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unite in the same suit his causes of action in the alternative, as he might have done in the Bombay case, it is impossible to hold that explanation II to section 13 operates as a bar to the subsequent suit.

The second appeal is, therefore, allowed, and, reversing the decree appealed against, the case is remanded to the lower Appellate Court for disposal on the merits. The costs of this second appeal will be costs in the case.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

1903. May 1. July 16.

RUNGIAH GOUNDEN & Co. (PETITIONERS), APPELLANTS,

v.

NANJAPPA ROW AND OTHERS (COUNTER-PETITIONERS), RESPONDENTS.*

Limitation Act—XV of 1877, sched. II, arts. 178, 179—Decree for sale of hypothecated property on a certain date in default of payment—Order for stay of execution passed before date fixed for sale—Subsequent application for execution more than three years from date of decree.

By a decree, dated 10th November 1897, it was provided that, in default of the defendants in the suit paying the sum decreed on or before the 10th May 1898, the hypothecated property should be sold. At the date of the decree another suit was pending in the same Court, in which the decree-holders were defendants and the judgment-debtors plaintiffs. On 27th November 1897, the judgment-debtors applied under section 243 of the Code of Civil Procedure for stay of execution of the decree pending the disposal of the suit in which they were the plaintiffs. On the 31st January 1898, an order was passed staying execution of that decree until the disposal of the other suit. The last-mentioned suit was disposed of on 23rd December 1901, and on 20th March 1902 the decree-holder in the earlier suit applied that the hypothecated properties might be sold:

Held, that the application was not barred by limitation, it being governed by article 178 and not by article 179, inasmuch as no prior application for execution of the decree or to take some step in aid of execution of the decree had been made. Article 179 is not exhaustive of applications for execution of decrees. There are cases to which article 178 may apply.

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* Civil Miscellaneous Appeals Nos. 111 and 112 of 1902, presented against the orders of W. E. T. Clarke, Subordinate Judge of Nilgiris, dated 21st July 1902, in Execution Petition No. 418 and in Miscellaneous Petition No. 245 of 1903, respectively, in Original Suit No. 74 of 1896.

A decree which directs the sale of mortgaged property in default of payment of the mortgage money declared due on or before the date fixed in the decree is not, within the meaning of paragraph 6, column 3, of article 179, a decree directing the payment of the amount to be made at a certain date. If, however, there is also a personal decree against the mortgagor and the application is to execute the decree as such, limitation will run from the date of the decree under paragraph 1, if payment is enforceable under the decree from the date thereof or from a future date under paragraph 6 if payment can be enforced under the decree only on or after such future date fixed in the decree. Neither paragraph 1 nor paragraph 6 can apply to the execution of a mortgage decree, as such, namely, to an application for sale of the mortgaged property which the decree directs to be sold in default of payment of the ascertained amount on or before the day fixed in the decree.

Principles laid down by which the article applicable should be ascertained.

The decision of the Full Bench in *Mallikarjunadu Setti* v. *Lingamurti*, (I.L.R., 25 Mad., 244), in connection with questions relating to limitation, explained.

Muhammad Suleman Khan v. *Muhammad Yar Khan*, (I.L.R., 17 All., 39); *Muhammad Islam* v. *Muhammad Ahsan*, (I.L.R., 16 All., 237); *Thakur Das* v. *Shadi Lal*, (I.L.R., 8 All., 56); *Ali Ahmad* v. *Naziran Bibi*, (I.L.R., 24 All., 542); and *Ashrafuddin Ahmed* v. *Bepin Behari Mullick*, (I.L.R., 30 Calc., 407), approved and followed.

All applications for the execution of a decree for sale of mortgaged property are not governed by article 178.

Observations as to when article 179 will be applicable.

The true criterion in determining whether article 179 or article 178 applies to a particular application is to ascertain whether any one of the six points of time specified in column 3 of article 179 is applicable to it, and if none of them is applicable it is only then that article 178 will apply.

Under the Limitation Act of 1877, an application cannot be made merely for the purpose of signifying the decree-holder's intention to keep the decree in force.

EXECUTION PETITIONS. The facts material to the decisions are fully set out in the judgment. The Subordinate Judge held that the applications were barred by limitation and dismissed them.

The petitioners preferred these appeals.

The Advocate-General (Hon. Mr. J. P. Wallis), Hon. Mr. *C. Sankaran Nayar* and *S. Kasturiranga Ayyangar* for appellants.

