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Procedure Act, X, of 1877, which limits and cuts down the period for executing decrees then capable of execution.

In our opinion Act XV of 1877 cannot be applied to any thing which, at the time of its becoming law, was barred by the law of limitation which it replaced, unless it can be shown that such was the express intention of the legislature. Such an inference would be opposed to the principles of a law of limitation.

We may observe also, that there is no valid proceeding in the nature of an application "to take some step in aid of execution of the decree" within three years of which the application of the 25th February 1878 was made, consequently the decree-holder cannot take advantage of the alteration in the law regulating the mode of calculation of the period of limitation. We do not consider the application of the 31st July 1876 to be a valid application so as to give the decree-holder a fresh starting point.

We, therefore, dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Pontifex and Mr. Justice McDonell.

NURSING DOYAL (DECREE-HOLDER) *v.* HURRYHUR SAHA (JUDGMENT-DEBTOR).*

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Limitation Acts (IX of 1871), sched. ii, art. 167; XV of 1877, s. 2, sched. ii, art. 179—Application—Bar of Remedy—Non-extinguishment of Right.

The Limitation Acts (IX of 1871 and XV of 1877) merely bar the remedy, but do not extinguish the debt.

The words in s. 2 of Act XV of 1877—"nothing herein shall be deemed to revive any right to sue"—should be used in their widest signification, and will include any application invoking the aid of the Court for the purpose of satisfying a demand.

Where, therefore, a judgment-creditor sought, on the 25th September 1877, to execute a decree passed on the 27th May 1874 (which decree, at the time

* Appeal from an Order, No. 279 of 1879, of the Officiating Judge of Gya, dated 11th September 1879.

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of the application for execution, was barred by art. 167 of sched. ii of Act IX of 1871), on the ground that he was entitled to take advantage of art. 179 of sched. ii of Act XV of 1877, which was more favorable to him—

Held that, under the wording of s. 2 of the latter Act, he was not entitled to do so.

THIS was an application by a decree-holder for the execution of a decree passed on the 27th May 1874. The last previous application for execution was made on the 23rd June 1874, and the property of the judgment-debtor was attached and sold on the 10th November 1876, and the case struck off on the 27th January 1877. On the 25th September 1877, more than three years after the date of the last application for execution, the decree-holder applied for the transfer of the case to the Court of the District Judge of Gya, and an order was passed transferring the case on the 24th September 1878. In that Court the decree-holder failing to show that any application to enforce the decree had been made within three years, the Judge held that the application of the 25th September 1877 was barred by limitation, and ordered the case to be struck off.

From this order the decree-holder appealed to the High Court.

Baboo *Aukil Chunder Sen*, for the appellant, cited *Eshan Chunder Bose* v. *Prannath Nag* (1), *Nilmoney Singh Deo* v. *Nilcomul Tuppadar* (2), and *Rughoo Nath Das* v. *Shiromonee Pat Mohadebee* (3).

Baboo *Nilmadhub Sen* and Baboo *Ram Chunder Sen*, for the respondent, contended, that the Court to which the decree was transferred had no jurisdiction to go into the question of limitation, and cited *Leake* v. *Daniel* (4). [PONTIFEX, J.—It does not appear in that case that the attention of the Court was called to s. 290, Act VIII of 1859.] Yes, in the referring order. Section 242 of Act X of 1877 says, that any order of the Court by which the decree was passed shall be binding upon the Court to which the decree is sent for execution.

(1) 14 B. L. R., 143; S. C., 22 W. R., 512.

(2) 25 W. R., 546.

(3) 24 W R., 20.

(4) B. L. R., Sup. Vol., 970; S. C., 10 W. R., F. B., 10.

[PONTIFEX, J.—Is not the transfer an order of the Court; s. 242 is in your favor.] Section 224 may be read with s. 242; the order contemplated by cl. (*c*), s. 224, is mentioned in s. 240. There is a case—*Shumbhoonath Shaha* v. *Guruchurn Lahiri* (1), decided on the 29th of April 1880 by Morris and Prinsep, JJ., which holds, that when a decree is barred under the Act of 1871, the remedy cannot be revived by Act XV of 1877. See also *Bhooputty Lall Tewary* v. *Soocfee Sekhur Mookerjee* (2).

The judgment of the Court (PONTIFEX and MCDONELL, JJ.) was delivered by

PONTIFEX, J.—We are of opinion that neither the Limitation Act of 1871, nor that of 1877, extinguishes a debt. These Acts only bar or discharge the remedy. This we think is clear from the language of the Acts, and particularly from ss. 12 and 29 of the Act of 1871, and ss. 11 and 28 of the Act of 1877.

