

## [APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

1877.  
September 11.

CHATUR JAGSI (PLAINTIFF) v. TULSI (DEFENDANT).\*

*Limitation—Promise—Acknowledgment—Recovery of barred debt—Act XIV. of 1859, Section 4—Act IX. of 1871, Section 20—Act IX. of 1872, Section 25, Clause 3.*

Act IX. of 1871, section 20, cl. (a), does not prevent a plaintiff from maintaining a substantive action on a promissory note passed to secure the amount due on an old note which was barred by limitation at the time of the making of the new, the plaintiff's right to bring such action being recognized by the later enactment, Act IX. of 1872, section 25, clause 3.

*Raghoji v. Abdul Karim* (I. L. R. 1 Bom. 590) followed.

This case was referred for the opinion of the High Court by Chintáman Sakháram Chitnis, Judge of the Court of Small Causes at Kaira.

The plaintiff sued to recover the amount due on two bonds or promissory notes (recorded as exhibits Nos. 3 & 4) purporting to have been passed to the plaintiff by the deceased defendant Tulsi. The notes had been given to secure a debt due to the plaintiff by Tulsi on a previous note dated the 4th April 1871, and which, as it specified no period for repayment, became barred at the end of three years from that date. The new notes were simply acknowledgments, in writing, of the old debt signed by Tulsi, and were dated the 8th April 1874, *i. e.*, four days after the old debt had become barred by lapse of time. The question submitted for the opinion of the High Court was:—Whether section 25, clause 3, of Act IX. of 1872 modifies the provisions of section 20 of Act IX. of 1871 in such a way as to remove a promise to pay an old debt, drawn up with all the formality of a promissory note or common money bond, from the operation of the latter?

No counsel or pleader appeared on either side.

WESTROPP, C. J. :—The question raised in this case by the learned First Class Subordinate Judge has already been decided on the 20th of March 1877 in this Court by Melvill and Kembal, JJ., in *Raghoji v. Abdul Karim*.<sup>(1)</sup> A copy of the judgment in that case is herewith forwarded to the First Class Subordinate Judge. In

Small Cause Court Reference No. 73 of 1877.

(1) I. L. R. 1 Bom. 590.

addition to the cases mentioned in it, the observations of the Court in *Tilakchand Hindumal v. Jitamal Sudaram* <sup>(1)</sup> as to the reason for upholding a promise to pay a debt barred by the Law of Limitation, may be referred to.

Having come to the opinion that the plaintiff is not prevented by the Indian Limitation Act, 1871, section 20 (a), from maintaining a substantive action on the new notes (exhibits 3 and 4), his right to bring such an action being recognized by section 25, clause 3, of the Indian Contract Act, which is the later enactment, we must reverse the decree of the Subordinate Judge, and remand this cause for a new trial on the merits.

*Decree reversed.*

(1) 10 Bom. H. C. Rep. 206; see pp. 214, 215.

### [APPELLATE CIVIL.]

*Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice West.*

BA'PUJI APA'JI (ORIGINAL PLAINTIFF), APPELLANT *v.* SENA'VARA'JI  
MA'RVA'DI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\* November 29.

*Gahan lahan mortgage—Mortgage convertible into a sale—Redemption—Alienation of land—Sale.*

Where the grantor executed to the grantee a document reciting a mortgage by the former to the latter of certain lands for Rs. 125, on which Rs. 200 were then due from the grantor to the grantee, and containing an agreement that the grantee should pay Rs. 75 to another creditor of the grantor, and purporting, in consideration of Rs. 275 so made up, absolutely to sell and convey the mortgaged lands to the grantee, and the grantee executed to the grantor a document of the same date reciting the sale of the mortgaged lands by the grantor to the grantee for the consideration of Rs. 275, and covenanting that the grantee should repay to the grantor the lands, the subject of the grant, if the grantor should repay to the grantee the sum of Rs. 275 within a certain period, and providing that, in case of default in such payment within such period, the covenant for reconveyance should become null,

*Held* that the transaction was a sale and not a mortgage, and that, consequently, the grantor had no right to redeem the lands after the expiration of the period so fixed for the payment of Rs. 275 by the grantor to the grantee, there being no evidence or allegation that, at the date of the execution of the two documents, Rs.

\* Special Appeal No. 232 of 1877.

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CHATUR  
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*v.*  
TULSI.