Mr. *A. S. Cowdell* and *P. S. Sivaswami Ayyar* for respondents.

JUDGMENT.—*In A.A.O. No.* 111 *of* 1902.—This is a matter arising in execution of the decree in Original Suit No. 74 of 1896 which was brought by the appellants against the respondents. The decree bears date the 10th November 1897 and the portion of the decree that is now sought to be executed runs as follows:—"That in default of the defendants or any of them paying the sum of Rs. 47,852 with further interest thereon at 7 per cent. per

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annum from date of suit to date of payment on or before the 10th May 1898, the hypothecated property hereinafter described or a sufficient portion thereof be sold and that the proceeds of such sale, etc." At the time of the passing of the said decree there was pending in the same Court another suit No. 82 of 1896 which was brought by the respondents Nos. 1 to 3 against the appellants and in which they claimed Rs. 93,973-2-10 from the appellants. On the 27th November 1897 an application was made by respondents Nos. 1 to 3 (defendants) in Original Suit No. 74 under section 243, Civil Procedure Code, for stay of execution of the decree therein pending the disposal of Original Suit No. 82 and after issuing notice to the appellants an order was passed on 31st January 1898 directing stay of execution of the decree in Original Suit No. 74 until the disposal of the said suit No. 82 of 1896. Original Suit No. 82 of 1896 was tried and disposed of by the Sub-Court on 23rd December 1901. Thereupon, the present application (Execution Petition No. 418 of 1902) was made by the appellants on the 20th March 1902 praying for the sale of the hypothecated properties and the Subordinate Judge applying article 179 of schedule II, Indian Limitation Act, held that the application was barred by limitation and dismissed the same.

This was the very first application made for execution and it is admitted that no prior step in aid of execution had ever been taken. If, as held by the Subordinate Judge, the article of the law of limitation applicable to the case were 179 we should be constrained to uphold his decision and hold that the application was barred by limitation and that section 15 of the Limitation Act could not be relied on for saving the application from the bar of limitation as the provision therein made for enlarging the ordinary period of limitation is applicable only to a suit, which word as defined in section 3 of the Act must, for the purpose of limitation, be taken as excluding applications which are made in a suit. It may be that under Act IX of 1871 there was no necessity to extend the provisions of section 16 of the Act (which corresponds to section 15 of the present Act) to applications for execution of decrees, for under that Act though the execution of a decree might have been stayed by injunction or otherwise, the decree-holder might, for the purpose of the law of limitation, simply present a petition signifying his intention to keep the decree in force and such application, though it was presented during the

continuance of the order staying execution would give him a fresh starting point (*vide* paragraph 4, column 3, article 167, schedule II, Act IX of 1871). Under paragraph 4 of column 3 of article 179 of Act XV of 1877 corresponding to article 167 of Act IX of 1871, the application which would furnish a fresh starting point for limitation must be one made in accordance with law for execution or to take some step in aid of execution of the decree and not one made merely to keep the decree in force. Such being the case it is only reasonable and proper that in computing the period of limitation prescribed for an application for execution of a decree the time during which the attaching decree-holder prosecutes a suit under section 283, Civil Procedure Code, or during which execution of the decree or a portion of it has been stayed by injunction or otherwise should be excluded. But as the law now stands "such course is not authorised" (*Narayana Nambi* v. *Pappi Brahmani*(1)) and it is not always possible to relieve the applicant from the bar of limitation by reviving an application which had been presented before the institution of the suit under section 283 or before the order staying execution. It may be that as in the present case no application had been or could have been presented before the order staying execution. And in cases in which an application had been presented prior to the suit under section 283 or to the order staying execution, it might have terminated in a manner which would make it impossible to revive the same, after the disposal of the suit or the expiration of the order as the case may be.

It has been argued on behalf of the appellants that even under article 179 the application is not barred by limitation, inasmuch as the effect of the order passed under section 243, Civil Procedure Code, staying execution of the decree was to postpone the date fixed for payment from the 10th May 1898 to the date of the decree in Original Suit No. 82, viz., 23rd December 1901, and, reading the decree as thus varied, limitation should be reckoned from the latter date under paragraph 6 of column 3 of article 179. It is impossible to accede to this argument for two reasons. An order relating to the stay of execution cannot be regarded as an order varying the decree either on review (section 623) or under section 206 or under section 210 which are the only sections under

(1) I.L.R., 10 Mad., 22 at p. 24.

