

any fine imposed upon him, the proprietor may be compelled to pay it. It appears, therefore, that the proprietor is liable for the driver, and existence of that liability is only consistent with the relationship between them being that of master and servant.

We should not consider ourselves justified in departing from the English rulings on this subject, unless we could see that there was a substantial difference in the legislation of the two countries. It appears to us, however, that it is essentially the same, and that the present case is governed by the authority of *Powles v. Hider* (1).

Attorneys for plaintiffs.—Messrs. *Tobin and Roughten*.

Attorneys for defendant.—Messrs. *Payne and Gilbert*.

(1) 25 L. J. Q. B., 331.

(20)

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.
RAMAPA (ORIGINAL PLAINTIFF), APPELLANT, v. UMANNA (ORIGINAL
DEFENDANT), RESPONDENT.*

1882
December 11.

Evidence—Registration—Receipt by mortgagee—Act III of 1877, Sec. 17.

The defendant tendered in evidence a receipt for Rs. 250, to show that the interest of his co-mortgagee (the plaintiff) in the mortgage had been extinguished. The receipt was objected to on the ground that it had not been registered.

Held that the receipt being tendered to show that the interest of the plaintiff in the mortgage had been extinguished, required registration, was inadmissible without registration.

Shidlingapa v. Chenbasapa (1) distinguished.

THIS was an appeal from the decision of E. Hosking, Senior Assistant Judge of Belgaum at Kaladgi in Original Suit No. 3 of 1880.

The facts of the case are stated in the judgment of the High Court.

Manekshah Jehangirshah for the appellant.—The case is governed by *Mahadaji v. Vyankaji* (2) and *Basawa v. Kalkpa* (3) and not by *Shidlingapa v. Chenbasapa* (4).

* Second Appeal. No. 81 of 1881.

(1) I. L. R., 4 Bom., 235.

(3) I. L. R., 2 Bom., 489.

(2) I. L. R., 1 Bom., 197.

(4) I. L. R., 4 Bom., 235.

1883
THE BOMBAY
TRAMWAY
COMPANY,
LIMITED,
v.
KHAIKRAJ
TEJFALL.

1882

RAMAPA
v.
UMANNA.*Nanabhai Haridas* (Government Pleader) for the respondent.

SARGENT, C. J.—The plaintiff seeks to recover possession of the half of two survey Nos. 796 and 787 in Honvad village in the Bijapur Taluka and for Rs. 200 mesne profits. It is not disputed that the land, No. 796, was mortgaged in 1874 with possession to the plaintiff and defendant jointly to secure Rs. 500, with an agreement that if the mortgage was not paid off in five years the survey Nos. 796 and 787 should be entered in the *khata* of plaintiff and defendant jointly.

Defendant's case is that plaintiff was paid Rs. 250 by the mortgagor as his share of the mortgage money before the expiration of the five years, and that, on payment of Rs. 900 by him to mortgagor, the lands were entered in his name, the mortgagor giving up all interest in the land. A receipt by plaintiff for Rs. 250 on account of the mortgage debt was tendered in evidence by defendant, and objected to on the ground of its not being registered. The Assistant Judge admitted it on the authority of *Shidlingapa v. Chenbasapa* (1), but we think wrongly. In that case the question was between mortgagee and mortgagors, and the receipts were given in evidence by the latter merely to show the state of the mortgage account. Here the receipt is tendered by the defendant to show that the interest of his co-mortgagee, the plaintiff, in the mortgage had been extinguished, and the case is, therefore, similar to *Mahaduji v. Vyankaji* (2) and *Bosawa v. Kalkapa* (3). We agree, however, with the Assistant Judge that the oral evidence corroborated by the probabilities of the case is sufficient to establish the defendant's contention that Rs. 250 were paid to the plaintiff. The decree must, therefore, be confirmed with costs.

Decree confirmed.

(1) I. L. R., 4 Bom., 235.

(2) I. L. R., 1 Bom., 197.

(3) I. L. R., 2 Bom., 489.