APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Benson.

VENKAYYA (Respondent), Appellant,

v.

RAGAVACHARLU (Appellant), Respondent.[*]

*Civil Procedure Code—Act XIV of 1882, s. 583—Limitation Act—Art XV of 1877,
sched. II, art. 179—Application for restitution—Period of limitation—Fraud.*

Applications made to obtain restitution under a decree in accordance with
Civil Procedure Code, section 583, are proceedings in execution of that decree and
are governed by Limitation Act, sched. II, art. 179.

Appeal under Letters Patent, section 15, against the judgment of
Mr. Justice Parker in Appeal against Order No. 13 of 1895 revers-
ing the order of K. C. Manavedan Raja, Acting District Judge
of Nellore, made in Civil Miscellaneous Appeal No. 3 of 1894,
affirming the order of P. Adinarayanayya, District Munsif of
Kanigiri, made on execution petition No. 144 of 1894.

This was a petition put in under Civil Procedure Code, sections
330 and 335, by the defendant in Original Suit No. 127 of 1879 on
the file of the District Munsif of Kavali to obtain restitution.

The District Munsif rejected the application as being barred
by the twelve years' rule of limitation overruling the petitioner's
plea that he had been prevented by fraud from executing the
decree.

The District Judge affirmed the decision of the District Munsif.
The petitioner preferred an appeal to the High Court, which came
on for hearing before Mr. Justice Parker, who said :—" I have
" no doubt that proceedings taken for obtaining restitution under
" section 583 of the Civil Procedure Code are proceedings in exe-
"-cution of the decree. The petition itself is put in under section
" 230 and execution will be barred under the twelve years' rule,
" unless the defendant has by fraud or force been prevented from
" executing the decree." He proceeded to refer to the allegations
of fraud made by the petitioner and in the result set aside the order
of the District Judge and remanded the case to be re-heard.

The respondent preferred the present appeal under the Letters
Patent.

[*] Letters Patent Appeal No. 39 of 1896.

Seshagiri Ayyar for appellant.

Ramachandra Rau Saheb for respondent.

JUDGMENT.—We have no doubt but that the learned Judge is right in holding that applications made to obtain restitution under a decree in accordance with section 583, Civil Procedure Code, are proceedings in execution of that decree, and are governed, as regards limitation, by article 179 of the second schedule of the Limitation Act. This is in accordance with the view taken in *Nand Ram v. Sita Ram*(1).

The appellant's vakil relies on a remark in the case reported as *Kurupam Zamindar v. Sadasiva*(2) to the effect that the learned Judges in that case were disposed to think that the application in a similar case was governed by article 178. That remark, however, is a mere *obiter dictum* and as such is not binding on us. One of the Judges who took part in that case is the learned Judge, whose order in the present case rules that article 179 is the article properly applicable. The appeal, therefore, fails and we dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

RAJA GOUNDAN (DEFENDANT), APPELLANT,

v.

RANGAYA GOUNDAN (PLAINTIFF), RESPONDENT.*

Rent Recovery Act—Act VIII of 1865 (Madras), s. 78—Limitation—Suit to recover property wrongfully distrained.

The plaintiff sued to recover certain property wrongfully distrained by the defendant who was his landlord, or in the alternative for its value. The defendant had tendered no patta to the plaintiff, but the distraint had taken place professedly under the Rent Recovery Act. The suit was not brought within six months from the date of the wrongful distraint :

Held that the suit was not barred under Rent Recovery Act, section 78.

SECOND APPEAL against the decree of W. J. Tate, District Judge of Salem, in Appeal Suit No. 181 of 1894, affirming the decree of

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(1) I.L.R., 8 All., 545.   (2) I.L.R., 10 Mad., 66.

* Second Appeal No. 14 of 1896.