Arrears due in respect of separate kists are distinct debts.

In the result the appeal fails upon both the points urged and must be dismissed with costs.

A. S. M. A. *Appeal dismissed.*

APPELLATE CIVIL.

Before Cuming and Page JJ.

DEWAN ABDUL ALIM

v.

ABDUL HAKAM.*

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April 26

Limitation—Limitation Act (IX of 1908), Art. 182 (2), construction of—Civil Procedure Code (Act V of 1908), s. 2 (2), meaning of.

Upon the true construction of the terms of Art. 182 (2) of the Limitation Act, the limitation runs from the date of the final decree of the Appellate Court where there has been an appeal, irrespective of the question whether the appeal relates to the whole decree or not.

Gopal Chunder Manna v. *Gosain Das Kalay* (1) followed, and other cases referred to.

Hur Proshaud v. *Enayet Hossein* (2), *Raghunath* v. *Abdul Hye* (3), *Christiana Sens* v. *Benarashi Proshad* (4) and *Kartick Chandra* v. *Nilmani Mondal* (5) dissented from.

MISCELLANEOUS APPEAL by Dewan Abdul Alim, the decree-holder plaintiff.

The plaintiff instituted a suit against the defendants for the recovery of certain properties in schedules I, II, III, and IV of the plaint. His suit in respect of

*Appeal from Original Order, No. 116 of 1924, against the order of Aswini Kumar Das Gupta, Subordinate Judge of Mymensingh, dated May 17, 1923.

(1) (1898) I. L. R. 25 Calc. 594.
(2) (1878) 2 C. L. R. 471.
(3) (1886) I. L. R. 14 Calc 26.
(4) (1914) 19 C. W. N. 287.
(5) (1916) 20 C. W. N. 686.

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properties in schedules I, II, and III, was dismissed, but he obtained a decree in respect of the properties in schedule IV on the 31st March 1908. He preferred an appeal to the High Court, and thence to the Privy Council, which was dismissed on the 22nd January 1920. The plaintiff then applied for execution on the 8th December 1922, by attaching the properties in schedule IV. The defendants objected that the decree could not be executed as it was time-barred. The executing Court held that it was not time-barred. The defendants judgment-debtors appealed to the High Court against the decision of the executing Court.

Babu Girija Prasanna Roy Chowdhury, for the appellant, contended that as there was no appeal against the decree relating to the properties in schedule IV and as the decree was passed on the 31st March 1908, the application for execution having been made on the 8th December 1922 was barred by limitation under Art. 182 (*2*) of the Limitation Act. The decree may be split up into several parts for purposes of appeal.

Babu Ramendra Chandra Roy, for the respondents, contended that a decree cannot be split up into different parts, and when a decree is appealed against, it makes no difference whether it is the whole or only part of the decree that is challenged, for in either case time runs from the date of the final decree.

CUMING J. This appeal which is by the judgment-debtor arises out of certain execution proceedings. The facts are these. The plaintiff brought a suit for the recovery of certain properties which were described in four Schedules.

He obtained a decree on the 31st March 1908 so far as regards the properties in Schedule IV. His claim for

the properties in Schedules I, II, and III was dismissed. Against that portion of the decree by which his claim was dismissed he appealed first to this Court, and then to the Privy Council. He was equally unsuccessful in both Courts. The order of the Privy Council dismissing his appeal is dated the 22nd January 1920.

