

The Government Solicitor (Messrs. *Barclay, Morgan and Orr*) for respondent.

MUHAMMED
ALIM OOLLAH
SAHIB
?.
THE
SECRETARY OF
STATE FOR
INDIA.

JUDGMENT.—It is by no means clear what are the exact terms on which contentious business is done as between the Government Solicitor and Government. Assuming, however, that the arrangement is that he should receive a salary and, in addition, the costs recoverable from third parties in those cases in which costs are awarded to Government, we are unable to see how that arrangement can affect a third party who is condemned in costs. *Raymond v. Lakeman*(1).

The arrangement does not appear to be contrary to public policy, and there is no Act under which it is made illegal. *Jennings v. Johnson*(2).

The appeal is dismissed with costs.

APPELLATE CIVIL.

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

KOORMAYYA AND OTHERS (PETITIONERS), APPELLANTS,

1893.
September 4.

v.

KRISHNAMMA NAIDU AND OTHERS (COUNTER-PETITIONERS),
RESPONDENTS)*.

Limitation—Act XV of 1877, sched. II, art. 179—Step in aid of execution—Request for payment of money realized in satisfaction of a decree.

A request for the payment of money realized in satisfaction of a decree is sufficient to keep the decree alive, being a step in aid of execution. *Venkatarayalu v. Narasimha* (3) approved and followed.

Whether a particular act is or is not an application for, or step in aid of execution, depends upon the nature of the act rather than the time at which it may possibly be done. *Hem Chunder Chowdhry v. Brajo Soondury Dabee*(4) qualified.

APPEAL against the order of H. G. Joseph, Acting District Judge of Ganjam, in original suit No. 2 of 1883.

The plaintiff, holder of a decree dated 14th October 1884,

* Appeal against Order No. 53 of 1892.

(1) 34 Beav., 584.

(2) L.R., 8 C.P., 425.

(3) I.L.R., 2 Mad., 174.

(4) I.L.R., 8 Calc., 89.

KOORMAYYA
v.
KRISHNAMMA
NAIDU.

presented a petition, dated 14th April 1891, to show good reasons why the decree had not been barred by limitation. It appeared that the plaintiff applied for and was paid certain moneys through the Court under receipts dated 15th May and 28th October 1889. The District Judge held on the authority of *Fuzal Iman v. Metta Singh*(1) that such an application was not a step in execution within the meaning of clause 4 of article 179, schedule II of Act XV of 1877, and that consequently the limitation was not saved.

The petitioner preferred this appeal.

Pattabhirama Ayyar for appellants.

The respondents were not represented.

JUDGMENT.—It must be inferred, from the Sheristadar's report on the receipts of 1889 and the Judge's subsequent order thereon, that there was a request for payment of the money realized in satisfaction of the decree, and such request is sufficient to keep the decree alive, as held in *Venkatarayalu v. Narasimha*(2).

Though the Judge considers the opinion expressed in *Venkatarayalu v. Narasimha*(2) to be a mere *obiter dictum*, it was certainly one of the grounds of decision in the case, and we agree with it. With reference to the observation in *Hem Chunder Chowdhry v. Brojo Soondury Dabee*(3) that the money may be drawn at any time, it seems to us that in deciding whether any particular act is or is not an application for, or step in aid of execution, it is the nature of the act that must be looked to, and not the time at which it may possibly be done.

We set aside the order of the District Judge and direct that the execution be proceeded with.

(1) I.L.R., 10 Calc., 549.

(2) I.L.R., 2 Mad., 174.

(3) I.L.R., 8 Calc., 89.
