entitled to claim compensation for the damages which he has sustained through the non-fulfilment of the contract (illustration to section 75).

For the above reasons, I hold that the conclusion of SANKARAN NAIR, J., is right and I would affirm his decision and dismiss this appeal.

The Court.—The result is the appeal is allowed and the suit is dismissed with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

A. BALASUBRAMANIA CHETTI AND THREE OTHERS (JUDGMENT-DEBTORS), APPELLANTS,

1913. February 25 and 26.

v.

SWARNAMMAL AND ANOTHER (DECREE-HOLDERS), RESPONDENTS.*

Execution—Civil Procedure Code (Act V of 1908), sec. 141, O. II, r. 2—Non-applicability of, to execution applications—Consolidating statute, construction of.

The dismissal of a suit on the ground that no suit would lie to recover mesne profits subsequent to the date of a previous decree which awarded subsequent mesne profits is no bar to a claim thereto in execution of that decree.

The fact that a decree-holder made a previous application for execution to recover mesne profits only for three years subsequent to the plaint and not for a further period also is not a bar under Order II, rule 2, Civil Procedure Code, or section 141, Civil Procedure Code, as now enacted, to another execution application for recovery of mesne profits for the further period.

Thakur Prasad v. *Fakir-ullah* (1895) I.L.R., 17 All., 106 (P.C.); s.c., 22 I.A., 44, followed.

Safdar Ali v. *Kishan Lal* (1910) 12 C.L.J., 6, not followed.

There is nothing in the Code of Civil Procedure to prevent a decree-holder from presenting successive applications for realising different portions of his decree.

When the words of a consolidating statute are clear their effect cannot be cut down by a comparison with the language of earlier statutes.

Section 141, Civil Procedure Code, is intended to apply to proceedings in Civil Courts such as probate, etc.

APPEAL against the order of K. KRISHNAMACHARIYAR, the Subordinate Judge of North Arcot, in Civil Miscellaneous

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* Appeal Against Order No. 259 of 1911.

BALASUBRA-MANIA CHETTI v. SWARNAM-MAL.

Petitions Nos. 216 and 184 of 1911 in Execution Petition No. 8 of 1911 filed in Original Suit No. 4 of 1904 on the file of S. GOPALA ACHARIYAR, the District Judge of Salem.

The necessary facts are given in the judgment. The judgment-debtors, whose objections to the execution of the decree were over-ruled, preferred this appeal.

L. A. Govindaraghava Ayyar for the appellants.

C. V. Ananthakrishna Ayyar for the respondents.

BENSON AND SUNDARA AYYAR, JJ.

JUDGMENT.—This appeal relates to proceedings in execution of a decree. The decree which was passed in a suit for possession of immoveable property and mesne profits, awarded mesne profits till the date of plaint, *i.e.*, till the 23rd March 1904 and subsequent profits "till the date of delivery or for three years, whichever is the shorter period." It is clear that there is here an inadvertent omission of the words "from the date of the decree" after the words "three years." We agree with the Subordinate Judge in holding that the sentence must be construed as entitling the plaintiff to mesne profits for three years from the date of the decree. But it is contended that the plaintiff is barred from making this claim on account of certain prior proceedings. One bar pleaded is that the decree in Original Suit No. 1185 of 1909 on the file of the District Munsif's Court of Tiruppattur, which was instituted by the plaintiff for mesne profits for three years from the date of the plaint precludes this application. This objection was not pressed in the Lower Court and it was conceded that the suit was dismissed on the preliminary ground that a fresh suit for mesne profits subsequent to the date of the decree was not sustainable. It is now argued that it was also dismissed on the ground that the plaintiff ought to have included his present claim in his previous suit and, not having done so, he was barred from suing again by Order II, rule 2, Civil Procedure Code. Assuming that this was the case, the Court merely held that a fresh suit could not be sustained. This does not preclude the plaintiff from claiming subsequent profits in execution of his previous decree. It is next contended that in any event Order II, rule 2, Civil Procedure Code, bars the present claim, because the plaintiff made a previous application for execution in which he sought to recover mesne profits only for three years subsequent to the plaint and not for the further period included in the present application.

It is argued that section 141, Civil Procedure Code, makes the rule applicable to execution petitions by laying down that the procedure prescribed in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil Jurisdiction and reference is made to *Safdar Ali* v. *Kishan Lal*(1) in support of the argument, where the Calcutta High Court held that rule 9 of Order IX of the Civil Procedure Code providing for the restoration of a suit dismissed for default was applicable to an order passed under Order XXI either under rule 98 or rule 99. We shall presently deal with this. But we do not think that the change in the language of section 647 of the old Code of Civil Procedure was intended to make any alteration in the law. The Privy Council held in *Thakur Prasad* v. *Fakir-ullah*(2) that execution proceedings must be regarded as a continuation of the suit and that section 647 of the old Code of Civil Procedure (Act XIV of 1882) which enacted that the procedure prescribed in the Civil Procedure Code should be applicable in all proceedings other than suits and appeals did not make the Code applicable to execution proceedings. An explanation was added to the section by section 4 of Act VI of 1892 to make this clear. This explanation has been omitted in section 141 of the present Code. We do not think that this shows that it was intended to declare that execution proceedings are not a continuation of the suit. It was on general principles that the Privy Council held that a suit includes proceedings in execution, and the word "suit" in section 141 must therefore be understood as including execution. This is the view adopted by Messrs. Woodroffe and Ameer Ali in their notes to section 141. When the words of a consolidating statute are clear, their effect cannot be cut down by a comparison with the language of earlier statutes—see article 180 of the Limitation Act which shows that several successive applications may be made for the execution of a decree. That also shows that it could not have been the intention of the legislature to apply to execution proceedings provisions laid down with regard to suits only. The procedure to be followed in appeals and execution applications is specifically laid down in the Civil

(1) (1910) 12 C.L.J., 6.

(2) (1894) 22 I.A., 44; s.c. (1895) I.L.R., 17 All., 106 (P.C).

BALASUBRAMANIA CHETTI v. SWARNAMMAL.

BENSON AND SUNDARA AYYAR, JJ.

Procedure Code. Section 141 is intended to apply to other proceedings in Civil Courts such as probate, etc.

With regard to *Safdar Ali* v. *Kishun Lal*(1) it does not appear whether the order dismissing the previous application was passed under rule 98 or rule 99 of Order XXI of the Code of Civil Procedure. If it was passed under rule 99, section 141 might perhaps be applicable, as the proceedings would not be between parties to the suit and the application might perhaps be treated as an independent original proceeding. If the order was under rule 98, then section 141 would not be applicable. The facts of the case are not stated in the report. We do not therefore feel pressed by the decision. This case was distinguished in its facts in the later case—*Asim Mandal* v. *Rajmohan Das*(2) and the observations with regard to section 141 are dissented from. We hold that the application is not barred by Order II, rule 2 of the Code of Civil Procedure, which is not made applicable to execution applications by the Civil Procedure Code. We see nothing in the Code to prevent a decree-holder from presenting successive applications for realising different portions of what he is entitled to under his decree. Lastly, it is argued that the fourth defendant is not liable to be personally arrested in execution of the decree. The plaintiff waives his right, if any, to arrest him. He will therefore be declared not liable to be arrested. We dismiss the appeal with costs with the modification mentioned above.

(1) (1910) 12 C.L.J., 6. (2) (1911) 13 C.L.J., 532.