

from one Court to another is an application to keep a decree in force. We accordingly decree the appeal with costs, and reversing the orders of the lower Courts, direct the Court of first instance to proceed with the application according to law.

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Appeal allowed.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

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RAGHU RAM AND OTHERS (JUDGMENT-DEBTORS) v. DANNU LAL (DECREE-HOLDER).*

*Execution of Decree—Proceeding to enforce decree—Act XIV of 1859
 (Limitation Act), s. 20—Limitation.*

Application for the execution of a decree was made on the 21st December, 1864, and in pursuance of such application the notice required by law was issued to the judgment-debtor. On the 7th February, 1865, the Court executing the decree called on the decree-holder to produce proof of the service of such notice within four days. On the 23rd February, 1865, in consequence of the decree-holder having failed to produce such proof, the Court dismissed the application. There was no proceeding either of the decree-holder or of the Court between the 7th and the 23rd February, 1865. On the 18th February, 1868, application was again made for the execution of the decree. *Held* that the proceeding of the Court of the 23rd February, 1865, striking off the former application for default of prosecution was not a proceeding to keep the decree alive, and the latter application was therefore beyond time.

THIS was an application for the execution of a decree. The facts of the case are sufficiently stated in the judgment of the High Court, to which the judgment-debtors appealed from the order of the lower appellate Court granting the application. The judgment-debtors contended that the application was barred by limitation.

Lala *Lalta Prasad*, for the appellants.

Munshi *Hanuman Prasad*, for the respondent.

The judgment of the Court was delivered by

PEARSON, J.—The question is whether the application of the 18th February, 1868, was within time. The last preceding appli-

* Second Appeal, No. 67 of 1878, from an order of H. A. Harrison, Esq., Judge of Mirzapur, dated the 29th April, 1878, reversing an order of Mirza Abid Ali Beg, Subordinate Judge of Mirzapur, dated the 1st March, 1876.

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cation was made on the 21st December, 1864, and in pursuance thereof notice was issued to the judgment-debtor. On the 7th February, 1865, the Court required the decree-holder to produce proof of the service of the notice within four days, and on the 23rd idem, in consequence of his having failed to comply with the requisition, struck off the application.

The first Court has held the application of the 18th February, 1868, to have been beyond time, being of opinion that the period of three years allowed by law should be reckoned from the 7th February, 1865, the date on which the decree-holder ceased to proceed in the matter of the application of the 21st December, 1864. The lower appellate Court has held that the period of limitation should be reckoned from the 23rd February, 1865, the date on which the application of 21st December, 1864, was struck off, and consequently that the application of 18th February, 1868, was within time. The first plea in appeal impugns the lower appellate Court's ruling on the point in question, and is accepted by us as valid.

There was no proceeding either of the decree-holder or of the Court between the 7th and 23rd February, 1865. On the part of the decree-holder, instead of action, there was inaction; and the Court's proceeding of the latter date striking off the application for default of prosecution was certainly not a proceeding to keep the decree alive. The view we take appears to us to be strongly supported by some of the observations in the Privy Council's judgment dated 14th July, 1870, in the case of *Dhiraj Mahtab Chund Bahadur v. Bulram Singh Baboo* (1) as well as by the judgment (2) to which the lower appellate Court refers in support of its own view.

We accordingly decree the appeal with costs, reversing the lower appellate Court's order and restoring that of the Court of first instance.

Appeal allowed.

(1) 5 B. L. R., at p. 616.

(2) *Roy Dhunput Singh Roy v. Mudhomotec Delia*, 11 B. L. R., 23