There was no appeal by either party regarding the Schedule IV properties. The decree-holder then on the 8th December 1922 applied for execution of the decree so far as the Schedule IV properties were concerned. The judgment-debtor objected that the decree could not be executed now as it was barred by limitation. He contended that limitation began to run from the date of the decree in the suit on the 31st March 1908 by the trial Court. The decree-holder contended that limitation ran from the 22nd January 1920, the date when his appeal was finally disposed of by the Privy Council. The decree-holder's contention found favour with the executing Court and hence this appeal by the judgment-debtor. The judgment-debtor contends that so far as the decree regarding the lands covered by Schedule IV is concerned there was no appeal. The decree of 1908 may be split up into several parts, viz., the part in favour of the plaintiff and the part in favour of the defendant. The appeal was only as regards that part of the decree in favour of the defendant, so that with regard to that part of the decree in his favour it was never imperilled by the appeal regarding the other part. Hence time ran from the date of the original decree. The decree-holder on the other hand contends that it is not possible to split up a decree into different parts, and that when a decree is appealed against it makes no difference whether it is the whole or only part of the decree that is challenged. Time runs from the date of the final decree.

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The point is one which has given rise to a considerable conflict of authorities, although the words of the article itself seem sufficiently clear and would admit of only one interpretation. The words used in article 182 (*2*) are—

"Where there has been an appeal, the date of the final decree or order "of the Appellate Court, or the withdrawal of the appeal."

Read by themselves these words would seem to mean that once there was an appeal, time ran from the date of the decision in the appeal, and there is no suggestion that it would be material as to whether all or only some of the parties appealed, or whether the whole or only part of the decree was challenged. It is difficult to my mind, with great respect to the learned Judges who have held otherwise, to ascribe any other meaning to them.

The expression "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to *all or any* of the matters in controversy in the suit.

Clearly, therefore, a decree may contain the decision of a number of matters in controversy, but it does not seem that the decision on each matter in controversy is a separate decree, and that there are really a number of decrees contained, as it has been described by one learned Judge, in one sheet of paper. It seems clear to me that there is only one decree and not a number of decrees. When a party appeals against a decree or a part of a decree he files a copy of the whole decree. No doubt possibly he does not object to the decree *in toto* and may only desire to have it varied in some portions. Still even if he appeals against any part of the decree the decree is appealed against. He may only be asking that the decree should be altered in some particulars and not all. It

seems to me, therefore, that the Appellate Court deals with the decree as a whole. It has always been held that after appeal the only decree that can be executed is the decree of the Appellate Court, whether it reverses, modifies, or confirms the decree of the lower Court. See the case of *Shohrat Singh* v. *Bridgman* (1). That decree is, I think, the only decree in the suit.

To hold otherwise would give rise to a possible contingency of there being three or possibly four decrees in the same suit capable of execution, viz., that of the Court of first instance as regards one part of the claim, that of the first Appellate Court with regard to another part of the claim, that of the High Court with regard to another part, and possibly that of the Privy Council with regard to a further part.

It seems to me that when a decree is appealed against, even though the appellant appeals against only a portion of the decree, the whole decree of the first Court is superseded by or becomes merged in the decree of the Appellate Court, and there is no part of the first Court's decree that remains to be executed. No part of the decree of the first Court can be held to be in separate existence after an appeal in the suit has been decided. The conclusion to which I come is that there is only one decree to be executed, and that is the decree of the Appellate Court. Hence time runs from the date of the Appellate Court's decree, and the present application for execution is not time-barred. It has been contended that this will be hard and inequitable in the present case, as it will mean that the defendant must disgorge some 17 years' mesne-profits. I cannot see that it is. The defendant appellant knew that by that portion of the decree

(1) (1882) I. L. R. 4 All. 376.

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against which he had not appealed the plaintiff's right to Schedule IV land had been decreed, and the defendant remained on in possession at his peril. He could at once have given up the land.

It only remains now for me to consider whether there is any decision of this Court by which I am bound and which takes a contrary view.

There are, as I have already stated, numerous conflicting decisions on this point, some in this Court and some in other High Courts. They have all been cited before us, discussed, distinguished or relied on. I have listened to and read these authorities with the respect they are entitled to, but it would be taking up the Court's time unnecessarily to deal with them separately.

