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*May* 5.

*Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Tyrrell.*

FARAGA KUAR (JUDGMENT-DEBTOR) *v.* BHAGWAN DIN AND ANOTHER (DECREE-HOLDERS.)*

*Execution of decree—Civil Procedure Code, s. 230—Meaning of "granted."*

Under s. 230 of the Civil Procedure Code, after a decree is twelve years old, there is a prohibition against its being executed more than once, *i. e.*, an application for execution should not be granted if a previous application has been allowed under the provisions of that section.

The mere filing of a petition with the result that the application contained in it is subsequently struck off, is not "granting" an application within the meaning of s. 230 of the Code, and ss. 245, 248 and 249 show that there is a broad distinction between admitting an application for the purpose of issuing notice to the other side and of hearing the objections that may be urged, and a decision of the Court as provided in s. 249.

In 1865 a decree was passed for a sum of money payable by yearly instalments for a period of sixteen years. Down to March, 1877, various amounts were paid on account of the decree. In that month an application was made for execution of the decree, the result being an arrangement for liquidation of the amount then due, which was confirmed by the Court. A second application for execution was made on the 9th March, 1881, the decree then being more than twelve years old. All that was done with reference to this application was that notice to appear was issued to the judgment-debtor's representatives, and subsequently a petition was filed notifying that an arrangement had been effected, under which a certain sum had been paid by one of the said representatives in satisfaction of the claim against him, and that the other had agreed to pay the balance by yearly instalments. Upon this, the application for execution was struck off. On the 5th March, 1883, another application for execution was made, notice to appear was issued, and after this notice a petition was put in intimating that an arrangement had been come to, and praying that execution might be postponed, whereupon the application was struck off. Again, on the 31st March, 1884, the decree-holder applied once more for execution of the decree.

*Held* that neither the previous application of the 9th March, 1881, nor that of the 5th March, 1883, could properly be said to have been "granted" within the meaning of s. 230 of the Civil Procedure Code, and, under these circumstances, the decree, though twelve years old and upwards, was not barred by that section and the application for execution should be allowed.

THE facts of this case are sufficiently stated in the judgment of Straight, Offg. C. J.

Mr. *W. M. Colvin* and Munshi *Hanuman Prasad*, for the appellant.

Pandit *Bishambar Nath* and Munshi *Kashi Prasad*, for the respondents.

* First Appeal No. 122 of 1885, from an order of W. Bleunerhassett, Esq., District Judge of Cawnpore, dated the 4th July, 1885.

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PARAGA KUAR v. BHAGWAN DIN.

STRAIGHT, Offg. C. J.—On the 26th August, 1865, one Bhagwan Din, the respondent before us, obtained a decree against a person named Hattu Singh. It was an instalment decree for Rs. 3,214-14-2, payable by yearly instalments, commencing in the year 1866, and extending to the year 1882, in all a period of 16 years. In the year 1870 the judgment-debtor Hattu Singh died leaving behind him a widow named Manni Kuar and two daughters, one of whom had a son named Jai Johdan Singh. He also left among his heirs a nephew named Zalim Singh, whose widow, named Paraga Kuar, is the appellant before us.

Now down to March, 1877, various amounts had been paid on account of the decree, and on the 6th March of that year, an application for execution was made against Manni Kuar, the widow of the deceased Hattu Singh. The result of these proceedings was, that an arrangment was come to on the 11th May, 1877, for liquidation of the amount then due, and this arrangement was confirmed by the Court on the 9th June, 1877. The next application for execution, with which we have to do, was made on the 9th March, 1881. At this time the decree was more than 12 years old. There was an office report made to the effect that Manni Kuar had died, and therefore notice was issued to Jai Jodhan Singh and Paraga Kuar, widow of Zalim Singh above-named, surviving heirs of the judgment-debtor. On the 6th April, 1881, it was notified to the Court that another arrangement had been effected under which a certain sum had been paid by Jai Jodhan Singh in satisfaction and discharge of the claim against him, and that the balance of Rs. 800 had been agreed to be paid by Paraga Kuar by yearly instalments. On the 5th March, 1883, there was another application for execution against Paraga Kuar, which was the last preceding application for execution to that which we have to deal with, namely, that of the 31st March, 1884, and what is prayed by the decree-holder is, that the execution of the decree of 1865 should be allowed by attachment and sale of the property of Paraga Kuar.

