

1883

HEMCHAND  
KUBER  
- v.  
VOHORA  
RAJI HAJI.

“ My opinion on the point hereby referred being in the negative, I have rejected the plaintiff's claim, contingent upon the decision of the High Court on the said point.”

No one appeared in the High Court.

The decision of the Court was given by

WEST, J.—The acknowledgment in this case would have satisfied the requirements of section 19 of Act XV of 1877 had it been written by Vohora Raji Haji himself. It contains his name as that of the person acknowledging the debt. As Vohora could not write, he got the acknowledgment, including his name, written by a third party. He thus made that third party his agent, and the Subordinate Judge being satisfied as to the facts, Vohora is bound by the acknowledgment.

We answer the reference accordingly.

### APPELLATE CIVIL.

1883  
August 16.

*Before Mr. Justice West and Mr. Justice Nanabhai Haridas.*  
BALKRISHNA PANDURANG, PLAINTIFF, v. GOVIND SHIVAJI,  
DEFENDANT.\*

*Limitation—Act XV of 1877, Sch. II, Art. 84—Suit by vakil—  
Termination of suit.*

The termination of the suit mentioned in article 84 of schedule II of the Limitation Act XV of 1877 means the date when judgment is given.

THIS was a reference by Rav Saheb Vaman Mahadev Bodas, Subordinate Judge of Yeola, under section 617 of the Code of Civil Procedure, for the orders of the High Court. He stated the case thus :—

“ In Suit No. 58 of 1877 of this Court's file, decided on 29th November, 1879, Shankar Shivaji, the defendant, was represented by the present plaintiff, who is a vakil practising in this Court. The claim in the suit was awarded, and Shankar was ordered to pay all costs. On an application made, the plaintiff got, in due time, copies of judgment and decree; but it was on 27th

\*Civil Reference, No. 27 of 1883.

January, 1880, that he gave them to Shankar. The amount now claimed is the unpaid balance of the money due to the plaintiff as vakil's fee and retainer, and the money expended by him for and on behalf of Shankar, with interest.

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“ The plaint is filed on 27th January, 1883 ; and the question is whether, under the circumstances stated above, the claim is barred by limitation, being made after three years of the date on which the Suit No. 58 was decided. Article 84, sch. II of the Limitation Act, 1877, which for a claim by a vakil for his costs of a suit gives the period of three years to be counted from the termination of the suit, governs the case. It is contended for the plaintiff that termination of a suit means, not its result or decision, but ordinarily final and entire satisfaction, by execution or otherwise, of the decree given ; and that, therefore, in the present case the period of limitation must be counted, not from 29th November, 1879, the date on which the Suit No. 58 was decided, but from 27th January, 1880, on which day copies of judgment and decree, which were obtained by the plaintiff more than a month before, were given by him to Shankar. If this contention is held to be sound, there will, it appears to me, be great confusion. Final satisfaction of a decree may not be had sometimes for twelve years or more, and a vakil will be entitled to make a claim for his costs of a suit decided twelve years ago. There can, perhaps, be no reason why he should not be so entitled, but no suit can be instituted before cause of action accrues, and the vakil will have no cause of action accrued to him till final and entire satisfaction of the decree. I think termination of a suit means its decision. A vakil may be bound, or entitled, to act for his client in a suit even after decree without a fresh *vakilpatra*, and the client in a such case may have a right to take the benefit of the vakil's services without any further charge ; but he, at the same time, can have no right to tell the vakil to wait for his fee and costs till final satisfaction of the decree. I think, therefore, that the present claim is barred by limitation. As, however, I entertain reasonable doubt on the point, I submit, of my own motion, the following question for the decision of the High Court :—

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"1. Whether termination of a suit means, within the meaning of article 84, sch. II of Act XV of 1877, its decision, or any and what fact or event after decision?"

*Yasheant Vasudev Athlye* for the plaintiff.

No one appeared for the defendant.

The decision of the Court was given by

WEST, J.—"The termination of a suit is when judgment is given in the Court in which the action is commenced"—*per* Blackburn, J., in *Harris v. Quine*(1). The time for limitation is to be counted, under article 84, sch. II of Act XV of 1877, from the termination of the suit. The pleader in this case instituted his suit more than three years after the termination thus defined of the one in which he had been retained by the defendant. His suit, therefore, was barred by limitation.

(1) L. R., 4 Q. B., at p. 658.

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Nanabhai Haridas.*

ANNAJI WAGHUJI PLAINTIFF, v. BA PUCHAND JETHIRAM,  
 DEFENDANT.\*

1883  
 August 16.

*Dehkhhan Agriculturists' Relief Act XVII of 1879, Sec. 3, Cl. (z)—Plaintiff—  
 Mortgagor—Assignee.*

The provision in section 3, cl. (z) of Act XVII of 1879 is not limited to an agriculturist who is himself the original mortgagor; so that where the plaintiff though an assignee, is an agriculturist, he is entitled to the benefit of sections 12, 13 and 14 of the Act.

THIS was a reference by Rav Saheb Shridhar B. Upasani, Subordinate Judge of Khatav, under section 617 of the Code of Civil Procedure. He stated the case thus:—

"The plaintiff in this case sues the defendant for redemption of the land in dispute. The land originally belonged to one Vithu bin Joti, and was mortgaged by him to the defendant. Subsequently the same was sold in execution of a decree against

\* Civil Reference, No. 19 of 1883.