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which a decree can be altered or varied by the Court which passed the same. An order staying execution is passed not necessarily by the Court which passed the decree, but by the Court executing the decree as a proceeding in execution under section 244, and the order is in reality only one postponing execution and not one varying the decree.

Further, a decree which directs the sale of mortgaged property in default of payment of the mortgage money declared due on or before the date fixed in the decree, is not, within the meaning of paragraph 6, column 3, article 179, a decree directing the payment of the amount to be made at a certain date. If, however, there is also a personal decree against the mortgagor and the application is to execute the decree as such, limitation will run from the date of the decree under paragraph 1 if payment is enforceable under the decree from the date thereof or from a future date under paragraph 6 if payment can be enforced under the decree only on or after such future date fixed in the decree. Neither paragraph 1 nor paragraph 6 can apply to the execution of a mortgage decree as such, *i.e.*, to an application for sale of the mortgaged property which the decree directs to be sold in default of payment of the ascertained amount on or before the day fixed in the decree.

In our opinion the application in question is governed by article 178 and not by article 179, inasmuch as no prior application for execution of the decree or to take some step in aid of execution of the decree had been made, and we cannot accede to the contention on behalf of the respondents that article 179 is exhaustive of applications for execution of decrees and that article 178 cannot be applied to any application for execution of any decree. In construing article 179 one must not lay undue stress upon the entry in the first column, ignoring the entries in the third column. If the various starting points fixed in the third column of any article from which the period of limitation is to be reckoned do not cover all cases falling within the class of suits or applications described in the first column, it will be impossible to hold that the article in question is exhaustive of the class. If the article is inapplicable to certain cases comprised in the class those cases will be governed, in the case of suits, by the residuary article 120 and in the case of applications by the residuary article 178. By way of illustration we may refer to two instances in support of this view. Though the first column of article 10 is

exhaustive of the class of suits to enforce a right of pre-emption yet it was found that neither of the points of time fixed in the third column thereof was applicable to the case of *Batul Begam* v. *Mansur Ali Khan*(1) and the Privy Council held in that case that the article applicable was not article 10, though the suit was one to enforce a right of pre-emption, but the residuary article 120. Similarly, the first column of article 64 is in terms exhaustive of suits for the recovery of money due on accounts stated. But the third column clearly shows that the article is limited to cases in which the accounts are stated in writing signed by the defendant or his agent. It has been held in several reported cases that article 179 is inapplicable to certain applications for execution of decrees and that the appropriate article applicable thereto is 178. In *Muhammad Suleman Khan* v. *Muhammad Yar Khan*(2) in which the decree as originally drawn was incapable of execution it was held that an application made within three years from the time when it was, under section 206, amended (about 12 years after the date of the decree), was governed not by article 179 but by article 178. When a decree is amended under section 206, it will, of course, continue to bear the original date and it was held in that case that the first paragraph of column 3, article 179, can apply only to cases in which the decree is enforceable on its date and as the decree became enforceable only after its amendment under section 206, the right to apply for execution accrued only on that date and that the application was therefore within time under article 178. In *Muhammad Islam* v. *Muhammad Ahsan*(3), the decree was for recovery of possession of immoveable property but only on default being made by the judgment-debtor in the payment year by year of a certain annuity to the decree-holder and it was held that the limitation applicable to an application for the recovery of the property, on default, in execution of such decree was that provided for by article 178. Paragraph 1 of article 179 could not apply, because the property was not recoverable at the date of the decree; nor paragraph 6 because it does not apply to delivery of property moveable or immoveable. We may here refer to section 429 of the Civil Procedure Code which prescribes that when a decree is

(1) L.R., 28 I.A., 248; (S.C.) I.L.R., 24 All., 17.
(2) I.L.R., 17 All., 39. (3) I.L.R., 16 All., 237.

