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FULL BENCH.

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Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Tyrrell, Mr. Justice Brodhurst, and Mr. Justice Mahmood.

MASHIAT-UN-NISSA (DECREE-HOLDER) v. RANI (JUDGMENT-DEBTOR).*

Limitation—Execution of decree—Act XV of 1877 *(Limitation Act), sch. ii, art.* 179, *cl.* (2)—"*Appeal*"—"*Final decree or order*"—*Decree against defendants severally—Appeal by some only of the judgment-debtors—Civil Procedure Code, s.* 544.

Where a decree for possession of immoveable property was passed not jointly, but severally, as against all the defendants individually, and specifically stated the proportions of which they were severally in possession, as also the costs separately payable by each of them to the plaintiff; and where two only of the defendants appealed on pleas which did not assail the decree in respect of any right or ground common to the appellants and all or any of the non-appealing defendants, but referred merely to the specific property alleged to be in the appellants' hands:—

Held by the Full Bench (Brodhurst and Mahmood, JJ., dissenting) that a first application for execution of the original decree against those defendants who had not appealed from it, and which was made five years after the date of the decree, was barred by limitation, and clause 2 of art. 179, sch. ii of the Limitation Act (XV of 1877), did not apply so as to make time run from the proceedings in the appeal preferred by the other defendants. That clause applies only to those cases in which the parties to the execution proceedings were parties to the appeal, or to the class of cases to which s. 544 of the Civil Procedure Code applies. *J. P. Wise* v. *Rajnarain Chuckerbutty* (1) and *Mullick Ahmed Zumma* v. *Muhammad Syad* (2) approved.

* Second appeal No. 672 of 1887 from a decree of C. W. P. Watts, Esq., District Judge of Moradabad, dated the 21st January 1887, reversing a decree of the Subordinate Judge of Moradabad, dated the 28th August 1886.

(1) 10 W. R., p. 30. (2) I. L. R., 6 Calc., 194; 6 C. L. R., 573.

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Held by Brodhurst and Mahmood, JJ., *contra*, that art. 179, clause (2), must be construed as applying without any exceptions to decrees from which an appeal has been lodged by any of the parties to the litigation in the original suit. *Nur-ul-Hasan* v. *Muhammad Hasan* (1) followed.

THE facts of this case are sufficiently stated in the judgments of Straight and Mahmood, JJ.

Mr. *Roshan Lal* and Babu *Durga Charan Banerji*, for the appellant.

Munshi *Madho Prasad*, for the respondent.

MAHMOOD, J. (after explaining the circumstances under which the case was referred to the Full Bench, continued :—)

The case itself is to my mind already governed by authority. The facts of it are, that one Musammat Mashiat-un-nissa brought a suit against six persons, Ibrar Husain, Mohan Singh, Udai Singh, Musammat Rani, Syad Muhammad Ali, and Iradat Ali, and obtained a decree for possession of immoveable property on the 12th December 1881. In this litigation some parties were absent in the first Court. Among them were Ibrar Husain and Iradat Ali, so that the decree so far as it related to them was a decree passed *ex parte*.

Matters stood thus when only two of the defendants, namely, Udai Singh and Mohan Singh, who were parties defendants to the cause and had defended it, presented an appeal to the lower appellate Court, not from the whole decree, but from a portion thereof. And having read the decree itself in the original Hindustani in which the matter is dealt with, I have no doubt that the original decree was not a joint decree, but a several decree, and that it was in respect of some of the parties an *ex parte* decree. The Court of first appeal decreed the appeal on the 24th April 1882, and from that decree an appeal was presented to this Court, as a Court of second appeal, and this Court by its judgment of the 17th April 1883, restored the decree of the Court of first instance.

The present proceedings began in consequence of an application made by the decree-holder, Musammat Mashiat-un-nissa, who is appellant before us, on the 15th April 1886, and to those proceed-

(1) I. L. R., 8 All. 573.

ings she impleaded, among others, Musammat Rani who was one of the original parties to the original decree, and sought execution against her. Musammat Rani, on the 17th May 1886, preferred objections on the ground, *inter alia*, that the decree was barred by limitation. Upon consideration of these objections, the Court of first instance disallowed the objections, and allowed execution on the 28th August 1886, but the lower appellate Court by its order of the 21st January 1887, allowed the objections, and held that the execution of the decree was barred by limitation.