It is sufficient for my purpose to refer only to the case of *Gopal Chunder Manna* v. *Gosain Das Kalay* (1). That was a decision of the Full Bench of this Court. The judgment was delivered by the learned Chief Justice Sir Francis Maclean. The Full Bench took the view that I have taken, and in dealing with the case the learned Chief Justice remarked:

"For myself I prefer the reasoning and conclusion of the two "learned Judges, [See the case of *Mashia'-un-nissa* v. *Rani* (2)] who "were in the minority in that case, and to read the language of sub-"section (2) of Article 179 (now Article 182) of the second schedule to the "Limitation Act according to the ordinary signification of the words used. "That article says that, where there has been an appeal, the date of the final "decree or order of the Appellate Court shall be taken to be the time from "which the period is to begin to run. There is no such qualification "in the Article as is suggested by the majority of the Judges in the "Allahabad case, and which must be read into the Article in order to "support their view, nor is there anything to lead me to suppose that any "such qualification or modification was intended by the Legislature. The "language of the Article is reasonably clear, and in my opinion the safer "course is to construe it according to the ordinary meaning of the words "used."

(1) (1898) I. L. R. 25 Calc. 594. (2) (1889) I. L. R. 13 All. 1.

This decision is in accordance with the view I have taken, and it is, moreover, a decision by which I am bound.

In these circumstances it would serve no useful purpose to discuss the numerous other decisions on the point.

The result is that the appeal is dismissed with costs.

PAGE J. The decision of this appeal depends upon the meaning and effect of Schedule I, Article 182 (2) of the Limitation Act (IX of 1908). On the 11th April 1906, Syeda Amatul Fatima, the predecessor-in-title of the respondents, as the heir of Izzatannessa Bibi instituted a suit against the appellant and his wife to recover possession of certain immoveable property set out in Schedules I to IV of the plaint, and certain moveables in Schedule V thereof. She alleged that the properties in Schedules I to III were the subject of a wakfnama of the 27th Chaitra 1309 under which Izzatannessa purported to make the properties wakf, and she prayed that the wakfnama might be declared void. The appellant and his wife contended that the whole of the properties were wakf, and that the appellant was duly in possession as mutwalli. On the 31st March 1908 the Subordinate Judge of Mymensingh passed a decree *inter alia* that the plaintiff—

"do recover possession from defendant No. 1 of the properties described in Schedule IV together with mesne-profits; Rs. 1,350 as the value of Izzatannessa's share in the other moveable properties mentioned in Schedule V, (excepting ornaments), but her claim in respect of the other properties which she claims as the heir of Izzatannessa be dismissed on the ground that Izzatannessa Bibi has made a valid wakf of the same; that the defendant No. 1 do pay to the plaintiff Rs. 1,350 the value of the moveable properties, and Rs. 479-12-6 the proportionate costs due to plaintiff, in all Rs. 1,829-12-6; and the plaintiff do pay to the said defendant No. 1 Rs. 1,812-8-6 the proportionate costs due to him; and that the defendant No. 2 do bear her own costs".

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The defendants did not prefer an appeal against the said decree, but the plaintiff appealed upon the ground that the wakfnama was invalid and void. The appeal was dismissed by the High Court on the 25th June 1912, and by the Privy Council on the 22nd January 1920.

On the 8th December 1922 the heirs of the plaintiff applied for execution of the decree of the 31st March 1908. The appellant, the then judgment-debtor, filed an objection upon the ground that the decree could not be executed 16 years after it was passed, and that the plaintiff's application for execution was barred by limitation. The appellant's objection was overruled, and from the order disallowing the objection this appeal has been brought. Under Article 182 it is provided that an application for the execution of a decree or order of any Civil Court must be made within three years from—

"(*i*) The date of the decree or order, or (*ii*) (where there has been an "appeal) the date of the final decree or order of the Appellate Court, or "the withdrawal of the appeal".