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passed against Government, say, for the delivery of land, a time must be fixed in the decree for the delivery and no execution shall issue until after the expiration of three months from the date of the report made by the Court to Government bringing to notice that the decree has not been complied with. If paragraph 1 of article 179 does not apply to the case because the decree is not enforceable on its date, there is no other paragraph which can apply and the application or rather the first application will be governed by article 178 and the three years will be reckoned from the expiration of the three months already referred to. In *Chhedi* v. *Lalu*(1), it was held that paragraph 1 of article 179 is applicable only to cases where there is a decree or order which can at its date be executed but that as the decree in a pre-emption suit is not capable of enforcement until the decree-holder pays into Court the pre-emption price, the first application for execution of such a decree is governed not by article 179 but by article 178, and that limitation commences to run against the decree-holder from the time when the pre-emption price is paid. It may well be doubted whether the decree in a pre-emption suit is not one enforceable at its date, inasmuch as it is perfectly open to the decree-holder to pay the amount into Court on the date of the decree and apply for execution. In *Maruti* v. *Krishna*(2), the decree provided for redemption by the plaintiff on payment within a month and it was held that as it was enforceable from its date, it being open to the plaintiff to pay the decree amount on its date, the application was governed by article 179 and not by article 178.

In the case of a decree for perpetual injunction there may be nothing enforceable at the date of the decree and the disobedience itself may take place more than three years after the date of the decree. None of the paragraphs in the third column of article 179 can apply to the first application for the enforcement of such a decree, under the provisions of section 260, Civil Procedure Code, and the application will be governed by article 178 (*Rajarathnam* v. *Shevalayammal*(3). In *Thakur Das* v. *Shadi Lal*(4), the decree provided that if the judgment-debt was not paid within four months the decree-holder should have the power to recover it by sale of the mortgaged property and it was held that inasmuch as

(1) I.L.R., 24 All., 300.
(2) I.L.R., 23 Bom., 592.
(3) I.L.R., 11 Mad., 103.
(4) I.L.R., 8 All., 56.

the decree provided expressly that the decree-holder might not apply for its execution till after the expiry of four months from its date, the first application made after the expiry of four months and within three years thereafter, though more than three years from date of decree, was governed by article 178 and not by article 179. This decision is directly applicable to the present case and we entirely concur in it. The question was again brought under the consideration of the Allahabad High Court in the recent case of *Ali Ahmad* v. *Naziran Bibi*(1), where, after reviewing all the previous decisions, it was held that an application by the plaintiff-mortgagee for an order absolute under section 87 of the Transfer of Property Act foreclosing the defendant's right of redemption is an application for execution of the decree passed under section 86 of the Act and is governed by article 178 and not by article 179 of the second schedule to the Indian Limitation Act, the time being reckoned from the date fixed by the decree for payment of the mortgage money by the defendant-mortgagor. As to the application of paragraph 1 of the third column to such a case the learned Judges (Bannerjee and Aikman, JJ.) observed as follows:—"Now there can be no doubt that the decree or order referred to in paragraph 1 must be a decree or order which on the date of it is capable of execution and that the *terminus a quo* cannot be a date on which the decree or order is not executable." Referring to the two previous cases of *Chunni Lal* v. *Harnam Das*(2) in which the decree was for the sale of the mortgaged property and *Parmeshri Lal* v. *Mohan Lal*(3), in which the decree was for foreclosure of the mortgage, both of which were relied on in support of the contention that article 179 was applicable, the learned Judges (one of whom took part in the former of the said two cases), who also consulted Mr. Justice Burkitt, who decided the latter case, observed that the only question considered and decided in those cases was whether applications for an order absolute for sale or for foreclosure are or are not applications for execution and as such governed by the period of limitation prescribed for the execution of decrees and not whether the period of limitation applicable thereto was that provided by article 179 or by article 178, and that in both these cases the application was held to be

(1) I.L.R., 24 All., 542. (2) I.L.R., 20 All., 302.
(3) I.L.R., 20 All., 357.

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barred by limitation, reference being made in the judgment to article 179, and that the result would be the same whether article 179 or article 178 applied.

Reference may here be made also to the recent case of *Ashrafuddin Ahmed* v. *Bepin Behari Mullick*(1), which appeared in the Law Reports after judgment in this appeal was reserved. In one of the appeals dealt with in that case, viz., Appeal No. 203 of 1901, the decree sought to be executed was an ordinary decree for money to which a clause was added that "the plaintiff shall not be able to take out execution of the decree until the disposal of the petition for insolvency made by the defendants before the District Judge of Patna." It was held that this clause, amounting only to an order staying execution of the decree till the disposal of the insolvency petition and not to a direction within the meaning of paragraph 6 of article 179, that payment of the amount decreed be made "at a certain date," viz., date of disposal of the insolvency petition, none of the points of time specified in the third column of article 179 was applicable to the case and that the application for execution was therefore governed by article 178, but that nevertheless the application was barred as the right to apply within the meaning of column 3 of article 178, accrued on the date when the insolvency petition was granted by the original Court under section 351, Civil Procedure Code, and not on the date when the receiver was discharged or the insolvency petition was finally disposed of in appeal. The present case is even stronger as to the applicability of article 178 inasmuch as the order staying execution of the decree was passed under a specific provision enacted by section 243 of the Civil Procedure Code.

