1890 JAN. 27. APPELLATE CIVIL. 14 B. 506.

Judge considered that defendant No. 2 acquired a title to the land free from all incumbrances, but that, in any case, the plaintiffs were estopped from setting up their title. We are unable to agree with the District Judge in these conclusions. The defendant No. 2 could only acquire the mortgagor's interest by the conveyance. Even if the mortgagor had been in actual possession, the registration of the mortgage would have been notice to the purchaser of the mortgagee's title. The District Judge, however, says: "The conveyance from defendant No. 1 was little more than a form," and that "if the latter had relinquished his occupancy by a separate *rajinama* and defendant No. 2 had subsequently taken it up by a separate *kabulayat*, the same results would have followed." This view of the rights of the parties is distinctly opposed to the ruling in *Ramchandra Maneshwar* v. *Bhimrav Ravji* (1) that the execution of a *rajinama* by the mortgagor in the third person's favour could only operate to pass the equity of redemption. As to the question of estoppel, the District Judge says that "the mortgagees allowed outsiders to believe they were no more interested in the land." But the mortgagees were under no obligation "to make any sign," one way or the other, in this matter, as it is not suggested that they stood by whilst the negotiation with the mortgagor was going on, and by so doing led the purchaser to suppose they were not interested in the land. They lived fifteen miles away from the lands in dispute, and it is not even shown that they knew anything about the sale to the defendant No. 2. Nor were the mortgagees under any obligation to move in the matter after the conveyance to defendant No. 2, provided they did not postpone doing so beyond the period prescribed by the Statute of Limitations.

We must, therefore, reverse the decree of the Court below, and the parties through their pleaders having after this decision agreed to a decree being passed in the terms of the Subordinate [511] Judge's decree omitting the order for plaintiff to recover Rs. 28-7-0 from defendant No. 2 and Rs. 70 from defendant No. 3, this Court directs that such decree be passed, with costs on respondents.

Decree reversed.

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14 B. 511.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood and Mr. Justice Telang.

DULABH VANMALI (*Plaintiff*) *v.* REHMAN JAMAL (*Defendant*).*

[19th February, 1890.]

Stamp Act I of 1879, s. 3, cl. 4 (b)—Construction—Khata *in the name of the debtor, but in the hand-writing of another.*

A *khata* in the name of a debtor acknowledging the receipt of the amount advanced, and bearing the signature of the writer of the *khata* as writer of it merely.

Held to be an acknowledgment only, and not a bond, within the meaning of s. 3, cl. 4 (*b*) of the Stamp Act I of 1879.

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* Civil Reference No. 22 of 1889.

(1) 1 B. 577.

1890. FEB. 19. APPELLATE CIVIL. 14 B. 511.

THIS was a reference by Rav Saheb Maneklal Narottamdas, Subordinate Judge of Dhandhuka and Gogha, under s. 49 of the Stamp Act (I of 1879).

The question referred was:—Whether the following *khata* was a bond within the meaning of cl. 4 (*b*) of s. 3 of the Stamp Act, I of 1879?

"The account of Shekh Rehman Jamal, the 10th day of *Bhadarva Vad* of *Samvat* 1942 (23rd September, 1886).

Cr.	Dr.
	The 10th day of *Bhadharva Vad* (23rd September, 1886). Received in cash Rs. 15, namely, fifteen in full. The said amount is received for getting the well cleansed. The hand-writing of Shah Girdhar Jetha. 'Dhani' (*i. e.*, debtor) Shekh Rehman [512] Jamal, by whom the abovementioned rupees fifteen are payable. The same is agreed to. His own hand-writing Rs. 15-0-0."

There was no appearance for the parties.

OPINION.

SARGENT, C. J.—We think the document is a mere acknowledgment of a debt of Rs. 15. There is nothing to lead to the supposition that the writer signed as an attesting witness.

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14 B. 512.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

CHHAGANRAM ASTIKRAM AND ANOTHER (*Original Plaintiffs*), *Appellants v.* BAI MOTIGAVRI AND OTHERS (*Original Defendants*), *Respondents.** [25th February, 1890.]

Limitation Act (XV of 1877), art. 120—Suit by a reversioner for a declaration of his title to property sold in execution of a decree against a Hindu widow—Cause of action.

D. died, leaving him surviving a widow and a daughter who was plaintiffs' mother. Defendant No. 2 obtained a decree against the widow, and in execution put up D.'s property to sale. Defendants 3, 4 and 5 purchased the property and took possession in 1869.

In 1883 the plaintiffs sued as D.'s reversionary heirs for a declaration that they were entitled to the property in dispute on the widow's death, alleging that the decree, in execution of which the property was sold, was a collusive and fraudulent decree, and that they were not bound by the sale in execution. They further alleged that the cause of action arose in 1879, when their mother died.

Held, that the suit was barred by limitation. The cause of action giving any reversioner the right to sue for a declaration was that given to the plaintiffs' mother in 1869, both by the sale and the dispossession, and it was not revived in favour of the plaintiffs on her death in 1879. All right to sue for a declaration was, therefore, barred in 1875 under art. 120 of sch. II of the Limitation Act (XV of 1877).

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* Second Appeal No. 741 of 1887.