI KAMATCHI AMMA BOYI SAIB AVERGUL and five others. } *Respondents* (*Defendants.*)

Where a document is, on its face, a mortgage, the right to redeem is so much an essential as not to be variable by agreement. The question of intention *extra* the document does not, therefore, arise.

1874.
December 7.
S. A. No. 551
of 1874.

THESE were Special Appeals against the decisions of Arunachella Iyer, the Subordinate Judge of South Tanjore, in Regular Appeals Nos. 5, 6, 7 and 8 of 1874, reversing the Decrees of the Court of the Additional District Munsif of Tanjore, in Original Suits Nos. 302, 303, 304 and 308 of 1872 respectively.

Plaintiff sought to redeem certain lands, alleged to have been mortgaged by his father to the 1st defendant's relation,

(*a*) Regulation XIV of 1816, Section 25, so far as it affects the case above stated, is as follows—" In all regular suits which may be instituted, either originally or in appeal, from and after the 1st day of February 1817, in any of the Zillah Courts, the Provincial Courts, or the Sadr Adálat, the Vakils employed for the respective parties are to be allowed, for pleading the causes of their clients, the rates of fees calculated as follows:—* * * * *

If the amount or value shall exceed 5,000 Rupees and shall not exceed 20,000 *Arcot* Rupees, on 5,000 as above (5 *per cent.*) and on the remainder two per cent."

(*a*) Present: Morgan, C. J. and Holloway, J.