

1874.
January 15.
A. No. 26
of 1873.

For these reasons I agree that the order appealed from should be reversed.

Under the Charter, the Court might frame rules for the Execution of Process and possibly might order that no process should be executed on Sunday, but no such order has been made.

Order reversed.

Appellate Jurisdiction. (a)

Referred Case No. 37 of 1873.

MOLAKATALLA NAGANNA.....*Plaintiff.*

PEDDA NARAPPA.....*Defendant.*

Where a suit was brought in June 1873 for a balance due on a bond dated 29th January 1868, payable on demand, the plaintiff alleging a demand for the balance in February 1873, less than 3 years before suit brought.—*Held*, that, as the writing was made in 1868, and, by the law then in operation, payment could not be enforced by suit after three years from that time, the new law in such a case conferred 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.

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

THIS was a case referred for the opinion of the High Court, under Section 22, Act XI of 1865, by P. Subba Rau, District Munsif of Gooty, in Suit No. 164 of 1873.

The suit was brought for the recovery of Rs. 49, being balance, after deducting part payments, due on a bond dated 29th January 1868, payable on demand, executed by the defendant in plaintiff's favor for Rs. 100, the plaintiff alleging that a demand for payment of the balance was made in February 1873. Though three years had elapsed since the execution of the bond it was urged that a demand had been made within three years preceding the presentation of the plaint. The suit was instituted on the 7th June 1873 and the case came on for hearing (ex parte) on the 3rd July 1873, when judgment was reserved subject to the decision of the High Court upon the following case:—“Section 4 of the new Limitation Act IX of 1871 provides that every suit instituted after the period of limitation prescribed therefor by the second schedule thereto annexed, shall be dismissed, although limitation has not been set up as a defence. Under clause (a) to Section 1, the Act applies to suits instituted

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

after the 1st April 1873. No. 58 of the second schedule provides a period of three years from the date of demand for agreements for money payable on demand. In the present suit, the part payments alleged by plaintiff have not been endorsed on the bond by the defendant or his agent as required by Section 21 of the Act. The plaintiff's witnesses depose that five months previously the plaintiff asked the defendant for the balance due, and that the defendant promised to pay if the plaintiff waited for two months more. Three years had elapsed when the alleged demand was made. The law in force at the time of the execution of the bond limited the period within which a suit could be brought upon it to three years from its date. Although Act IX of 1871 does not appear to be applicable to bonds executed before it came into operation, and applies only to suits instituted after it came into operation, I am of opinion that a suit on a bond payable on demand cannot be admitted, unless there was a demand made within the time limited by the law in force at the date of execution of such bond, and unless the suit is commenced within the time prescribed by Act IX of 1871, computed from the date of such demand. The questions submitted for decision by the High Court are:—

I.—Under the above circumstances can this suit be proceeded with to judgment?

II.—Is a suit on a bond admissible, whatever the bond's age may be, if such bond provides for payment on demand, and a demand within three years preceding the institution of the suit be alleged and proved?

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—The writing is for the payment of 100 Rupees, of which a portion (51 Rupees) has been paid and the balance (49 Rupees) is now sued for. The nature of the suit assumes that the whole debt had accrued due at some former time and had been in part paid before the demand for this balance. If the new law is applicable, and the time of limitation is to be computed from the time of demand, it is immaterial when the *balance* was demanded. It must be

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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.