MOHIDEEN BEE v. SYED MEER SAHEB. — BAKEWELL, J.

distributive share of the property of an intestate. In the case where one of the heirs has retained part of the inheritance in his possession, the suit must be brought within twelve years at the latest, after the debts of the intestate have been paid and the inheritance has become divisible among the heirs. In my opinion the suit is barred and must be dismissed with costs.

K.R.

ORIGINAL CIVIL.

Before Mr. Justice Bakewell.

JAMES RUSSEL McLAREN AND OTHERS (PLAINTIFFS),

v.

V. VEERIAH NAIDU AND OTHERS (DEFENDANTS).*

1915. November 9.

Limitation Act (IX of 1908), art. 183—Revivor of decree of Original Side of the High Court—Revival of decree on notice to one only of two judgment-debtors, not operating as revival against the other.

A revivor of a decree of the Original Side of the High Court made on an application for execution against one only of two judgment-debtors in the case does not keep the decree alive so as to enable the decree-holder to execute it against the other judgment-debtor after twelve years from the date of the decree.

The facts of the case sufficiently appear from the judgment.

Messrs. *Venkatasubba Rao* and *Radhakrishnayya* for the plaintiffs.

K. Ramachandra Ayyar for the second defendant.

BAKEWELL, J. JUDGMENT.—By a decree of this Court, dated 20th of February 1900, the two defendants in the suit were ordered to pay to the plaintiffs the sum of Rs. 10,938-11-0 and interest thereon and costs. On the 24th February 1903, one of the plaintiffs in the suit presented an application for execution of this decree which prayed that notice under section 248 of the Code of Civil Procedure might issue to the first defendant to appear and show cause why execution of the decree should not issue and for attachment of a decree in another suit awarding costs to the first defendant. Notice was issued accordingly to the first defendant and on 3rd March 1903 an order was made granting leave to execute as prayed.

On the 25th February 1914 the transferee from the same plaintiff presented this application for execution of the decree, which states that the last order in execution is that of 3rd March

* Civil Suit No. 203 of 1899.

1908 and prays that the name of the transferee may be brought on record and leave to execute the decree against the second defendant be granted to him, and that notice may issue to the defendants. The second defendant appears upon notice issued on this application and objects that the application is barred by limitation by virtue of article 183 of the Limitation Act, 1908. This article prescribes a period of twelve years for an application to enforce a decree of a High Court in the exercise of its ordinary original civil jurisdiction, and provides that, when the decree has been revived, the twelve years shall be computed from the date of such revivor.

The English law is stated by Blackstone in the following passage:—"Writs of execution must be sued out within a year and a day after the judgment is entered; otherwise the Court concludes *prima facie* that the judgment is satisfied and extinct; yet, however, it will grant a writ of *scire facias* in pursuance of statute Westm. 2-13 Edw. 1, c. 45, for the defendant to show cause why the judgment should not be revived and execution had against him; to which the defendant may plead such matter as he has to allege in order to show why process of execution should not be issued or the plaintiff may still bring an action of debt founded on this dormant judgment, which was the only method of revival allowed by the common law" (Commentaries, 15th Edition, volume 3, page 421). The writ recited the judgment and any change in the parties, and commanded the Sheriff to make known to the defendant or other person named in the writ that he should appear before the Court on a specified date to show cause why the plaintiff should not have execution of the judgment (Freeman on Execution, volume 1, pages 323 and 324). The form of notice under Order XXI, rule 22 of the Code, which corresponds with section 248 of the Code of 1882, contains substantially the same particulars (Appendix E, Form No. 7), and it has been held that the procedure under this section has taken the place of the former procedure by writ of *scire facias* in the Supreme Court, and that an order for execution after notice effects a revivor of a decree within the meaning of article 183: see *Doo Venkatesa Perumal Chetty* v. *Srinivasa Ranga Row*(1). Where there had been a change of parties subsequent to judgment, as in the case of the death of the judgment-creditor,

(1) (1910) I.L.R., 33 Mad., 187.

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a writ of *scire facias* was necessary even within a year of the judgment, and it was held that a judgment in *scire facias* conferred a new right upon the executors—*Farran* v. *Beresford*(1) and *Farrell* v. *Gleeson*(2). Whether the judgment in *scire facias* conferred a new right when there had been no change of parties seems doubtful—*Farran* v. *Beresford*(1); but the writ should conform to the original judgment and should, therefore, be joint when the judgmont is joint, and the latter should be revived against all the original defendants (Freeman on Execution, volume I, page 313). The procedure upon the writ therefore followed that in the action of debt against joint-debtors in which all should be joined and judgment against one extinguished the claim against another joint-debtor—*King* v. *Hoare*(3).

From the passage from Blackstone cited above it appears that a judgment-creditor had concurrent remedies by the writ of *scire facias* and the action of debt, and it is improbable that the judgments would have different effects.

The order of revivor in the present case was made without notice to one defendant and he had therefore no opportunity of appearing and objecting thereto, and it had no effect as against him or his property, except that, if it were carried out his co-debtor might obtain a right of contribution as against him. It seems to me that an *ex parte* order of this kind should not be held to affect the position of the second defendant in the absence of any direct authority.

In other Courts, where the prescribed period of limitation is very much less than in this Court, an application for execution made against one of several joint-debtors takes effect against them all (article 182); but there is no such provision for cases in which notice of the application is required. The fact that the legislature has expressly provided for one case of joint-debtors and has omitted to make the same provision for another case appears to me to show an intention to place the two cases on a different footing.

For these reasons I hold that the previous order in execution against the first defendant did not revive the decree as against the second defendant, and I dismiss this application with taxed costs.

N.R.

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(1) (1843) 10 Cl. & F., 319 at p. 334; s.c., 8 E.R., 764.
(2) (1844) Cl. & F., 702; s.c., 8 E.R., 1260. (3) (1844) 13 M. & W., 494.