That application has been granted by the lower Court, and Paraga Kuar prefers this appeal. The only real ground on which we are asked to disturb its order is, that the original decree having

been more than 12 years old at the date of the two last applications for execution, it is barred by limitation. Looking at the provisions of s. 230 of the Civil Procedure Code, it would appear that, after a decree is 12 years old, there is a prohibition against its being executed more than once, that is, an application for execution should not be granted if a previous application had been allowed under the provisions of that section.

Now the test to apply to this case is, to see whether the last of those applications preceding the application the granting of which is the subject of appeal, was *granted*, because, if granted, the prohibition referred to in the section applies. The last preceding application was that of the 5th March, 1883, and all that seems to have been done was, that application was made, notice to appear was issued, and after this notice, a petition was put in intimating that some arrangement had been come to, and praying that execution might be postponed, whereupon the application was struck off. It appears to me impossible to say that the mere filing of a petition with the result that the application contained in it is subsequently struck off, is granting an application within the meaning of s. 230 of the Code; and looking to the provisions contained in ss. 245, 248 and 249, it also appears to me that there is a broad distinction between admitting an application for the purpose of issuing notice to the other side and of hearing the objections that may be urged, and a decision of the Court as provided in s. 249. In other words, it is one thing to ask for execution of a decree, and another to have such application granted. I therefore think the last preceding application here was not one that can be said to have been "granted." The same may be said as to the application of the 9th March, 1881; nothing more was done as to that than as to the application of the 5th March, 1883. Therefore that also is not within the prohibition contained in s. 230.

Under these circumstances the decree, though twelve years old and upwards, is not barred by s. 230 of the Civil Procedure Code, and therefore the plea of limitation fails on that ground.

It has been suggested that the Judge has not tried the question whether Paraga Kuar was a party to the compromise of 1881;

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but no such objection has been put forward by her in her grounds of appeal. Her plea was that the execution of the decree was barred by limitation, and, though this matter has been before this Court in another shape in appeal from the District Judge, and is again before us, no such allegation has ever been formally made on her part, nor has it been entered in the memorandum of appeal. Under these circumstances we should not be justified in interfering with the order of the lower Court or delaying the execution of the decree. The appeal is dismissed with costs.

TYRRELL, J.—I concur.

*Appeal dismissed.*

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## CRIMINAL REVISIONAL.

*Before Mr. Justice Brodhurst.*

QUEEN-EMPRESS *v.* DHUNDI.

*Attempt to cheat—Act XLV of* 1860 (*Penal Code*), *ss.* 417, 511.

In a prosecution for an attempt to cheat, under ss. 417-511 of the Penal Code, the accused was charged and convicted of having at the central octroi office made false representations as to the contents of certain *kuppas* (skin vessels), the object of which was to obtain a certificate entitling him to obtain a refund of octroi duty. Prior to granting the certificate, the octroi officers examined the contents of the *kuppas* and found that the representations of the accused regarding them were untrue. In consequence of this discovery no certificate was given to him, and he was charged and convicted as above-mentioned. The procedure necessary for obtaining a refund of octroi duty was that the central office, on satisfying itself that the articles produced were of the nature stated, would grant a certificate, which certificate would have to be indorsed by the outpost clerk when he passed the goods (on which refund was claimed) out of the town, and the owner would have to take back the certificate so indorsed to the central office and present it to be cashed.

*Held* that even assuming the accused to have falsely represented the contents of the *kuppas* as alleged, he had not completed an attempt to cheat, but had only made preparation for cheating, and that the conviction must therefore be set aside.

THIS case was reported to the High Court for orders by Mr W. Young, Sessions Judge of Agra. The facts were set forth in the Judge's reference as follows :—"The applicant for revision, Dhundi, Ahir, is a servant of Kallu Mal, Bania, of Mathura, and the case against him is that he, at the central octroi office in Mathura, on the 16th December, 1885, falsely represented three *kuppas* (skins), which were there and then produced, to contain ghi,