

not disentitle him to his right as a mortgagee—*Shridhar Narayan v. Atmaram Govind* (1). Govind bought only the right title, and interest of Atmaram, which consisted of equity of redemption only. The receiver could sell nothing more. The defendant purchased only what Govind had.

*Manekshah Jehangirshah*, for the respondent.—The whole property became vested in the receiver, and s. 356 of the Civil Procedure Code (Act XIV of 1882) gives full power to deal with the property as the Court directs. The respondent, therefore, bought the field free of the plaintiff's mortgage. The non-appearance of the plaintiff when cited was a waiver of his rights.

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### JUDGMENT.

SARGENT, C. J.—The language of ss. 354, 355 and 356 is far from being as clear as might be wished; but we think that the Assistant Judge was wrong in holding that the mortgaged property could be sold by the receiver without either the consent of the plaintiff, (the mortgagee) or paying him off. By s. 354 the equity of redemption, which was the only interest the insolvent had in the mortgaged premises, vested in the receiver, and s. 356, which directs the receiver to convert the property into money, must be read with s. 354 and as referring to the property vested in the receiver by that section. It is true that s. 356 contemplates the payment of the debts secured by mortgage out of the proceeds of the conversion of the insolvent's property in priority to the general creditors; but this must be taken in connection with the preceding section, and must be understood as referring to those cases in which the mortgaged premises have actually been sold after coming to an understanding with the mortgagee. The language of s. 31 of the Indian Insolvent Act (St. 11 and 12 Vic., cap. XXI) directing the official assignee to sell the property and effects of the insolvent, was so treated by the Supreme Court of Calcutta: see the remarks of Sir L. Peel in *Llewellyn v. O'Dowda* (2). Govind, therefore, only purchased the equity of redemption in the one field; and the defendant, who now stands in Govind's [276] shoes with notice of plaintiff's claim, although he may possibly be entitled to redeem the entire nine fields comprised in the mortgage, must deliver possession to the plaintiff, (the mortgagee), until that is done. We must, therefore, reverse the decree, and order that plaintiff be put into possession. Appellant to have his costs here and in the Courts below.

12 B. 276.

### APPELLATE CIVIL.

*Before Mr. Justice Nanabhai Haridas, Mr. Justice Birdwood,  
and Mr. Justice Jardine.*

In re THE APPLICATION OF SHESHAMMA.\* [20th December, 1887.]

*Stamp Act I of 1879, sch. II, 1 (b)—Construction.*

S. being desirous of obtaining copies of certain records in a suit in the Court of the Subordinate Judge of Sirsi appeared before the nazir and clerk of that Court, and made an affidavit to the effect that she was the heir and legal representative

\* Civil Reference, No. 39 of 1887.

(1) 7 B. 455.

(2) Taylor's Reports, 169.

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of one of the defendants in that suit, and needed the copies for the purpose of producing them in a suit filed against her in the Court at Karwar. The affidavit together with a duly stamped application was presented by her pleader to the District Judge, who, being of opinion that the affidavit should be on a stamped paper, referred the case to the High Court.

*Held*, that the affidavit was exempt from stamp duty, under sch. II, 1 (b) of the Stamp Act I of 1879.

[F., 30 B. 275=7 Bom. L. R. 697.]

THIS was a reference by E. H. Moscardi, Acting District Judge of Kanara, under s. 49 of Act I of 1879. The case was stated as follows:—

“One Sheshamma kom Manjappa, inhabitant of Sirsi, being desirous of obtaining copies of certain records of suit No. 419 of 1872 of the Sirsi First Class Subordinate Judge’s Court, appeared before the nazir and clerk of the Subordinate Judge’s Court at Sirsi, and made affidavit to the effect that she was the daughter and legal representative of one of the defendants in that case, and that she urgently needed the said copies for presentation in a certain suit that had been filed against her. This affidavit together with a duly stamped application for the said copies was presented by her pleader to the District Judge of Kanara, who referred the following question for the High Court’s decision:

[277] “Does the affidavit in question require to be written on stamped paper?”

The District Judge’s opinion on the point was in the affirmative. There was no appearance for the applicant.

#### OPINION.

PER CURIAM.—The question depends on the construction of the words of Act I of 1879, sch. II, 1 (b) “for the immediate purpose of being used or filed in any Court, or before the officer of any Court.” The mere fact that it suited the convenience of the party making the affidavit to make it at Sirsi, instead of going for that purpose to the Court at Karwar, where she proposed to file it, does not, we think, take the instance out of the words or the intention which may reasonably be imputed to the Legislature.

“When a statute requires that something shall be done ‘forth with,’ or ‘immediately,’ or even ‘instantly,’ it would probably be understood as allowing a reasonable time for doing it”—Maxwell on Stat, p. 423., (2nd ed.). See *Toms v. Wilson* (1), *Massey v. Sladen* (2), and *Forsdike v. Stone* (3). The last case shows that the test is whether, under the circumstances, there was such unreasonable delay as would be inconsistent with what is meant by “immediate”. From examination of the dates we think we may infer that the purpose existed at the time the affidavit was made of filing it in the Court at Karwar, and that this purpose was carried out promptly. We are, therefore, of opinion that the affidavit is exempt.

(1) 32 L. J. Q. B. 33, 382.  
(3) L.R. 3 C. P. 607.

(2) L. R. 4 Ex. 13.