Now, with respect to the immoveable properties in Schedule IV and the moveables in Schedule V there has been no appeal, and the decision of the Appellate Courts in respect of the properties in Schedules I to III (which alone were the subject matter of the appeals) could not in any circumstances or in any way affect the right of the plaintiff to obtain possession of the properties in Schedules IV and V which was finally determined by the decree passed on the 31st March 1908. That part of the decree, therefore, which related to Schedules IV and V was in no way "imperilled" by the appeals which were preferred. Moreover, there can be no doubt that the plaintiff, notwithstanding the appeal, would have been entitled forthwith to execute the decree in respect of the properties in

Schedules IV and V: *Juscurn Boid* v. *Pirthi Chand Lal Choudhury* (1). Why should the plaintiff, it is urged, in these circumstances, be entitled to hold his hand, and to execute the decree in respect of these properties long after the period has expired within which he would have been entitled to execute it if no appeal had been preferred, merely because he has appealed against the decree in respect of other properties which are not connected with these properties and when his right to recover possession of the properties in Schedules IV and V is in no way dependent upon, and could not be affected by, the result of the appeal? The answer, I think, is that the fixing of a period of limitation must always be a matter arbitrary and experimental, and

> "A rule of law that in any case in which there has been an appeal "from a decree limitation shall begin to run from the date of the decree on "appeal, irrespective of whether the decree was appealed from in whole or "in part may not be altogether scientific; but it is simple, certain and "intelligible and I think it is the rule which the Legislature intended to "lay down;"

per White C. J. in *Kristnamachariar* v. *Mangammal* (2).

Such a rule does not work any real hardship upon the judgment-debtor, for it is open to him to satisfy that portion of the decree against which there is no appeal without waiting for the Court to compel him to obey the decree by issuing process in execution. Apart from the confusion which would result if limitation were to be reckoned from different starting points in respect of the execution of different parts of the same decree, in my opinion, no warrant for such a construction can be found in the language which the Legislature has employed to define "decree" in section 2(*2*) of the Civil Procedure Code, or to fix

(1) (1918) I. L. R. 46 Calc. 670, 679. (2) (1902) I. L. R. 26 Mad. 91, 92.

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the period of limitation in Article 182(2). Under section 2 (2)

"Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to *all or any* of the matters in controversy in the suit;

and I respectfully agree with Bhashyam Ayyangar J. when he observed that

"When an appeal is preferred from a decree of a Court of first "instance the suit is continued in the Court of Appeal and reheard either in "whole or in part according as the whole suit is litigated again in "the Court of Appeal or only a part of it. The final decree in the "appeal will thus be the final decree in the suit, whether that be one "confirming, varying or reversing the decree of the Court of first "instance. The mere fact that a matter is litigated both in the Court of "first instance and again, though only in part, in the Court of Appeal, "cannot convert or split up the suit into two and there can be only one final "decree in that suit, viz., the decree of the Court of Appeal. There cannot "be two final decrees in such a suit, one by the Court of first instance and "the other by the Court of Appeal".

Kristnamachariar v. *Mangammal* (1).

The language used in Article 182 (2) is equally clear, and, in my opinion, upon the true construction of the terms of this article limitation runs from the date of the final decree of the Appellate Court where there has been an appeal, irrespective of the question whether the appeal relates to the whole decree or not. This is the interpretation which has been given to Article 182 (2) by the Calcutta High Court in *Gungamoye Dassee* v. *Shib Sunker* (2), *Har Kant Sen* v. *Biraj Mohan Roy* (3), *Gopal Chunder Manna* v. *Gosain Das Kalay* (4), *Mahomed Mehdi* v. *Mohini Kanta* (5), and *Satish Chandra Chaudhuri* v. *Girish Chandra Chakravarty* (6); by the Madras High Court in *Kristnamachariar* v. *Mangammal* (1), *Peria* v.

(1) (1902) I. L. R. 26 Mad. 91, 95.
(2) (1878) 3 C. L. R. 430.
(3) (1896) I. L. R. 23 Calc. 876.
(4) (1898) I. L. R. 25 Calc. 594.
(5) (1907) I. L. R. 34 Calc. 874.
(6) (1920) I. L. R. 47 Calc. 813.

