

## APPELLATE CIVIL.

*Before Mr. Justice Parker and Mr. Justice Subramania Ayyar.*

JAMBUVAYYAN (PLAINTIFF) APPELLANT,

*v.*

VENKATARAYAR (DEFENDANT) RESPONDENT.\*

1895.  
August 19.  
September 3.

*Civil Procedure Code—Act XIV of 1882, s. 344—Insolvent judgment-debtor—Decree passed on appeal—Jurisdiction of original Court to make declaration of insolvency.*

A suit for money was dismissed, but on appeal the High Court passed a decree for the plaintiff. The judgment-debtor made an application to the Court of first instance under Civil Procedure Code, section 344, to be declared an insolvent:

*Held*, that the Court had jurisdiction to make the declaration sought for.

APPEAL under Letters Patent, section 15, against the judgment of MUTTUSAMI AYYAR, J., dismissing appeal against order No. 42 of 1893, which was preferred against an order of C. Venkobachariar, Subordinate Judge of Tanjore, on insolvent petition No. 2 of 1890.

The application in the Subordinate Court was made under Civil Procedure Code, section 344, by the defendant in original suit No. 36 of 1886 on the file of that Court. This suit had been dismissed by the Subordinate Judge, but his decree had been reversed in appeal No. 60 of 1888 in the High Court, in which a decree was passed for the plaintiff. Objections to the application were overruled by the Subordinate Judge, who passed an order as prayed. The decree-holder preferred to the High Court the appeal, which came on for hearing before MUTTUSAMI AYYAR, J., who delivered judgment as follows:—

MUTTUSAMI AYYAR, J.—It is urged in support of this appeal that the jurisdiction of the Subordinate Judge in insolvency matters is limited to decrees actually passed by himself and does not extend to decrees passed on appeal from his decrees by the Appellate Court, although the suits in which they are passed are cognizable by him. In support of this contention, reliance is placed on the wording of section 360 of the Code of Civil Procedure. That section is in these terms:—“The local Government may, by notification in the official “Gazette, invest any Court other than a District Court with the “powers conferred on District Courts by sections 344 to 359 of the

\* Letters Patent, Appeal No. 49 of 1894.

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“Code of Civil Procedure, and the District Judge may transfer to any Court, situated in his district and so invested, any case instituted under section 344. A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property any order of attachment has been made, in execution of a decree for money *passed by that Court.*” The argument is that the words “passed by that Court” are words of limitation, and do not include decrees under execution if they are passed by the Appellate Court in appeal.

By section 344 plenary jurisdiction is conferred on District Courts subject to the condition precedent that the judgment-debtor is arrested or imprisoned in execution of a decree for money, or that an order of attachment is made in execution of such decree. By the first clause of section 360, power is reserved to the local Government to confer on any Court other than a District Court the powers conferred on District Courts by sections 344 to 359. These two sections, if nothing more appeared, would disclose an intention to enable the local Government to confer co-ordinate jurisdiction. As Courts other than District Courts may have limited pecuniary jurisdiction over suits, the words “in any decree passed by that Court” are inserted. The occasion when the jurisdiction arises is arrest or imprisonment or attachment in execution of a money decree. The reasonable construction is that the words “decree for money passed by that Court” mean decrees passed by that Court in suits which are cognizable by it or decrees passed in appeal in confirmation, reversal or modification of those decrees. For purposes of execution, the decree passed by an Appellate Court is on the same footing with the decrees passed by the original Court itself. Whenever there is an appeal, the final decree capable of execution is the decree passed by the Appellate Court, whether it confirms, modifies or reverses the original decree, and if the appellant’s contention were to prevail, all decrees from which appeals are preferred would cease to be decrees passed by the original Court for purposes of execution. There would also be this anomaly. A Subordinate Judge would have insolvency jurisdiction over one defendant who did not prefer an appeal, and have no insolvency jurisdiction over another defendant in the same suit who preferred an appeal from his decree. At the last hearing when this Court directed the District Court to return the appeal preferred to it for presentation to the High Court, this objection was not taken. I

dismiss this appeal with costs on the ground that the construction which ought to be placed on a statute should be such as fairly and reasonably executes the intention of the legislature where that intention is plain.

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The appellant preferred the present appeal under Letters Patent, section 15.

*Sivasami Ayyar* for appellant.

*Mr. Parthasaradhi Ayyangar* for respondent.

JUDGMENT.—It is conceded that if the Subordinate Court had, in the first instance, decreed in plaintiff's favour, it would have had jurisdiction to entertain an application under section 344, but it is contended that it is otherwise, since the Subordinate Court dismissed the plaintiff's claim and the decree in his favour was passed by the Appellate Court.

If this argument be valid, the jurisdiction of the Subordinate Court would also be ousted, if the plaintiff had obtained a decree in his favour in the first instance, and that decree had subsequently been confirmed on appeal, since the decree to be executed would be that of the Appellate Court.

There can be no doubt that the Subordinate Court must execute the decree of an Appellate Court, reversing its own, and that in that respect it is regarded for all intents and purposes as the Court which passed the decree.

We think the order of the learned Judge was right and dismiss this appeal with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Shephard and Mr. Justice Best.*

BARROW (RESPONDENT No. 1), APPELLANT,

*v.*

JAVERCHUND SETT (APPELLANT), RESPONDENT.\*

1895.  
September 17.

*Limitation Act—Act XV of 1877, s. 14, sched. II, art. 179—Exclusion of time of proceeding bonâ fide in Court without jurisdiction—Step in aid of execution—Application for sanction to an agreement to give time to a judgment-debtor.*

On an application made in June 1892 for execution of a decree for the payment of a sum of money by instalments passed in 1883 by a Subordinate Court,

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\* Letters Patent Appeal No. 52 of 1894.