

I conclude, therefore, in the words of Lord Cottenham, ^{1873.}
 “There is indeed the want of every circumstance which in ^{March 7.}
 other cases has been thought necessary to give a purchase S. A. No. 310
 the character of a mortgage, and no proof of any intention of 1872.
 having existed that it should be so considered.”

Our decision is quite consistent with I, Madras H. C. Rep., 460, and cases in the note, including that in 5, Moo. P. C., 72.

Holding these views, I agree with Mr. Justice Innes that plaintiff's claim is barred, 12 years from the cause of action (1843 at latest) having elapsed before suit. But, as the question of limitation was only raised in Special Appeal, and as defendants have failed in the main facts, I would direct that both parties should bear their own costs throughout.

Appellate Jurisdiction(a)

Referred Case No. 11 of 1873.

A Small Causes Court is precluded, by the provisions of Section 21 of the Small Causes Courts' Act, from entertaining a review of its own judgment under Section 376 of Act VIII of 1859.

THIS was a case referred for the opinion of the High ^{1873.}
 Court by V. Sundararamáyya, the District Munsiff of ^{March 10.}
 Sholinghur, in Suit No. 642 of 1872. R. C. No. 11
of 1872.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—The District Munsif refers for the decision of the High Court the question “Whether a Small Cause Court can entertain under Section 376 of Act VIII of 1859, a review of its own judgment?”

Section 46 makes the Civil Procedure Code applicable whenever there is nothing which has gone before Section 46 which bars the applicability. Section 21, making all orders and decisions final, save on the special grounds mentioned in it, is a bar to importing, from the Civil Procedure Code, another process perturbing the finality.

(a) present: Holloway and Kindersley, JJ.