facility for executing decrees even when all the decree-holders are unable or unwilling to join in applying for execution. It is no doubt true that the Court has discretion to refuse execution for sufficient cause; but that is no reason for holding such order to be other than an order relating to the execution of the decree within the meaning of section 244. In *Gooroo Doss Roy* v. *Ram Ruginee Dossia*(1), which was followed in *Odhoya Pershad* v. *Mahadeo Dutt Bhandaree*(2), the question was not between the decree-holder on one side and the judgment-debtor on the other, but merely between two of the joint decree-holders. With reference to the learned Judge's observation, we find that there has been no contest as between the decree-holders, but only an allegation that some of them had come to terms with the judgment-debtor.

We set aside the order of the learned Judge and of the lower appellate Court, and remand the case to the District Judge for replacement on the file and disposal on the merits, so far as the order of the District Munsif cancels the previous order in favour of third plaintiff.

The costs in this Court and the District Court will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1893. March 2. April 18.

LAKSHMINARAYANAPPA (DEFENDANT No. 3), APPELLANT,

v.

VENKATARATNAM AND OTHERS (PLAINTIFFS and DEFENDANTS Nos. 1, 4 AND 5), RESPONDENTS.*

Limitation Act—Act XV of 1877, sch. II, art. 124—Suit for having the appointment of a karnam declared void.

A suit by existing karnams for having the appointment of another person as a karnam jointly with themselves declared void does not fall within the provision of article 124 of the Limitation Act.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 545 of 1891, confirming the

(1) 17 W.R., 136. (2) 17 W.R., 415. * Second Appeal No. 757 of 1892.

LAKSHMINA-RAYANAPPA v. VENKATARATNAM.

decree of O. V. Nunjundeh Ayyar, District Munsif of Masulipatam, in original suit No. 130 of 1890.

The third defendant was appointed a village kurnam by the first and second defendants, who were the receiver and manager, respectively, of the estate in which the village was situated. The plaintiffs, who were already kurnams of that village, filed this suit to set aside the appointment. It appeared that the third defendant was appointed a kurnam on the ground that the existing kurnams did not discharge the duties of their office efficiently, and that his father, who had died ten years before the suit, had been a kurnam, but had for ten years previously performed no duties as such. The District Judge, in affirming the decree of the District Munsif, held that the third defendant having been out of possession of this hereditary office for twenty years, had lost all right to it, and was barred by article 124 of the Limitation Act.

The third defendant preferred this appeal.

Pattabhirama Ayyar for appellant.

Srirangachariar for respondents Nos. 1 and 2.

JUDGMENT.—Article 124 of the Limitation Act is not applicable, as this is not a suit for possession of the hereditary office, but a suit by the existing kurnams for having declared void the appointment of third defendant as kurnam jointly with themselves. We observe that the appointment was made under the orders of the Collector administering the estate on behalf of the zamindar, on the ground that the existing kurnams did not discharge the duties of their office with efficiency.

As regards respondents' contention that the third defendant was appointed as an additional kurnam, we find that the third defendant's father had been kurnam of the village, and it was quite open to the landholder, in fact it was his duty, to fill up the vacancy caused by the third defendant's father's death under section 7 of the Regulation XXIX of 1802. The faisal number of kurnams cannot be reduced without the sanction of the Board of Revenue, and the omission to appoint a successor to the third defendant's father was contrary to the policy of that section. The appointment of the third defendant, instead of being open to objection, was therefore merely in accordance with the requirements of the regulation.

It is contended that the third defendant's right to the office was barred, as his father had died ten years previously, and he has

also during the last ten years of his life ceased to do the duties of kurnam, though his name was retained in the list of kurnams. The question is not whether the third defendant's right to claim the office is barred, but whether the Collector had no power to make the appointment.

The appointment of a stranger even by a zamindar when a vacancy exists would be open to no objection on the ground of its not being made within twelve years of the vacancy occurring, and we fail to understand why the appointment of an heir should be open to objection on this ground.

We set aside the decrees of both the lower Courts and direct that the suit be dismissed with costs throughout to be paid by plaintiffs (first and second respondents).

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

THOMMAYYA CHETTI.*

1893.
August 30.
November 1.

Indian Ports Act—Act X of 1889, s. 6, cl. k—Local Government's rules thereunder—Boats plying and not plying for hire—'Ultra vires'.

It is only with regard to boats plying for hire that section 6 of Act X of 1889 gives the Local Government authority to make rules. Rules purporting to make it obligatory on boat owners to ply for hire are *ultra vires.*

PETITIONS under sections 435 and 436 of the Criminal Procedure Code, praying the High Court to revise the finding and sentence of the First-class Sub-divisional Magistrate of Negapatam, passed in summary trials Nos. 1, 5 to 7 and 9 to 11 of 1893.

In these cases the owners of boats in the Port of Negapatam were fined various sums for refusing to take out their boats to a certain steamer, when called upon by the Port Officer to do so. The convictions were under rules 1 and 23 of the boat rules sanctioned

* Criminal Revision Cases Nos. 290 to 297 of 1893.