

Before Mr. Justice Ainslie and Mr. Justice Broughton.

JUGGERNATH SAHCO AND OTHERS (JUDGMENT-DEBTORS) v. JUDOO
ROY SINGH AND OTHERS (DECREE-HOLDERS).*

1879
May 2.

*Execution-proceedings—Order of Privy Council—Act X of 1877, s. 610—
Procedure.*

Before a decree-holder in the District Court can obtain execution of a decree, which has been affirmed by the Privy Council, he must produce, on the application for execution, a certified copy of the order passed by Her Majesty in Council.

THIS was an application for execution of a decree which had been affirmed by the Privy Council. The judgment-creditors on making the application, filed a number of the Weekly Reporter containing the decision passed in the case; the Subordinate Judge ordered that a copy of the decision of the Privy Council should be filed and put up with the record, and, on its being produced, ordered that the application should be admitted and execution-proceedings be commenced.

The judgment-debtors appealed to the High Court.

Mr. *R. E. Twidale* for the appellants.—The copy of the Privy Council judgment is insufficient. It is an unattested printed paper only. A decree-holder is bound to file the original order of Her Majesty in Council in the High Court, and to apply to the High Court to transmit it to the District Court for execution, and, under s. 610 of Act X of 1877, he is bound to produce a certified copy of such order on applying for execution. This the respondents have not done, and, therefore, the Judge below was wrong in allowing the execution-proceedings to be commenced.

Baboo Pran Nauth Pundit for the respondents.

* Appeal from Original Order, No. 333 of 1878, against the order of *W. Dacosta, Esq.*, Subordinate Judge of Tirhoot, dated the 30th November 1878.

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The judgments of the Court were delivered by

AINSLIE, J.—The final order in the suit, out of which the present case arises, was made by Her Majesty in Council. Under s. 610 of the Civil Procedure Code the decree-holders were bound to produce a certified copy of the final order when they applied for execution. It is no doubt true, as pointed out by the respondents' pleader, that the formal order of Her Majesty in Council is drawn up in the terms of the recommendation of the Judicial Committee in their judgment, but such recommendation cannot be taken to be the decree or order referred to in s. 610.

Before the decree-holders can proceed with the execution of their decree in this case, it will be necessary for them to take steps to obtain a copy of the order of Her Majesty in Council. As to the costs of this appeal, the appellants are not entitled to them. On a former occasion, proceedings taken by the respondents for the purpose of enforcing their claim were stopped on the objection of the appellants, that it was necessary for them to produce a copy of the *faisalla* in the appeal to Her Majesty in Council. The word *faisalla* in this country is used as representing the judgment, not the order or decree: and in suits here, there are two distinct papers. The Subordinate Judge appears to have understood the word '*faisalla*' to mean the judgment, and not the formal order. If it was the intention of the judgment-debtors on the former occasion to claim the production of the formal order of Her Majesty in Council, they should have said so distinctly, and should not have used a word which, to say the least of it, is ambiguous. Apparently the respondents complied with the demand made upon them on that occasion; and they are now met by a further objection that the document, which they produced, is a note of the grounds of decision, and not such an order as is capable of execution.

We consider ourselves bound to give effect to the objection, because under the words of the Code the respondents were bound to produce the formal order, but at the same time, looking to the mode in which this case has been dealt with by the parties, we think the objection of the judgment-debtors now put forward ought to have been distinctly taken on the former

occasion. The order made by the lower Court for allowing execution to proceed must be set aside.

BROUGHTON, J.—I entirely concur. The question has been fully discussed in the case of *Joy Narain Giree v. Goluck Chunder Mytee* (1). Section 610 of the Code of Civil Procedure seems to have been drafted on that case. I also agree that the appellants are not entitled to the costs of this appeal.

Appeal allowed.

Before Mr. Justice Jackson and Mr. Justice McDonell.

SHOTEENATH MOOKERJEE AND OTHERS (DEFENDANTS) v. OBHOY NUND ROY AND OTHERS (PLAINTIFFS).*

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1879
 May 20.

Limitation—Symbolical Possession—Obstruction or Resistance to Possession—Act XV of 1877, sched. ii, art. 165.

Symbolical possession; such as may be given by the Nazir of a Court by sticking a bamboo into the ground, or the like; of a dwelling-house, or of a share in a dwelling-house, of which actual possession might have been granted, is not such a *bonâ fide* possession as will save limitation.

A purchaser of immoveable property, sold in execution of a decree, must, under Act XV of 1877, sched. ii, art. 165, if obstructed or resisted in endeavouring to obtain possession, apply, within thirty days, to the Court under the directions of which the execution-sale was held, to be put into actual possession; and if he omits to do so within thirty days from the time when his taking possession was first obstructed or resisted, his only remedy is by a civil suit.

The plaintiffs, on the 31st January 1863, purchased a half-share in a certain house at a sale in execution of a decree, but took no steps at the time to take possession of it. In 1869, the Nazir of the Court was directed to put them into possession, and gave them symbolical possession. Afterwards, in 1871, the plaintiffs, again with the assistance of the Nazir, entered upon, and for the space of about a minute remained in, possession of one of the rooms in the house, until they were turned out by the defendants.

On the 18th November 1876, the plaintiffs filed a suit, praying for a declaration of right, and for a partition, and to be put into separate possession of the share that might be allotted to them on such partition.

* Appeal from Appellate Decree, No. 2567 of 1873, against the decree of Baboo Kishen Chunder Chatterjee, Subordinate Judge of Nuddea, dated the 26th of July 1873, reversing the decree of Baboo Krishna Mohun Mookhopadhyaya, Munsif of Krishnagore, dated the 22nd of February 1877.