sif is a very just and reasonable one, and is always recognized in England (see Taylor on Evidence, pp. 121, 120; Roscoe on Evidence, p. 610, and cases there cited). It is founded upon the supposition, that when a road has been for many years the boundary between two properties, and there is no evidence, that the owner of either property gave up the whole of the land necessary for it, it must be presumed that each party was content to sacrifice one-half of the site for the convenience and benefit of the public.

We think, therefore, that the judgment of the Munsif was right, and must be affirmed, to the extent of the area which the plaintiffs claimed in their plaint. He had obviously no right to award the plaintiffs a larger area than they claimed.

The decree must be confined to a piece of land—25 cubits in length, 9 cubits in breadth, and about 1 cowrie in area—forming a portion of the parcel called Banakur described in the plaint, and lying within the boundaries which are specified in the schedule.

The judgment of both Appellate Courts will be reversed, and the plaintiffs will have their costs in those Courts, as well as of this appeal.

Appeal allowed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

FAKHAROODDEEN MAHOMED AHSAN (PLAINTIFF) *v.* POGOSE AND OTHERS (DEFENDANTS).*

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May 27.

Limitation Act, IX of 1871, *sched. ii, art.* 93, *Construction of—Suit to have Deed declared a forgery.*

A suit to declare the forgery of an instrument issued or registered or attempted to be enforced is required by art. 93 of sched. ii of Act IX of 1871 to be brought within three years of the date of the issue, registration, or attempted enforcement of the document, whichever may first happen; and if a document has once been used or attempted to be used, a party having

* Regular Appeal, No. 179 of 1877, against the decree of J. Geddes, Esq., Officiating Judge of Zilla Furreedpore, dated the 28th of March 1877.

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notice of such use or attempted use cannot, after the expiration of three years from such use or attempted use, bring a suit to have it declared a forgery by reason of any further attempt to make use of it.

DURING the pendency of an appeal to the High Court in a suit in which one Najamunnissa was plaintiff and the present plaintiff was defendant, and which had been dismissed by the lower Court, Najamunnissa conveyed to the present defendant, by a deed dated 17th July 1864, a six-anna, of her sixteen annas, share in two properties, which was the subject-matter of the suit. Najamunnissa obtained a decree in the High Court and died shortly afterwards. The present plaintiff having applied for leave to appeal to the Privy Council, the present defendant, some time in 1865, applied, on the basis of the deed of conveyance by Najamunnissa conveying to him a six-anna share in the said property, to have his name put upon the record as one of the respondents. This application was opposed by the present plaintiff, on the ground that the deed relied upon by the present defendant was a forgery. The Court, however, eventually put the present defendant's name on the record, on the ground that doing so would not prejudice the present plaintiff, without deciding whether or not the deed was a forgery. The decree of the High Court having been confirmed on appeal by the Privy Council in December 1873, the present defendant applied to execute it to the extent of the share conveyed to him by the deed of 1864. On this the present plaintiff filed a claim alleging the deed of 17th July 1864 to be a forgery. This claim having been dismissed on the ground that the matter could not be summarily adjudicated, the present plaintiff filed a suit to have it declared, among other things, that the deed of 17th July 1864 was a forgery. It was held by the lower Court that the suit was barred by limitation. From this order the plaintiff appealed to the High Court.

Mr. *Branson* appeared for the appellant.

The *Advocate-General* (Hon'ble *G. C. Paul*) and Mr. *Evans* for the respondent.

Mr. *Branson* for the appellant contended, that, under art. 93 of sched. ii, Act IX of 1871, the plaintiff had a right to bring his action within three years either of the issue of the instrument impugned by him, or of its registration, or of its attempted enforcement; and that having brought his suit within three years of the defendant's attempt to enforce his rights under the deed by applying for execution of the decree to the extent of the share to which he was entitled under the deed, he was not now barred by limitation.

Mr. *Evans* submitted, that the defendant had issued and attempted to enforce the deed when he first applied in 1865 to have his name placed as a respondent on the record of the case in which the plaintiff was the appellant, and that more than three years having elapsed from that time, the defendant now taking further steps to enforce his rights under the same deed, could not confer upon the plaintiff a right to litigate a question already barred by limitation.

Mr. *Branson* in reply.