The learned pleader for the respondents placed strong reliance also upon the passages at pages 288 and 269 in the recent Full Bench decision of this Court in *Mallikarjunadu Setti* v. *Lingamurti*(2) to the effect that an application for an order absolute under section 89 of the Transfer of Property Act is an application for execution of the decree passed under section 88, that it is governed by article 179 of the Limitation Act and that an order thereon is appealable as an order under section 244, Civil Procedure Code. Among the points referred to the Full Bench in that case there was no question as to the period of limitation for an application made under section

(1) I.L.R., 30 Calc., 407. (2) I.L.R., 25 Mad., 244.

89, Transfer of Property Act, for an order absolute for sale. The High Court of Calcutta has held that such an application is not an application for execution of a decree and that there is no period of limitation applicable thereto. All that was decided in the Full Bench case was that it was an application for execution of the decree and as such it would be governed by the period of limitation prescribed for execution of decrees and reference was casually made to article 179 as that is the one ordinarily applicable to execution of decrees. There was no question raised or argued as to whether article 179 or article 178 was applicable, for the simple reason that no question of limitation was at all involved in the case. To be fastidious it should have been observed that an application for an order absolute for sale is an application for execution of the decree and that for purposes of limitation it would be governed by article 179 or article 178 as the case might be.

Following the decisions quoted above we hold that the present application is governed by article 178 and not by article 179. We are not to be understood as laying down that all applications for the execution of a decree for sale of mortgaged property are governed by article 178. Though, at the date of the original decree, it may not be enforceable, yet if, at the date of the appellate decree, it is enforceable even the first application for sale made after the appellate decree will be governed by article 179, paragraph 2, and not by article 178, the time being reckoned from the date of the appellate decree. If the application in question has been preceded by another application made in accordance with law for execution or to take some step in aid of execution the article applicable will, as a general rule, be 179, paragraph 4, and not article 178. Similarly, if a notice has been issued under section 248, Civil Procedure Code, prior to the application in question, article 179, paragragh 5, will apply. Whether article 179 or article 178 is applicable to a particular application will depend upon the nature and portion of the decree sought to be executed and whether the application that is made is the first application or a subsequent application. The true criterion in determining whether article 179 or 178 applies to a particular application is to ascertain whether any one of the six points of time specified in column 3 of article 179 is applicable to it and if none of them is applicable, it is only then that article 178 will apply. There is, therefore, no force whatever in the argument advanced by the learned pleader

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for the respondents that if article 178 is made applicable to the execution of a mortgage decree for sale the decree-holder can make no application at all after three years from the date fixed for sale even if he had made an application within three years from such date. In the view we take of articles 178 and 179, the decree-holder will have the full benefit of article 179 whenever any of the six paragraphs of column 3 thereof can furnish a starting point for his application. It is only when the decree is not enforceable at the date on which it is made, and when the decree-holder will be prejudiced by the application of paragraph 1 of the third column of article 179, that his application may be saved from the bar of limitation by article 178 as in the present case.

In this very case if the present application is held not barred, any subsequent application which the decree-holder may make for execution will be governed by article 179, paragraph 4.

Applying, therefore, article 178 to the case, the only question that remains for consideration is,—when did the decree-holder's right to apply for sale accrue within the meaning of column 3 of article 178. But for the circumstance that respondents Nos. 1 to 3 applied for and obtained an order for stay of execution of the decree before the 10th May 1898, up to which the appellants could not have applied for an order absolute for sale, the decree-holder's right to apply for sale would have accrued on the 10th May 1898 and his present application would be clearly barred and it would be equally so even if the respondents had obtained an order for stay any day subsequent to the 10th May 1898. For if limitation had once begun to run under column 3 of article 178, the subsequent stay of execution would not affect it and for the reasons already stated in reference to article 179 the period during which the execution was stayed under section 243 could not, under the present state of the law, be excluded in computing the period of limitation under article 178. Execution having been stayed prior to the 10th May 1898 the decree-holder's right to apply for sale accrued for the first time only on the disposal of Original Suit No. 82 on the 23rd December 1901. It is impossible to accede to the argument that during the time that execution of the decree was stayed the decree-holder had a right to apply and that his right therefore accrued on the 10th May 1898 notwithstanding that if he had so applied the Court must have summarily rejected the application. In comparing paragraph 4 of article 179 with

