APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

DHARMA' VITHAL AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* GOVIND SADVALKAR (ORIGINAL PLAINTIFF), RESPONDENT).* 1883 *November* 21.

Limitation—New period—Revival of barred suit—Plaint—Receipt—Decree—Acknowledgment—Agent—Vakil—Act XV. of 1877, *Section* 19—*Mortgage—Redemption.*

The plaintiff's ancestor mortgaged a piece of land to the defendants' ancestor in 1797, and placed him in possession as agreed upon. Three years afterwards both the mortgagor and the mortgagee went out of the country. The mortgagor returning first resumed possession of the land; the mortgagee returning afterwards filed a suit in 1826 to recover possession under the terms of the mortgage, and obtaining a decree in his favour possession was restored to him by the Civil Court in 1827. When taking delivery of the possession from the Court, the mortgagee passed to the officers of the Court a receipt in which the mortgagee acknowledged having received possession of the mortgaged land as directed by the decree. The plaintiff, the representative of the original mortgagor, on the 4th of December 1880, sued the defendant, the representative of the original mortgagee, to redeem the land.

Held that the suit was barred: the receipt incorporating the decree by reference did not operate as an acknowledgment of a mortgage subsisting in 1827, so as to give to the mortgagor a new period of limitation under section 19 of Act XV of 1877. This section intends a distinct acknowledgment of an existing liability or jural relation, not an acknowledgment without knowledge that the party is admitting anything.

A plaint signed by a Vakil before the Limitation Act IX of 1871 came into operation does not save limitation, as the earlier Limitation Acts do not give authority to an agent to sign an acknowledgment for his principal similar to that given by section 20 of that Act and section 19 of Act XV of 1877.

Acknowledgments which are insufficient to keep alive a cause of action because they were signed only by an agent, are equally insufficient to sustain a suit on the same cause of action under Act XV of 1877, as section 2 of the Act expressly bars the revival of a right to sue barred under the earlier Acts, although they might have been sufficient under Act IX of 1871.

THIS was an appeal from an order made by C. E. G. Crawford Assistant Judge at Ratnágiri, reversing the decree of Ráv Sáheb Parshrám Balál Joshi, Subordinate Judge of Vengurla.

Bápu Sadvalkar, ancestor of the plaintiff, in 1797 mortgaged a piece of land to Náráyan Sheth, ancestor of the defendants. By the terms of the mortgage deed the mortgagee was to remain in

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possession and enjoy the profits in lieu of interest. The mortgagee entered on and remained in possession for three years and then fled the country in consequence of political disturbances. The mortgagor also did the same, but returning sooner than the mortgagee took quiet possession of his land. The mortgagee returning soon afterwards had in 1826 to file a suit in the Civil Court to obtain possession as contemplated in the mortgage. In 1827, the mortgagee obtained a decree and obtained possession, passing to the Názir of the Court a receipt in which he acknowledged having received possession of the land as directed by the decree. In 1880, December 4th, the plaintiff sued the defendants to redeem the land mortgaged in 1797. The defendants contended that the suit was barred, more than sixty years having elapsed since the execution of the mortgage.

The Subordinate Judge held the suit to be barred; the Assistant Judge was of a different opinion. He was of opinion "that the receipt passed by the mortgagee, on restoration of possession, to the officer of the Court, constitutes an acknowledgment from the date of which a fresh period of limitation must be calculated under section 19 of the Limitation Act 1877. It refers to the decree, which decided that the defendants' ancestor, then plaintiff, was entitled to possession as mortgagee of the plaintiff's ancestor, then defendant, and the defendants' ancestor whose signature it bears must be held thereby to have acknowledged that it was as such mortgagee that he received possession". The Assistant Judge accordingly reversed the decree of the Subordinate Judge and remanded the suit for a determination on the merits. Against the order of remand the defendants appealed to the High Court.

Ghanashám Nilkanth Nádkarni for the appellants:—The question is whether more than 60 years having elapsed since the execution of the original mortgage, the bar of limitation is saved. The receipt by itself and as distinct from the decree is not an acknowledgment of the mortgage. As incorporating the decree it is not solely the act of the party. An acknowledgment that bars must be signed by the party. The decree is an act of the Court. Neither does the plaint of 1826 save the limitation as it was signed not by the mortgagee but by his Vakil, and according

to the law then obtaining it could not be a binding acknowledgment. The receipt and the decree could not be read as one document: *Luchmee Buksh Roy* v. *Runjeet Rám Pánday*.(1) A right to sue once extinguished cannot be revived: *Sitárám Vásudev* v. *Khanderáv Balkrishna*(2). The last clause of section 20 of Act XV of 1877 cannot avail, as the suit was barred before that Act was passed.

Pándurang Balibhadra for the respondent.—The receipt should be read with the decree and the recitals in the decree. Thus read it is an acknowledgment of the relationship of mortgagor and mortgagee. By itself the receipt might not be sufficient, but with the recitals in the decree to which it expressly refers it was sufficient to save the limitation under Act. XIV. of 1859 and is sufficient also under Act XV of 1877. Section 20 of this Act in the last clause provides that where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of the section. The mortgage in this case contains an agreement of this nature. Hence the right of redemption still exists: *Rámhit Rái* v. *Satgur Rai*(3); *Daia Chand* v. *Sarfráz*(4); *Valia Tamburatti* v. *Vira Ráyan*(5); *Ram Coomár Kur* v. *Jakur Ali*(6). But we rely especially on *Mohesh Lál* v. *Busunt Kumáree*(7), in which it was held that acknowledgments which under Act XIV of 1859 were insufficient to keep alive a cause of action, because they were signed only by an agent, were sufficient to sustain a suit on the same cause of action under Act IX of 1871. If they were sufficient under that Act they would be sufficient under Act XV of 1877. The fact that section 2 of the latter provides against the revival of a barred claim makes no difference, for the remedy might be barred without the extinguishment of the right. The plaint of 1826 signed by the mortgagee's Vakil is thus sufficient to save the limitation.