The judgment of the Court was delivered by

JACKSON, J. (TOTTENHAM, J., concurring).—As we have no doubt whatever as to what ought to be the result of this appeal, and as there are other cases depending upon it, we may as well announce what our decision is. We may, if necessary, hereafter state at greater length the reasons which have led to that decision. This suit was dismissed in the Court below upon two preliminary grounds,—the first being that the question was in reality *res judicata*, and the second being the ground of limitation. As to the first point Mr. Branson has satisfied us that the decision of the Court below was wrong. It is not necessary at present that we should do more than cite the case of *Abedoonissa Khatoon* v. *Ameeroonissa Khatoon* (1), a decision of the late Chief Justice of this Court, in which we entirely concur, and which decision has since been affirmed by the Judicial Committee of the Privy Council (2). It is clear to us that the actual adjudication of this matter would have to be made

(1) 20 W. R., 305. (2) L. R., 4 I. A., 66; S. C., I. L. R., 2 Calc., 327.

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in a regular suit brought for that purpose, and not by any order made in execution of decree. In fact, this matter was so clear that Mr. Evans has not thought necessary to argue this question.

The other ground on which the judgment of the Court below has proceeded is that of limitation. Mr. Branson's argument has proceeded entirely upon what he maintains to be the proper construction of art. 93 of the second schedule of Act IX of 1871. This, to take the view most favorable to the plaintiff, is a suit "to declare the forgery of an instrument issued or registered or attempted to be enforced." Certainly, no other article of the schedule can be found which would be more favourable for the purposes of the suit. The time when the period begins to run in such suits is "the date of the issue, registration, or attempt." I should be disposed to hold that these dates were applicable respectively to the circumstances in which the instrument has been published,—that is to say, where it has been issued, the time begins to run from the date of the issue; where it has been registered, the time runs from the date of registration, and so on. But it is clear that the suit at any rate would be barred at the expiration of three years from some one or other of the acts described in the third column,—that is to say, the issue, registration, or attempt. The acts or matters specified in the third column of that schedule are acts which, according to the intention of the legislature, put the plaintiff upon the assertion of his rights; and in the case of an instrument which is said to be forged, and which prejudices the plaintiff, the legislature apparently thought that he ought to commence the suit as he has notice of the instrument by the issue, registration, or attempt to enforce it. If we say that the plaintiff is entitled to have his time run from the latest of those three acts, then it is contended that, in the present suit, he is in time. Mr. Pogose, on obtaining from Najamunnissa a hibanama which the plaintiff seeks to have set aside, applied, during the pendency of Azim Chowdry's appeal, to be put on the record as a respondent. That application was made some time in 1865, and the order upon that is dated January 1866. Now Mr. Branson contends that that was not an enforcement of or an

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attempt to enforce that instrument. It seems to me it clearly was such an attempt to enforce the instrument as under art. 93 obliged plaintiff to bring his suit within three years of such attempt. It is not necessary for the purposes of that article that the person who is to profit by that instrument should seek to obtain the entire fruits of it. It is quite enough in my opinion if, having obtained the instrument, he seeks to place himself in an advantageous position which but for the instrument he could not occupy. It clearly was the first advantage that Mr. Pogose could take by the enforcement of that instrument to have himself placed on the record of the appeal, in order to be benefited by the final decision if the appeal were dismissed. I think, therefore, that when he made that application, he attempted to enforce that instrument, and that the suit ought to have been brought within three years from the date of such attempt. On this ground I think that this appeal ought to be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

CHAMPABATY (PLAINTIFF) *v.* BIBI JIBUN AND ANOTHER (DEFENDANTS).* 1878 *May* 30.

Stamp Duty—Penalty, Tender of—General Stamp Act (I of 1869), sched. ii, arts. 5, 11.

An Appellate Court has no authority to direct the reception of an unstamped document to which the provisions of s. 20 of the Stamp Act (XVIII of 1867) apply, unless the amount of stamp duty and prescribed penalty was tendered when the document was first offered in evidence and rejected.

THIS was a suit to recover Rs. 7,729-12-3, principal and interest, due on the basis of a chitta of deposit of money. The chitta was as follows:

* Regular Appeal, No. 36 of 1877, against the decree of Baboo Mothooranath Goopta Roy Bahadur, First Subordinate Judge of Zilla Bhagalpore, dated the 14th of November 1876.