Lakshmi Doss (1), and *Vydianatha* v. *Subramania* (2); by the Bombay High Court in *Abdul Rahiman* v. *Maidin Saiba* (3), and *Shivram* v. *Sakharam* (4); and by the Patna High Court in *Somar Singh* v. *Mussammat Premdei* (5). The same construction of Article 179 (2) [now 182 (2)] was adopted by two of the Judges of the Allahabad High Court in *Mashiatunnissa* v. *Rani* (6); and the view expressed by these learned Judges was accepted by the Full Bench of the Calcutta High Court in *Gopal Chunder's* case (7), while Edge C. J., who took a different view in that case, subsequently appears to have accepted the construction of 182 (2) which I venture to believe is the true one when sitting with Banerji J. in *Badiunnissa* v. *Shamsuddin* (8).

It must be admitted that in certain Calcutta cases, *Hur Proshaud* v. *Enayet Hossein* (9), *Raghunath* v. *Abdul Hye* (10), *Christiana Sens* v. *Benarashi Proshad* (11) and *Kartick Chandra* v. *Nilmani Mondal* (12) and in Madras in *Muthu* v. *Chellappa* (13) a different construction has been placed upon Article 182 (2). In these cases the learned Judges appear to have been of opinion that the question whether an application for execution was barred by limitation under Article 182 (2)—

"depended upon the question whether the appeal which was relied "on to save it did or did not imperil the whole decree".

per Coxe J. in *Christiana Sens* v. *Benarashi Proshad* (11).

(1) (1906) I. L. R. 30 Mad. 1.
(2) (1911) I. L. R. 36 Mad. 104.
(3) (1896) I. L. R. 22 Bom. 500.
(4) (1908) I. L. R. 33 Bom. 39.
(5) (1924) I. L. R. 3 Pat. 327.
(6) (1889) I. L. R. 13 All. 1.
(7) (1898) I. L. R. 25 Calc. 594.
(8) (1895) I L. R. 17 All. 103.
(9) (1878) 2 C. L. R. 471.
(10) (1886) I. L. R. 14 Calc. 26.
(11) (1914) 19 C W. N. 287, 288.
(12) (1916) 20 C. W. N. 686.
(13) (1889) I. L. R. 12 Mad. 479.

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In effect their Lordships construed the words—"where there has been an appeal", to mean where "there has been an appeal which relates to the whole "subject matter of the decree, and the whole and not "a part of the decree only has been imperilled", and held that it was the duty of the Court in each case to—

"See whether the original decree was really one decree or an 'incorporation of several decrees, and whether the appeal imperilled the 'whole decree or not."

per Coxe J. in *Christiana Sens'* case (1).

But *Muthu* v. *Chellappa* (2) was overruled by the Full Bench of the Madras High Court in *Kristnama* v. *Mangammal* (3), and *Hur Proshaud* v. *Enayet Hossein* (4) and *Raghunath* v. *Abdul Hye* (5) were dissented from, if not overruled, by the Full Bench of the Calcutta High Court in *Gopal Chunder's* case (6). With all due respect for the learned Judges who decided them those two cases and *Christiana Sens* v. *Benarashi Proshad* (1) and *Kartick Chandra* v. *Nilmani Mondal* (7) I hold to be inconsistent with the decision of the Full Bench in *Gopal Chunder's* case (6), and I am unable to follow them, or to accept the interpretation which in those cases was given to the terms of Article 182 (2).

For these reasons, in my opinion, the appeal should be dismissed.

B. M. S. *Appeal dismissed.*

(1) (1914) 19 C. W. N. 287, 289.
(2) (1889) I. L. R. 12 Mad. 479.
(3) (1902) I. L. R. 26 Mad. 91.
(4) (1878) 2 C. L. R. 471.
(5) (1886) I. L. R. 14 Calc. 26.
(6) (1898) I. L. R. 25 Calc. 594
(7) (1916) 20 C. W. N. 686.