

the order was one within the competence of the Magistrate to make, and that the Magistrate believed that an offence had been committed, though it was not on the evidence before him established against the accused. Whether action under s. 416 was justified by the evidence was for the Magistrate to determine. I cannot say that he exercised his discretion wrongly regarding the tea regarding which the Babu made no claim. On the contrary, the latter said that the tea was found in the house occupied by Khazan Singh, his servant, and he supposes that Khazan Singh put it there. Moreover he did not explain how he became possessed of the tea or sugar either, but he said that they were not ration food. He, however, explained his possession of other portions of the property found. There was moreover some evidence that the guns were his, as also the "kuk-ri" and pistol, and the cartridges did not appear to bear the Queen's mark. The other articles, too, were such as he could have bought at public auction or might reasonably have in his own possession. This, too, may be said of the sugar which did not exceed 1½ sirs in quantity. The law requires that "an offence should appear to have been committed," and when this is the case, an order may be made under s. 418 of the Criminal Procedure Code. But with respect to the property proclaimed an offence appears to have been committed only as regards the tea. Therefore the proclamation must be confined to the tea found and seized by the police, and in this respect the order must be modified, and the remaining portion of the property will be excluded from the proclamation. I see no remarks on the part of the Magistrate regarding the Babu which are not warranted by the suspicious character and the circumstances of the case, and the Court below was quite justified in refusing to give back the tea, but the petitioner may have the rest of the property restored to him.

1879

 EMPRESS
INDIA
v.
NILAMBA
BABU,

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Spankie.

SOHAN LAL AND ANOTHER (DECREE-HOLDERS) v. KARIM BAKHSH (JUDGMENT-DEBTOR).*

Execution of Decree—Act X of 1877 (Civil Procedure Code), s. 230—Limitation.

The concluding clause of s. 230 of Act X of 1877 refers to the question of limitation, not that of due diligence.

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* Second Appeal, No. 114 of 1878, from an order of W. C. Turner, Esq., Judge of Sahāraupur, dated the 24th July, 1878, affirming an order of Babu Ishri Prasad, Mun-
sif of Deoband, dated the 6th March, 1878.

1879

MOHAN LAL
v.
KARIM
BAKSH.

Where, therefore, the decree-holder had not on the last preceding application under s. 230 of Act X of 1877 used due diligence to procure complete satisfaction of the decree, and Act X of 1877 had not been in force three years, *held* that the provisions of the third clause of s. 230 of Act X of 1877 were applicable to a subsequent application under that section.

The transferees of the decree in this case applied on the 23rd February, 1878, under s. 230 of Act X of 1877, for the execution of the decree, which was dated the 30th March, 1872. They had previously applied under that section for the execution of the decree on the 21st December, 1877. The Court executing the decree ordered on this application that the notices required by ss. 232 and 248 of Act X of 1877 should be given. The notices required by s. 232 were served, but the notice required by s. 248 was not served as the decree-holder failed to pay the Court fees leviable for the service of the notice. In consequence of this failure the application was dismissed by the Court. The judgment-debtor set up as a defence to the application dated the 23rd February, 1878, that under s. 230 of Act X of 1877 it ought not to be granted, the decree-holder not having on the preceding application, dated the 21st December, 1877, used due diligence to procure satisfaction of the decree. The Court refused to grant the application on the ground that the decree-holder had not on the preceding application used due diligence to procure satisfaction of the decree. On appeal by the decree-holders the lower appellate Court affirmed the order refusing the application.

The decree-holders appealed to the High Court, contending, with reference to the concluding clause of s. 230 of Act X of 1877, that the provisions of the third clause of that section were not applicable, three years after the passing of Act X of 1877 not having elapsed.

Munshi *Sukh Ram*, for the appellants.

Munshi *Hanuman Prasad*, for the respondent.

The judgment of the Court was delivered by

PEARSON, J.—The concluding clause of s. 230 of Act X of 1877 appears to us to refer to the question of limitation, not that of diligence. In this case a previous application had been made to the Court under the section, of which the third clause therefore appears to be applicable. The appeal is dismissed with costs.

Appeal dismissed.