

## REVISIONAL CIVIL.

1891  
March 31.*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Knox.*JAWAHIR MAL (PETITIONER) v. KISTUR CHAND AND ANOTHER  
(OPPOSITE PARTIES). \**Execution of decree—Decree of appellate Court—What that decree  
should contain.*

Where the judgment of an appellate Court directed that a certain sum over and above what had been decreed to him in the Court of first instance should be decreed to the appellant, but the decree of the appellate Court did not specify the sums that would be due to the appellant under that decree, except by reference to the judgment on which it was based and to the decree of the Court of first instance,—

*Held* that though the decree as thus drawn was informal, yet as the amount due to the decree-holder was ascertainable from the record, and the decree was thus practically capable of execution, execution should, as a matter of equity, be granted to the decree-holder.

This was a reference under s. 18 of the Ajmere Courts Regulation No. I of 1877, made by the Commissioner of Ajmere-Marwarra upon the following facts :—

On the 22nd December 1883, one Jawahir Mal obtained a decree for Rs. 4,110-12-8 in the Court of the Subordinate Judge of Beawar. The decree-holder appealed to the District Judge against this decree, claiming an additional sum of Rs. 1,601-7-0. The appellate Court found in favor of the appellant, but omitted to enter the sum found in his favor in its decree. The first application for execution was made on the 4th December 1886, and it was ultimately struck off. On the 19th November 1889, a second application for execution was filed and the usual proceedings commenced. On the 21st October 1889, the decree-holder applied in the appellate Court to bring the decree of that Court into conformity with the judgment. That application was rejected on the 29th November 1889, on the ground that there was no reason for amendment of the decree. The execution proceedings initiated on the 19th November 1889 were terminated by an order of the 19th December, striking off the execution proceedings as barred by limi-

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\* Reference under s. 18, Ajmere Courts Regulation No. I of 1877.

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tation. From this order the decree-holder appealed, but his appeal was rejected. He then applied that a reference might be made to the High Court on the point of limitation and other legal questions which were considered to have arisen in the case.

The reference came before Edge, C. J., and Knox, J., who gave judgment as follows :—

EDGE, C. J., and KNOX, J.—This is a reference from the Commissioner of Ajmere. Jawahir Mal obtained a decree against Kistur Chand and another for Rs. 4,110-12-8 with costs. That decree was obtained on the 22nd December 1883. The defendants appealed, and their appeal was dismissed. The plaintiff also appealed and his appeal was allowed. The result of his appeal was that he obtained a decree for certain costs of the appeal and for a sum found by the Commissioner to be Rs. 1,601-11-7 in addition to the amount of the original decree. On the 4th December 1886 he applied for execution, and on the 19th February 1887 his application was struck off, on the ground that he had not complied with the direction of the Court to file an inventory of the property to be attached and on the further ground that he was not present. There is no doubt in our minds that the decree to be executed is the decree of the appellate Court. We are informed that Jawahir Mal applied to the appellate Court to bring its decree into accordance with its judgment, and that the appellate Court dismissed that application, being of opinion that the decree was in accordance with its judgment and the application unnecessary. If the decree of the appellate Court had been drawn up strictly in form, it should have shown in itself the ultimate relief granted, that is, it should have shown a decree in Jawahir Mal's favor, not only for the amount of the decree in the Court of first instance, but for the additional amount decreed in appeal by the appellate Court, and should also have shown the costs. The decree did not specify these amounts except by reference to the decree of the Court of first instance and to the finding of the Commissioner. Now, although this decree is not in form, still from the record it can be ascertained what the amount was, and in our opinion the informality in the decree which was the result of the

manner in which it was drawn up in the office of the appellate Court, should not be allowed, where equity and good conscience are to guide us, to stand in the way of Jawahir Mal's obtaining execution for the amount found in his favor and for his costs. The application for execution was also informal, but we think it may be treated as an application to execute the decree in the case. It referred not only to the decree of the Court of first instance, but also to the decree of the appellate Court. Now as to the question of limitation. The application of the 4th December 1886, although it was struck off on the 19th February 1887, was still, in our opinion, an application for execution, or a taking a step in aid of execution within the meaning of art. 179 of the second schedule of the Indian Limitation Act, and therefore the present application is not time-barred. Owing to the view which we take and have expressed in this case it does not appear to us to be necessary to discuss the question as to the conflict between the decisions of the High Courts. With this expression of opinion we order the papers to be returned to the Commissioner of Ajmere-Marwara.

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 REVISIONAL CRIMINAL.
 

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 1891  
April 3.
 

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*Before Mr. Justice Straight.*

QUEEN-EMPRESS v. R. HAWTHORNE.

*Criminal Procedure Code, ss. 191 and 342—Magistrate taking cognizance of an offence on his own personal knowledge—Right of accused to have the case transferred—Power of Magistrate to question the accused.*

Where a Magistrate was found to have taken cognizance of an offence under cl. (c) of s. 191 of the Code of Criminal Procedure, *Held* that he had no power, on an application being made under the last clause of the section abovenamed, to refuse to transfer the case.

*Held* also that where a Magistrate, before evidence taken for the prosecution, put questions to the accused of the nature of a cross-examination, such procedure was illegal, as it could not be said that the questions were put "for the purpose of enabling the accused to explain any circumstances appearing against him in the evidence," within the meaning of s. 342 of the Code of Criminal Procedure.