WEST J.—The mortgage in this case was made a few years before the beginning of the present century. In the absence,

(1) 13 Beng. L. R. 177. P. C.
(2) I. L. R. 1 Bom. 286.
(3) I. L. R. 3 All. 247.
(4) I. L. R. 1 All. 117.
(5) I. L. R. 1 Mad. 228.
(6) I. L. R. 8 Cal. 716.
(7) I. L. R. 6 Cal. 340.

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therefore, of anything further, the present suit for redemption, instituted 4th December 1880, would be barred. But in the early part of this century both mortgagor and mortgagee were forced to fly by political disturbances. The mortgagor, or his representative, returned first and resumed possession of the land mortgaged. Afterwards the mortgagee too came back and reclaimed possession under his mortgage. This was refused: but he recovered it in 1827 by a decree made on a suit instituted in 1826. The receipt given for the delivery of the land to the Officer of the Court (Nazir) is in evidence. It refers to the suit and decree, and as the decree sets forth the then plaintiff's claim as resting on a mortgage, the Assistant Judge has held that the decree is incorporated by reference, so that the receipt serves as an acknowledgment of a mortgage subsisting in 1827, which would give the mortgagor until 1887, within which to sue for redemption. We do not think this is a correct interpretation of Section 19 of Act XV. of 1877. That section intends a distinct acknowledgment of an existing liability to serve as a recreation of it at the time of such acknowledgment; but there cannot really be an acknowledgment without knowledge that the party is admitting something. Now, all that the receipt admits by implication is that the land had been awarded to him who passed it by the decree. To extend it, so as to make it an admission of the reasonings and legal grounds stated in the decree, would be to go beyond what probably was present at all to the consciousness of the recipient when he acknowledged having been put into possession. The intention of the law is manifestly to make an admission in writing of an existing jural relation of the kind specified equivalent for the purposes of limitation to a new contract: but for this purpose, the consciousness and intention must be as clear as they would be in a contract itself, and no one would pretend that a contract to buy land awarded by a particular decree was an admission of the particulars of the judgment. The reference would be merely a means of defining the thing bargained for, and here the reference was merely a means of defining the thing delivered.

It is further contended, however, that at least the plaint in the suit of 1826 is an acknowledgment of a subsisting mortgage, and

one sufficient for the purpose of barring limitation. Now, the plaint was signed by the plaintiff's, *i. e.* the mortgagee's pleader, and he, being appointed for the purpose of setting forth the then plaintiff's, jural relation to the then defendant with a view to obtaining an enforcement of plaintiff's right, was, no doubt, an agent duly authorized to make an acknowledgment in that behalf so far as the same was relevant to the cause and within the scope reasonably viewed of his authority. By Section 19, Explanation 2 of Act XV. of 1877 (as by Section 20 of Act IX. of 1871) such an acknowledgment would serve equally with one signed by the client to bar limitation: but the signature by an agent not having been given this effect by the earlier Limitation Acts, it could not under them replace an acknowledgment signed by the principal, and matters stood just as if it had not been made.

It is obvious as a consequence that, when Act XV. of 1877 came into operation, the present claim had ceased to be enforceable, unless a provision similar to that at the end of Section 20 could by construction be imported into the earlier Acts. The suit was barred even before the Act IX. of 1871, and there is nothing, so far as has been shown to us, in the earlier Act XIV. of 1859, to make possession by a mortgagee equivalent to payments by a mortgagor in keeping a mortgage debt with its reciprocal incidents alive. If it was not alive in the sense of being a lien redeemable in 1871, the decisions of this Court are to the effect that it would not be revived by the Act of that year. Much less would it be revived by the later Act of 1877, which expressly provides against the revival of suits barred by the existing law before it came into force.

Mr. Pandurang in his able argument has referred us to a Calcutta case, in which it seems to have been held that acknowledgments signed by an agent, which had not been of any use under the earlier law in preventing a suit from becoming barred by limitation, might still answer that purpose when the suit was brought under the operation of Act XV. of 1877. This would, no doubt, have been so but for Section 2 of the last named Act. A limitation is applied at the moment when some step is to be taken along with its qualifications or the derogations from it as

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they subsist at the same moment. Hence in applying Section 4 of the Act along with Schedule II, Article 148, to a claim to redeem by a mortgagor, we must see whether a new point of time from which to compute for limitation has not been established by something having that effect under Section 19. But the provisions of the Act do not stop here. Supposing the claim would be revived by the operation of the clauses just referred to, still Section 2 may make it impossible to apply them. We have seen that before the Act came into operation, the suit in this case was barred, notwithstanding certain circumstances which, had it been in operation all along, would have kept the debt and its incidents alive. This is exactly such a case as is contemplated by Section 2. Nothing in the Act, it says, is to revive any right to sue barred under Act IX. of 1871 or any Act by it repealed. The present suit then being for any reason barred under the operation of the previous laws could not be revived by that of Act XV. of 1877 in giving a new effect to existing recoverable claims acknowledged by an agent. The personal right once gone was gone for ever, and, as said in *Brassington* v. *Llewellyn*[1], there could be no remitter to a right which had perished.

We must, therefore, reverse the order of the District Court (Assistant Judge), and restore the decree of the Subordinate Judge, with costs throughout on respondent.

Order reversed.

27 L. J. Ex., 297.