1873. November 24. R. C. No. 37 of 1873.

ascertained when the debt (of 100 Rupees) became due and was demanded, and the computation must be from this period. But the writing, having been made in January 1868 for money payable on demand, by the law then in operation could not be enforced by suit after three years from that time. The new Act in such a case confers no right of suit founded upon a demand subsequently made. The repeal of the former Act could not affect the legal bar which had previously arisen.

We think in the present case the suit is barred.

Appellate Jurisdiction. (a)

Special Appeal No. 324 *of* 1873.

VASUDEVA SHANBHAGA and another...*Special Appellants.*

KULEADI NARNAPAI and 10 others...*Special Respondents.*

A suit brought against a number of alienees of a deceased member of an undivided family, for the recovery of family property illegally alienated by him, is not such a suit as ought to be dismissed on the ground of multifariousness. It is most desirable that the whole of the alienations should be at once before the Court called upon to decide the question, in order to secure the soundness of the particular decision and perhaps the avoidance of discordant decisions in different cases upon facts nearly the same.

1874. January 22. S. A. Nos. 324, & 634 of 1873.

THIS was a Special Appeal against the decision of A. C. Burnell, the Acting Civil Judge of Mangalore, in Regular Appeal No. 327 of 1872, confirming the decree of the Court of the Additional Principal Sadr Amin of Mangalore, in Original Suit No. 64 of 1870.

Plaintiffs, the special appellants in *Special Appeal No.* 324 *of* 1873, were the sons of one Naraina Shanbhaga. They stated in their plaint that the whole of the property described in the plaint was acquired by their paternal grandfather, Vasudeva Shanbhaga; that long after the death of their grandfather their father died on the 26th March 1867; that they succeeded to, and have since been enjoying the property left by their father, with the exception of that in the possession of the defendants who have been enjoying the same under alienations made by their

(a) Present: Morgan, C. J. Holloway, Innes and Kindersley, JJ.

father; and that the said alienations being valid only to the extent of his own share, they have brought this suit to cancel the alienations to the extent of their shares and to recover their two-thirds of the family property.

The 1st defendant pleaded, among other pleas, that the suit should be dismissed for multifariousness, and an issue was framed as to whether the suit was sustainable in law. The following is taken from the judgment of the Court of First Instance :—

"I think the suit unsustainable because different causes of actions have been joined against several defendants. Although the suit is designated by the plaintiffs as one for partition, it is not in fact one for partition, as its real object is to cancel alienations made by their father and recover the property from strangers. None of the members of the plaintiff's family are included as defendants or are alleged to enjoy any of the family property. Plaintiffs admit that their father having died, they have since been enjoying whatever property their father left behind. None of the defendants have ever denied the plaintiffs' right to succeed their father, or recover their share of the property, should the alienations be held invalid. They have, on the contrary, indirectly and tacitly admitted the plaintiffs' right of succession, so that different causes of action have been joined in this suit against different parties where each of these parties has a distinct and separate interest. The suit may be sustainable if the defendants deny the plaintiffs' right to recover the share claimed by them. But the present suit is clearly brought against several defendants for causes of actions which have accrued against each of them separately and in respect of which they are not jointly concerned, which is illegal. See note to Section 8 of the Code of Civil Procedure by Broughton."

The plaintiffs appealed, and the District Judge confirmed the decision of the Principal Sadr Amin. Plaintiffs then preferred a Special Appeal.

A. Rámachandrayar, for the special appellants, the plaintiffs.

1874. January 22. S. A. Nos. 324 & 634 of 1873.

Ráma Rau, for the 9th and 10th special respondents, the 10th and 11th defendants.

Special Appeal No. 634 *of* 1873.

CUTTI OODAIYAN.............. *Special Appellant.*

CANAGAPPA OODAIYAN and 21 others..................... *Special Respondents.*

THIS was a Special Appeal against the decision of G. Muttuswamy Chettiar, Subordinate Judge of North Tanjore, in Regular Appeals Nos. 258, 259, 260 and 273 of 1872, reversing the decree of the Court of the District Munsif of Tranquebar in Original Suit No. 82 of 1871.

The suit was brought on similar grounds to the former one (*S. A. No.* 324 of 1873) to set aside alleged illegal alienations of family property made to different persons. The Munsif went fully into the merits of the case and decreed, as to most of the property claimed, in favour of the plaintiff. The Subordinate Judge, however, dismissed the suit on the ground of multifariousness. The plaintiff appealed specially.

Gurumurti Aiyar, for the special appellant, the plaintiff.

Ananda Charlu, for the 2nd, 3rd, 5th to 15th and 17th to 22nd special respondents, 2nd, 3rd, 5th to 15th and 17th to 22nd defendants.

In these cases the High Court delivered the following JUDGMENTS :—

In S. A. No. 324 *of* 1873.—This is a suit for a share of family property and is brought against alienees of one member deceased. It has been dismissed by the two Courts below on the ground of multifariousness.

We are unanimous in thinking that these decrees should be reversed and the suit remitted for decision on the merits.

The question mainly at issue will probably be whether the alienations were made with the assent of the other members, or for such family necessity as would suffice to supply the absence of that assent.

1874. *January* 22.

S. A. Nos. 324, & 634 *of* 1873.

It is manifest that the number and nature of the alienations are no unimportant elements for the determination of their propriety. It is most desirable that the whole of them should be at once before the Court called upon to decide the question in order to secure the soundness of the particular decision and perhaps the avoidance of discordant decisions in different cases upon facts nearly the same.

In our opinion a discretion as to procedure has here been exercised in a manner not to the advantage of substantial justice.

The costs hitherto incurred in all the Courts will be provided for in the Subordinate Judge's revised decree.

In S. A. No. 634 *of* 1873.—In the case from North Tanjore there is less difficulty in reversing the decree; for the Subordinate Judge has, in a similar case, dismissed the suit upon appeal after a full decision upon the merits in the Original Court.

The decree of the Lower Appellate Court will be reversed and the appeals remanded for investigation on the merits. The costs in this and the Lower Appellate Court will be provided for in the revised decree.

Special Appeals allowed.

Appellate Jurisdiction. (a)

Referred Case No. 24 *of* 1873.

EATHAMUKALA SUBBAMMAH................*Plaintiff.*

RAGIAH.......................................*Defendant.*

Suit brought on 24th April 1873 for principal and interest due on a bond dated 30th October 1850. The debt was payable by 8 annual instalments on failure of any one of which the whole amount was to be payable on demand. No instalment was paid and when the suit was brought defendant pleaded that the suit was barred as three years had elapsed from the date on which the last instalment became due.

Held, that the usual clause, that on failure to pay one instalment the whole amount shall be payable on demand, gave a mere election to plaintiff of converting the obligation into a different one. That that election was never exercised, and that the document continued one securing the payment of a debt by instalments as to all of which the action had long been barred. That it was unnecessary. therefore, to consider whether, in the present case, "on demand" must not be construed according to its meaning at the period at which the words were written.

(a) Present: Holloway, Ag. C. J. and Innes, J.