

tion of their official receipt, they were entitled to demand a consolidation note for Rs. 48,000. Such being the view I entertain of the case, I am of opinion that this appeal should be dismissed with costs. But the decree must be amended from the shape in which the relief has been given by the lower Court, so as to declare the plaintiffs entitled to damages, such damages to be the amount of the two promissory notes for Rs. 12,000 and Rs. 5,000, with interest from 1st July, 1872, to date of payment.

PEARSON, J.—I concur generally and substantially in the view taken of the case by my honorable and learned colleague, and in dismissing the appeal with costs, and in amending the decree of the lower Court in the manner proposed by him.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Straight.

NARSINGH DAS (DECREE-HOLDER) v. NARAIN DAS (JUDGMENT-DEBTOR).*

Execution of decree—Limitation—Act XV of 1877 (Limitation Act), sch. II, arts. 171, 179 (2), 181.

Held that the words "appeal" and "Appellate Court" in art 179 (2), sch. II. of Act XV of 1877, include an appeal to Her Majesty in Council.

Held, therefore, where an appeal had been preferred to Her Majesty in Council from a decree of the High Court dated the 18th August, 1871, and the High Court's decree was affirmed by an order of Her Majesty in Council dated the 12th August, 1876, and an application for execution of the High Court's decree was made on the 15th July, 1879, that, under art 179 (2), sch. II. of Act XV of 1877, the limitation of such application must be computed from the date of the order of Her Majesty in Council.

THE decree of which execution was sought in this case was one made by the High Court on the 18th August, 1871, on appeal from a decree of the District Judge of Benares. On the 28th January, 1874, the decree-holder applied for the execution of the High Court's decree. On the 12th August, 1876, an appeal having been preferred from the decree to Her Majesty in Council, the High Court's decree was affirmed. On the 15th July, 1879, the decree-holder made the present application for execution of the High Court's decree. The District Judge of Benares held that

*First Appeal, No. 154 of 1879, from an order of G. E. Knox, Esq., Judge of Benares, dated the 15th October, 1879.

1880

THE SECRETARY OF
STATE FOR
INDIA IN
COUNCIL
v.
SHEO SING
RAM.

1880

March 5

1880

ARISING
DAS
v.
DAS.

this application was barred by limitation, inasmuch as between the 28th January, 1874, and the 15th July, 1879, the decree-holder had taken no action in the matter of the execution of the decree. In so holding the Judge disallowed the decree-holder's contention that the period of limitation should be computed from the date of the order of Her Majesty in Council, such order being the order of an "Appellate Court" within the meaning of No. 179, proviso 2, sch. ii. of Act XV of 1877. The Judge observed with reference to this contention as follows:—"No. 179 is only for those cases for which No. 180 does not provide, while No. 180 is clearly intended for all orders of Her Majesty in Council. I cannot hold that Her Majesty in Council was ever intended as an Appellate Court in No. 179."

The decree-holder appealed to the High Court, again contending that limitation should be computed from the date of the order of Her Majesty in Council.

The *Senior Government Pleader* (Lala Juala Prasad) and Pandit *Ajudhia Nath*, for the appellant.

Mr. *Conlan* and Pandit *Bishambhar Nath*, for the respondent.

The following judgments were delivered by the Court :

OLDFIELD, J.—I hold that the decree which is now being executed is the decree of the High Court, and the law of limitation which will govern the case is art. 179 (2), Act XV of 1879,—" (Where there has been an appeal), the date of the final decree or order of the Appellate Court." In the case before us there was an appeal to Her Majesty in Council who affirmed the decree of this Court, the date of the order on that appeal being 12th August, 1876, and the present application is within time from that date.

I see no reason to doubt that the words "appeal" and "Appellate Court" in art. 179 (2) are intended to include appeals to Her Majesty in Council, since we find that these appeals are made the subject of legislation in the Act, which in art. 177 provides the limitation for the admission of such appeals, and in art. 180 provides the limitation for enforcing orders of Her Majesty in Council made in course of such appeals. Were it otherwise and were appeals referred to in art. 179 (2) restricted to appeals preferred to the

Appellate Courts in India, a party who had appealed to Her Majesty in Council from a decree of a Court in India would be in a worse position, in respect of the limitation for the execution of his decree, than a party who had appealed to an Appellate Court in India.

I would decree the appeal with costs and set aside the order of the Judge and remand the case for disposal on the merits.

STRAIGHT, J.—I am of opinion that the decree which is now proposed to be executed is the decree of the High Court of the 18th August, 1871, and that the law of limitation which must govern the matter is contained in art. 179, Act XV of 1877, paragraph 2, column 3. In the present case there was an appeal to Her Majesty in Council and the decree of this Court was ultimately affirmed by order of the 12th August, 1876. During the pendency of that appeal, time did not run and the period of limitation only began on the passing of the final order. The present application by the decree-holder, appellant before us, was made on the 15th July, 1879, and is therefore within time. I see no reason to doubt that the words "appeal" and "Appellate Court" are now intended to include appeals to Her Majesty in Council, for we find those appeals made the subject of legislation in Act XV, which by art. 177 provides a period of limitation within which they may be admitted. Moreover, art. 180 establishes a limitation for enforcing orders of Her Majesty in Council, a provision, the presence of which may be accounted for by certain observations contained in the judgment of the Privy Council in the case of *Kristo Kiuker Ghose Roy v. Burroda Kant Singh Roy* (1), quoted by Mr. Conlan in arguing this matter before us for the respondent. The question that arose there related to Act XIV of 1859 and neither in that Statute nor in Act IX of 1871 were there analogous articles to art. 177 or to the last sentence of art. 180. So far as that decision is concerned, it does not appear to me to be otherwise in any way relevant to the present case.

I agree that the appeal should be decreed with costs, and that the Judge should dispose of the application of the decree-holder on its merits.

Cause remanded.

(1) 17 W. R., at p. 227.

1880

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