entitled to receive, and their Lordships will humbly advise His Majesty accordingly.

In the circumstances their Lordships think the appellant should bear his costs of these appeals; the costs in the Lower Courts will be in the discretion of the High Court.

Appeals allowed.

Solicitor for the appellant: *Douglas Grant.*

J. V. W.

APPELLATE CIVIL.

Before Sir Ralphi Sillery Benson, Officiating Chief Justice, and Mr. Justice Sankaran-Nair.

DESOO VENKATESA PERUMAL CHETTY (TRANSFEREE—PLAINTIFF), APPELLANT,

v.

SRINIVASA RANGA ROW AND THE OFFICIAL ASSIGNEE OF MADRAS, RESPONDENTS.*

1909. September 28. October 6.

Limitation Act XV of 1877, schedule II, art. 180—'Revival' of decree, what is—Civil Procedure Code, XIV of 1882, s. 248, notice under—No revival where notice not issued.

Where on an application for execution of a decree more than one year old, order for execution was issued without the notice to the judgment-debtor required by section 248 of the Civil Procedure Code of 1882, such order for execution does not 'revive' the judgment within the meaning of article 180 of schedule II of the Limitation Act of 1877. It is only where such notice has been issued that the judgment or decree is 'revived'.

ORIGINAL side appeal against the judgment and order of Wallis, J., dated 22nd December 1908 in Civil Suit No. 151 of 1893.

A decree was passed in favour of the plaintiff on 30th January 1894 in Original Suit No. 151 of 1893 in the High Court. The decree was transferred for execution to the District Court of North Arcot in January 1896. An application for execution was made on 15th February 1896 to the District Court and an order for attachment was made on 19th March 1896 without notice to the defendant. The decree was assigned to the appellant on 27th January 1908, who applied to the High Court for execution.

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* Original Side Appeal No. 5 of 1909.

BENSON, C.J., AND SANKARAN-NAIR, J.

DESOO VENKATESA PERUMAL CHETTY v. SRINIVASA RANGA ROW.

The following order was made by Wallis, J.

An application for the transmission of a decree is not an application for execution and notice under section 248 is not necessary (22 Cal., 921). The petitioners do not show that the order for transmission of 27th January 1896, was not made on notice to the defendant, and as such notice was not necessary, it cannot be presumed to have been given. The decree-holder applied for execution to the District Court of North Arcot on 15th February 1896 and an order for attachment was made on 19th March 1896 as the decree was more than a year old under section 248, Civil Procedure Code, this order ought to have been made on notice, but the petition on which the order of attachment is endorsed contains no order for notice such as would usually be found there if notice had been ordered and it may well be that the District Judge considered notice unnecessary. It is for the decree-holder to prove notice and I am not satisfied that he has proved notice or that on the evidence in this case notice ought to be presumed especially where there is a denial on the other side that notice was served. To constitute reviver under article 180 there must be an order for execution on notice, and as notice is not proved, the petition must be dismissed with costs.

Against this order the transferee-plaintiff appealed.

K. Srinivasa Ayyangar and *C. Venkatasubbaramiah* for appellant.

P. V. Ramachandra Raju for respondent.

JUDGMENT.—The decree-holder applied for execution on the 15th February 1896 of his decree which was more than a year old. It was necessary to issue notice under section 248, Civil Procedure Code of 1882. We have now ascertained that no notice was issued and an order for attachment was made on the 19th March 1896. The present application for the transmission of the decree for execution after substituting the appellant's name as transferee on record was made within twelve years from the date of the order. The question whether the application is barred depends upon the meaning to be given to the word "revived" in article 180, schedule II of the Limitation Act. In all the cases cited an order to issue execution *after* notice to the judgment-debtor has been held to revive a judgment or decree. But we have not been referred to any case in which an order alone without any notice has been held to have that effect. The appellant's pleader

argues that the absence of notice under section 248 of the Code of Civil Procedure of 1882 has been held to be only an irregularity and though it may be open to the judgment-debtor to set aside the order passed without notice in an appropriate proceeding it is not open to him to treat it as a nullity till set aside—see *Malkarjun* v. *Narhari*(1). This may be so. But the question that we have to consider is what is the meaning of the term "revived," and when the cases show that it has long been understood to mean an order after notice we do not think we shall be warranted in giving that term a wider meaning. We must therefore uphold the order of the learned Judge and hold there was no revivor.

It was then argued that as there is an application now pending to execute the decree, the question of limitation does not arise. This question was not raised before the learned Judge, probably for the reason that the present application was to transmit the decree for execution and not to continue any execution proceeding already pending. The appellant must be left to make a fresh application on that basis and cannot be allowed to raise that question at this stage on this application.

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Miller.

NARAYANASWAMI NAIDU GARU, RECEIVER, NIDADAVOLE ESTATE (PLAINTIFF), APPELLANT IN APPEAL SUIT NOS. 191 AND 192 OF 1907,

v.

SREE RAJAH VELLANKI SREENIVASA JAGGANNADHA RAO BAHADUR, ZAMINDAR GARU (DEFENDANT), RESPONDENT IN BOTH.*

1909. October 6, 18, 19, 28.

Land-revenue Assessment Act (Madras), Act I of 1876—Party driven to sue for separate registration not entitled to damages for refusal to register—Action for money had and received—Request, when implied.

The alienee of a portion of an estate, who is driven to a civil suit to enforce separate registry, under Act I of 1876, all the parties to the alienation not

(1) (1901) I.L.R., 25 Bom., 337.

* Appeals Nos. 191 and 192 of 1907.