

REFERENCE
UNDER STAMP
ACT, s. 46.

The Acting Government Pleader (Mr. *Powell*) for the Board of Revenue.

The judgment of the Full Bench (Collins, C.J., Kernan, Muttusámi Ayyar, Brandt, and Parker, JJ.) was delivered by

COLLINS, C.J.—We are of opinion that the endorsement on the mortgage bond is exempted from stamp duty under sch. II, art. 15, of the Stamp Act of 1879, it being a receipt within the terms of the exemption.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

1886.
Sept. 24, 25.

KURUPAM ZAMÍNDÁR (PLAINTIFF), APPELLANT,

and

SADASIVA (DEFENDANT), RESPONDENT.*

Limitation Act, sch. II, arts. 178, 179 (3)—Civil Procedure Code, s. 583—Application for refund of moneys levied under decree reversed on appeal—Review rejected—Time not excluded from computation.

Where a review of judgment has been applied for, and, after notice to the other side, refused, the period during which such application was pending cannot be excluded in computing the period of limitation for execution of the decree under art. 179 (3) of sch. II of the Indian Limitation Act.

Sembla.—An application for refund of moneys levied in execution of a decree subsequently reversed on appeal is not governed by art. 179 but by art. 178 of sch. II of the Limitation Act.

APPEAL against an order of J. Kelsall, District Judge of Vizagapatam, in execution proceedings in suit 11 of 1878.

The facts necessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Parker, J.).

Subba Ráu for appellant.

Mr. Powell for respondent.

JUDGMENT.—In this case Sri Rájá Vyricherla Suryanáráyana Rázu Bahadur, zamíndár of Kurupam, had sued defendant, Kuehibhotla Sadasiva Parabrahman, for mesne profits, and had got a decree, which was subsequently reversed by the High Court

* Appeal against Order 56 of 1886.

Appeal Suit 71 of 1881 on September 26th, 1881. Pending the appeal the zamindár had collected in execution Rs. 7,100 from defendant.

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The zamindár petitioned the High Court to review the appeal decree, but after notice to defendant the review was refused on October 2nd, 1882.

The present application under s. 583 of the Code of Civil Procedure, for recovery of the Rs. 7,100 levied in execution, was presented on August 6th, 1885, and the appellant contends that it is barred except as to Rs. 70, the costs of the review proceedings.

If the application be regarded as falling under art. 179, sch. II of the Limitation Act, the period of limitation will run from the date of the High Court decree (September 26th, 1881), since clause 3 only applies to cases in which there has been a review of judgment, and in this case the review was refused.

We are disposed however to think that the application is governed by art. 178, since it is not one for execution of a decree or order, but to enforce a benefit by way of restitution under a decree passed in appeal. Such execution is governed by the rules prescribed in the Code for the execution of decrees, and limitation will run from the date when the right to apply accrues. This was on September 26th, 1881, and the pendency of an application for review by the other side did not debar defendants from applying for the refund. The application is therefore barred in either case, except with regard to Rs. 70, the costs of the review proceedings.

The order of the District Court must be modified accordingly, and the respondent must bear appellant's costs in this appeal. It is not necessary now to consider the claim for interest, but we do not think the Judge should have awarded a higher rate than 6 per cent. per annum.