paragraph 4 of the corresponding article 167 of Act IX of 1871 we have already pointed out that no application could, under the present law, be made merely for the purpose of signifying the decree-holder's intention to keep the decree in force. That being so, the only application in accordance with law which it was open to the decree-holder to make in the present case was one subsequent to the 23rd December 1901, the date of the decree in Original Suit No. 82.

In support of this view we may refer to the decision of the Bombay High Court in *Kalyanbhai Dipchand* v. *Ghanashamlal Jadunathji*(1) in which it was held that an application made by the decree-holder, or rather his representative, after an order staying execution of the decree had expired, to revive an application which had been made by the decree-holder before such order, was governed by article 178 and his right to make such an application by seeking to have his name entered in the original application in the place of the decree-holder could not have accrued on the date of the death of the decree-holder, as the order staying execution was then in force, and that the right accrued only after the expiration of that order.

The appeal is accordingly allowed with costs and the order appealed against is reversed and the case remanded in order that the necessary order may be passed in due course of law to bring the mortgaged property to sale.

A.A.O. No. 112 *of* 1902.—Subsequently to Execution Petition No. 418 of 1902, which was presented on the 20th March 1902, the appellants presented another petition on the 8th July 1902 purporting to be made under section 89 of the Transfer of Property Act and praying for an order absolute for sale. The object of taking this step evidently was to contend (relying upon certain decisions of the Calcutta High Court) that such an application is not governed by the law of limitation, and that after obtaining such an order absolute, which, according to certain decisions of the Calcutta High Court, is the final decree in the case, they might apply for execution of such final decree. In the recent Full Bench decision of this Court the majority held that the decree passed under section 88, Transfer of Property Act, is not a decree *nisi* or a preliminary decree, but the decree in the suit, and that an

(1) I.L.R., 5 Bom., 29.

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application for an order absolute for sale under section 89 is only an application for enforcing the decree under sections 230 and 235 of the Code of Civil Procedure and that, as such, it is subject to the law of limitation prescribed for execution of decrees.

For the reasons stated in the judgment in A.A.O. No. 111 of 1902, it must be held that this application is also governed by article 178 and is not barred by limitation.

The appeal is accordingly allowed and, reversing the order appealed against, the case is remanded for the necessary final order to be passed in due course of law for sale of the mortgaged property. Each party will bear his own costs of this appeal.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Davies.

1902. November 27, 28. December 9.

VEERASOKKARAJU, MINOR, REPRESENTED BY THE COLLECTOR OF SALEM AS AGENT TO THE COURT OF WARDS (PETITIONER, SECOND DEFENDANT), APPELLANT,

v.

PAPIAH (COUNTER-PETITIONER, PLAINTIFF), RESPONDENT.*

Hindu Law—Rights of unsecured creditors by way of charge or lien on the inheritance—Position of legal representative—Distribution of assets.

The unsecured creditors of a deceased Hindu have no charge or lien on the inheritance. If payments are not made by the heir rateably, it does not follow that he has failed to apply the assets duly. Every payment on account of a debt is perfectly lawful, irrespective of its effect upon the other creditors, and is a due application of the assets within the meaning of section 252 of the Code of Civil Procedure.

There is no analogy between the case of an executor who is governed by the special provisions of the Succession Act and that of a legal representative under the Hindu Law with reference to the question of the distribution of the assets among creditors.

Where property of a deceased remains in the hands of the legal representative, it does not necessarily follow that a creditor is entitled to proceed against it as assets in the hands of the legal representatives. The question to be

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* Civil Miscellaneous Appeal No. 89 of 1902, presented against the order of L. C. Miller, District Judge of Salem, dated the 28th day of February 1902, in Civil Miscellaneous Petition No. 34 of 1901, in Execution Petition No. 46 of 1900, in Original Suit No. 32 of 1898.