The difference between these Acts and the English Limitation law is, that in India limitation need not be set up as a defence (s. 4 of the Act of 1871 and s. 4 of the Act of 1877), while in England, the defendant must expressly claim the operation of the Statute. Section 60 of the Contract Act, which was passed after the Limitation Act of 1871, also shows that the debt is not extinguished, but may be insisted on for certain purposes; so likewise, if the creditor had a lien on the goods of his debtor on a general account, he would be entitled to hold the goods for a debt the recovery of which was barred by the Limitation Act. And probably it would be held that an executor would be allowed to retain out of a legacy a debt owing by the legatee to the testator, though its recovery was barred by the Act. But a difficult question arises by reason of the passing and repeal of so many Limitation Acts in India, *viz.*, whether, in consequence of the repeal of a former Act, a remedy barred or discharged by it revives, subject of course to the provision in the repealing Act.

With respect to the institution of suits, s. 2 of the Limitation Act of 1877 is clear. It states that "nothing in the Act con

(1) *Ante*, p. 894. (2) 12 W. R., 255.

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tained shall be deemed to revive any right to sue barred under any enactment thereby repealed." The Act of 1871 was not by any means so clear. In the case of *Nocoor Chunder Bose* v. *Kally Coomar Ghose* (1), I decided that the remedy barred by the Act of 1859 was not revived by the repealing Act of 1871. The reasons for my decision were, that while s. 1 of the Act of 1871 declared that the Act was to come into force on the 1st of July 1871, yet at the same time it also expressly enacted that s. 2, which repealed the Act of 1859, was not to come into force before the 1st of April 1873. Between the 1st of July 1871 and the 1st of April 1873, therefore, the Act of 1859 continued in force; and during that period, by that express provision of the Act of 1871, no suit could lie for the debt which was sued for in that case. It seems to me preposterous to impute to the legislature an intention of giving validity to a suit instituted after the 1st of April 1873, which they had at the same time, and by the same section, expressly provided, should, by the continuance of the Act of 1859, be barred between the 1st of July 1871 and 1st of April 1873.

But, as I have said, that difficulty is removed by the clear language of s. 2 of the Act of 1877, so far as respects the institution of suits. Unfortunately, that language is not so clear as to the conduct of proceedings in a suit after its institution.

In the case before us the judgment-creditor sought to enforce execution of a decree passed on the 27th May 1874. The question is, whether, assuming execution of such decree was barred by art. 167, sched. ii of the Act of 1871, the judgment-creditor can take advantage of the more liberal provisions (as in this case) of art. 179 of sched. ii of the Act of 1877. The Court below has decided that he cannot, and against that decision the judgment-creditor has appealed to us. His argument is, that the Act of 1877 having in its third section defined the word "suit" so as not to include an appeal or an application, therefore the words "to revive any right to sue" appearing in the second section, must also be confined to the institution of suits as opposed to the conduct of proceedings in a suit after

(1) I. L. R., 1 Calc., 328.

its institution. No doubt, there is some foundation for this argument from the imperfect language used in the Act; but we think that s. 2 at least indicates the policy of the Act, and in our opinion the word "revive any right to sue" used in that section should have their widest signification, which we think would include any application invoking the aid of the Court for the purpose of satisfying a demand. It is by no means an uncommon form of speech to say "sue out in execution;" we, therefore, think the words of the Act warrant the decision of the lower Court.

We have been referred to a case (1) decided by Morris and Prinsep, JJ., on the 29th of April of this year in which they arrive at the same conclusion on the broad ground that a contrary decision, unless required by the express language of the Act, would be "opposed to the principles of a law of limitation." We are of course bound by that case.

But the applicant urges that the Court at Gya, to which his judgment had been transferred from Hazaribagh, was not the Court which should have tried this question of limitation; and that his case ought to have been sent back to Hazaribagh for adjudication on that question, and he has referred us to the case of *Lutfullah* v. *Kirat Chand* (2). That case, however, is opposed to the Full Bench case of *Leake* v. *Daniel* (3), and we think that ss. 242 and 224 (*c*) of the new Procedure Code support the ruling of the Full Bench.

We, therefore, dismiss this appeal, but the position of the appellant being that of an unsatisfied creditor, we dismiss it without costs.

Appeal dismissed.

(1) *Shumbhoonath Shaha* v. *Guruchurn Lahiri*, *ante*, p. 894.
(2) 13 B. L. R., App., 30; S. C., 21 W. R., 330.
(3) B. L. R., Sup. Vol., 970; S. C., 10 W. R., F. B. 10.