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NA'RÁYANDÁS  
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v.  
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Act, permit the heirs of the plaintiff to come on the record before the agreement is duly filed should the plaintiff die in the meantime ?

(3) Whether the agreement, which is the subject of the reference, can be filed under the circumstances already mentioned, or whether it must be cancelled ?

The opinion of the Subordinate Judge on each of the above questions was in the negative.

There was no appearance for the parties.

SARGENT, C. J.:—We agree with the Subordinate Judge in his view with regard to the first and second questions referred by him. There is no provision in the Dekkhan Agriculturists' Relief Act empowering a conciliator to enter the name of the heir of a party, and Government have not apparently under section 49 (a) of the Act made any rules regulating the procedure before conciliators in this respect.

When, however, the Subordinate Judge was seized of the agreement there was a proceeding before him under the Act. He, therefore, under section 74 of the Act should have followed the provisions of the Civil Procedure Code in regard to placing on the record heirs of deceased parties, and there was no reason for him to return the agreement to the conciliator, assuming that he had the power to do so. It remains for him to take the legal steps to bring the heirs of the deceased plaintiff on the record; and it is thus unnecessary to answer the third question, which does not arise.

*Order accordingly.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

BA'LRISHNA PANDHÁRINATH (ORIGINAL PLAINTIFF), APPELLANT, v.  
BA'PU YESA'JI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Civil Procedure Code (Act XIV of 1882), Sec. 258—Amending Act (VII of 1888),  
Sec. 27—Changes of law relating to procedure—Retrospective effect—Practice.*

The change effected in the language of section 258 of the Civil Procedure Code (Act XIV of 1882) by section 27 of the Amending Act (VII of 1888), by which

\* Second Appeal, No. 529 of 1892.

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uncertified adjustments can now be recognized by other Courts than the Court executing the decree, applies to adjustments previous to the Amending Act.

Changes of law relating to procedure have retrospective effect.

SECOND appeal from the decision of T. Hart-Davies, Acting District Judge of Ahmednagar, confirming the decree of Ráo Saheb M. V. Kathavate, Subordinate Judge of Shevgaon.

The plaintiff sued for possession of certain land which he alleged he had purchased from defendants Nos. 1 and 2 and subsequently leased to them by a rent-note which they had passed to him.

Defendants Nos. 1 and 2 admitted the execution of the sale-deed and the rent-note passed by them to the plaintiff, but they contended that both these documents were void, having been passed under compulsion in adjustment of a decree on a mortgage for Rs. 282 which the plaintiff had obtained against them. They also relied on the point that the plaintiff had failed to certify the adjustment to the Court.

The Subordinate Judge dismissed the suit on the ground that the sale-deed and the rent-note were void for want of consideration, as the plaintiff had failed to certify them in accordance with section 258 of the Civil Procedure Code (Act XIV of 1882).

On appeal by the plaintiff the Judge confirmed the decree.

The following is an extract from his judgment :—

“In this case a conciliator's decision was passed, and it was filed in the civil Court, so it becomes a ‘decree’ to all intents and purposes. In satisfaction of this decree the defendants passed a sale-deed to plaintiff and a rent-note on the sale-deed, but this satisfaction was not certified through the Court as required by section 258 of the Civil Procedure Code. So they are void, and the lower Court held that they could not be sued on. But under the Amending Act (VII of 1888), section 27, it is clear that such payments or adjustments may be recognized by Courts *except when executing the decree*, so that under the present state of the law section 258 does not bar such agreements from forming the basis of a suit. But no doubt before Act VII of 1888 was passed such actions would be barred, and in this case the adjustments were made in 1883, and if they were void then, it is doubtful whether section 258 as amended by Act VII of 1888 has retrospective effect, and renders such adjustments capable of forming the basis of a suit in 1888. It is true that in I. L. R., 15 Bom., p. 420, the bond in that case, where the matter is discussed, was dated 1886, but the decision was on the general question raised, and not on the particular case submitted by the Subordinate Judge, and this point was not taken or apparently brought to the notice of their Lordships. I am inclined to think that the amendment cannot have retrospective effect, and

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that as the adjustments were made at a time when they were void for the purpose of forming the basis of a suit, subsequent legislation does not alter their character, and that they are still incapable of being used for this purpose."

The plaintiff preferred a second appeal.

*Mahádeo Váman Bhat* for the appellant (plaintiff):—Rules of procedure have a retrospective effect, and, therefore, the Amending Act VII of 1888 is applicable to the present case. It was not necessary to certify the adjustment to the Court—*Swamiráo v. Káshináth*<sup>(1)</sup>; *Bank of Bengal v. Vyabhoy Gángji*<sup>(2)</sup>.

*Báláji Abáji Bhagavat* for the respondents (defendants):—The consideration for the sale-deed being a decretal debt, and the parties having adjusted the debt out of Court, we submit that the sanction of the Court was necessary to the adjustment. The adjustment not being certified to the Court, it became void, and an adjustment which was void when it was made cannot become valid by a subsequent change in the Code of Civil Procedure.

SARGENT, C. J.:—The necessity for an adjustment of a decree being certified to the Court and the consequence of its not being so certified were declared by section 258 of the Code of Civil Procedure (Act XIV of 1882). The effect of that section was only to make an adjustment not cognizable by the Court unless certified. The section, therefore, only affected the practice of the Court, and there seems to be no reason for not applying the ordinary rule that changes in matters of procedure are retrospective. The change effected in the language of section 258 by section 27, Act VII of 1888, by which uncertified adjustments can now be recognized by other Courts than the Court executing the decree, must, therefore, be held to apply to adjustments previous to the Act. This seems to have been assumed in *Swamiráo v. Káshináth*<sup>(1)</sup>.

We must, therefore, reverse the decree and send back the case for a decision on the merits. Costs to abide the result.

*Decree reversed and case sent back.*

(1) I. L. R., 15 Bom., 419.

(2) I. L. R., 16 Bom., 618.