

1894.

SAKHA'RA'M  
MULSHET  
MHA'DIK  
v.  
VISHRA'M.

having been brought more than three years after the date of alleged purchase is barred by law of limitation."

The plaintiff preferred a second appeal.

*Naráyan Ganesh Chandavarkar* for the appellant (plaintiff) :—  
The Judge has treated the tree as moveable property. The tree is standing and is attached to the soil. The sale-deed itself describes the tree as standing in the Kumbhár Váda of the village. It is, therefore, immóveable property, and the suit is consequently governed by twelve years' limitation and is not time-barred.

*Dáji Abáji Khare* for the respondents (defendants).

SARGENT, C. J.:—We cannot agree with the District Judge that "suing for possession of a tree sold under Exhibit 45 is to sue for moveable property." The intention of the parties is to be gathered from the document, which is in the clearest terms a sale of the jack tree standing in the Kumbhár Váda. The tree so standing is immoveable property, whatever the plaintiff's intention might be as to cutting it down and so converting it into moveable property.

The suit is, therefore, not barred, and we must 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.*

## APPELLATE CIVIL.

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

1894.  
February 13.

PA'RVATISHANKAR (ORIGINAL PETITIONER), APPELLANT, v. ISHVARDA'S JAGJIVANDAS' AND RAGHUNA'THJI NICHHABHAI, OFFICIAL LIQUIDATORS OF THE BAILA SPINNING AND WEAVING COMPANY, LIMITED (ORIGINAL OPPONENTS), RESPONDENTS.\*

*Company—Indian Companies' Act (VI of 1882), Sec. 169—"Rehearing," meaning of—Application to set aside an ex parte order.*

Section 169 of the Indian Companies' Act (VI of 1882) does not apply to an application to set aside an *ex parte* order.

The term "rehearing" in section 169 of the Act means a rehearing in the nature of an appeal.

\*Appeal, No. 150 of 1893.

THIS was an appeal from the decision of J. B. Alcock, District Judge of Surat, in miscellaneous application No. 46 of 1893.

The appellant Párvatishankar Durgâshankár was a share-holder of the Baila Spinning, Weaving, and Manufacturing Company, Limited.

The company was wound-up under the orders of the Court. In the course of the winding-up proceedings the District Court of Surat passed an *ex parte* order on 29th September, 1893, directing Párvatishankar to be placed on the list of contributors of the company.

On the 5th October, 1893, Párvatishankar applied to the Court to set aside the *ex parte* order passed against him.

Notice of this application was served on the official liquidators of the company on 4th November, 1893.

The District Court rejected this application on the ground that the liquidators were not served with notice of the application within three weeks of the order complained of, as required by section 169 of the Indian Companies' Act (VI of 1882).

Against this order Párvatishankar appealed to the High Court.

*Govardhanráam M. Tripathi* for the appellant.

*Ganpat Sadáshiv Ráo* for the respondents (official liquidators).

SARGENT, C. J.—The language of sections 141 and 169 of the Indian Companies' Acts of 1866 and 1882 is apparently taken from section 124 of the English Act of 1862. In *Ex parte Besley*<sup>(1)</sup> it was held that by "rehearings" in section 33 of the Companies' Act 12 and 13 Vic., c. 108, were meant rehearings in the nature of appeals, and such is said by Mr. Buckley on the Companies' Acts to be its meaning in the Act of 1862. In this country it may be said that the use of the term "rehearing" in the sense of an appeal is not known to the procedure of the Civil Courts, which recognises only a "rehearing" after an order for review has been made. However, bearing in mind the hardship which the section might work in this country where notices are served by the Court, as pointed out by Sir Richard Garth, C. J., in *In the matter of the Sarawak and Hindustan*

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(1) 3 Mac. and G., 287 at p. 298.

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*Banking and Trading Company Limited—Lallah Barroomul v. The Official Liquidator*<sup>(1)</sup>, we are not disposed to apply the section beyond what the language clearly requires; and, therefore, without deciding whether it would apply to an application for review, we do not think it was intended to apply to an application to set aside an *ex parte* order, which is not, strictly speaking, an application for a rehearing, although it may result in it. Moreover, the defendant is ordinarily in ignorance of the order having been made against him, and may remain so until it was attempted to be enforced against him.

In this view of section 169 of the Act we must reverse the order of the Court below and send back the case for a decision on the merits. Costs to abide the result.

*Order reversed.*

(1) I. L. R., 4 Calc., 706.

## APPELLATE CIVIL.

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

1894;  
February 15.

DWA'RKA'DÁS PARSHOTAMDÁS, DECREE-HOLDER, v. ISÁBHÁI DÁUD-KHA'N, SURETY, AND ABDUL TYAB DÁUDKHA'N, JUDGMENT-DEBTOR.\*

*Civil Procedure Code (Act XIV of 1882), Sec. 336—Judgment-debtor—Surety—Judgment-debtor's application to be declared an insolvent—Release of the surety.*

A person standing surety for a judgment-debtor under section 336 of the Civil Procedure Code (Act XIV of 1882) is released from his obligation when the judgment-debtor has applied to be declared an insolvent.

REFERENCE by Khán Bahádur Barzorji Edalji Modi, Judge of the Court of Small Causes at Surat, under section 617 of the Civil Procedure Code (Act XIV of 1882).

One Dwárkádás Parshotamdás obtained a decree in the Court of Small Causes at Surat against his debtor Abdul Tyab Daudkhán, and applied for execution by the arrest and imprisonment of the judgment-debtor. A warrant was issued, and the judgment-debtor was arrested and brought before the Court on the 25th August, 1893. He, thereupon, expressed his intention to apply, under Chapter XX of the Civil Procedure Code (Act XIV

\* Civil Reference, No. 2 of 1894.