It is in consequence of that order that this second appeal has been preferred. It has been preferred upon two grounds stated in the memorandum of appeal. The first is that, because the decree was joint and was executed within three years from the date of the final decree of this Court, the judgment of the Court below is wrong. The other reason is that costs having been jointly awarded against all the judgment-debtors, the decree could not have been executed separately against the present respondents alone, and so the decree was not barred. The argument which was addressed to me as a Judge of this Court sitting in the single Bench, also when sitting with my brother Brodhurst, as also when sitting in this Court as member of a Bench of three Judges, also when sitting here in the same capacity as member of a Bench of five Judges, seems to me to raise three points of law which I must say Mr. *Durga Charan Banerji* has argued with much ability. Those points are :—

First, as to the interpretation of art. 179, sch. ii of the Limitation Act (XV of 1877), especially clause 2 of the third column of the article, whether the words "appeal" and "final decree or order of the appellate Court" are to be limited to any particular class of decrees or are to be understood in the broad sense of the words being read without any qualification by importing either epithets or other matters with respect to the statutory words above mentioned.

The second question is, if these words are to be qualified by any qualification outside the statute in which they occur, whether or not the words to be imported are to be limited to any particular class of epithets.

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The third question is, what was exactly the nature of the decree?

Dealing with the third question first, it is clear to me that the decree cannot fall under the words, "joint" or "joint and several," though it may fall, to the extent of the two persons Ibrar Husain and Iradat Ali, under the category of being a decree *ex parte*. I do not, however, wish to deal with this point at any length, because the views which I hold are independent of the nature of the decree. I must, however, refer by way of explanation to the circumstances which to my mind require consideration as to the meaning of the word "decree."

In the course of the argument yesterday I said from the Bench that to my mind if the word decree is to be qualified, it contemplates possibilities of the following description :—

(1) A decree passed *ex parte*.

(2) A decree passed in default.

(3) A decree in an appeal, in respect of a portion of the subject-matter of the decree.

(4) A decree passed in appeal by only one out of several parties or by all the parties.

(5) A decree in an appeal from a decree passed only as to costs.

(6) A decree or order in a Civil Court not governed by the Civil Procedure Code.

And irrespective of other considerations which may refer to the possibilities of the decree, a decree may be qualified by the words "joint," "several," "joint and several."

I have arrived at the conclusion that the real difficulty which arises in this case is that of interpreting the statute whereby the case is governed. In doing so, I am within the authority, not only of judgments in the Courts in England, but also of judgments in British India that the general rule of interpretation is that a word which is to be understood in the language of the statute is to be understood in the most general manner unless there is enough reason to qualify the meaning of the word. In cases where a statute is

peculiar and limited in its own scope, the principle of interpretation has been to refer to other portions of the statute, but also in cases where there are statutes more than one the Judges have to consider those statutes which are *in pari materia*, and with their help to remove the ambiguity. The rule again is what has been I believe called in England the golden rule of interpretation, that the Legislature deals with the difficulties which arose before the statute was passed.

I hold this to be a sound principle of interpretation, and I hold also that in the statute, Act XV of 1877, there is nothing to warrant me, either in the first column of article 179, or in the third column of the same article, clause 2, in limiting the word "appeal" or "decree" by any one of the epithets which I have suggested if a broad meaning is to be placed upon those words. This is what I have already said on a former occasion in *Nur-ul Hasan* v. *Muhammad Hasan* (1). I refer especially to the first portion of my judgment which is reported at page 576. There, in expressing my concurrence with the views which Mr. Justice Oldfield had already expressed, I went on to say:—"I have arrived at exactly the same conclusion as my learned brother, but I wish to say that the ground of distinction which he has drawn between the present case and those referred to is, to my mind, very clear. The present case is not necessarily inconsistent with what was ruled there. In the 2nd clause of article 179, there are no words limiting or qualifying the application of those words to decrees in which only one or more of the parties have appealed; the clause as framed must be looked upon as intended to apply, without any exceptions, to decrees from which an appeal has been lodged, by any of the parties to the original proceedings; and I should say the clause should certainly be applied to cases such as the present, where the whole decree was imperilled by the appeal."

It is clear that the main principle upon which my judgment proceeded was that there was no justification for qualifying the words to which reference has already been made by me more than

(1) I. L. R., 8 All., 573.

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once. I think the ruling deals not only with the first point, but also with the second, as stated by me, and I have said enough on the third point. But because in the course of the argument some difficulty was raised by Mr. *Madho Prasad*, for the respondent, as to whether or not in interpreting article 179, we are to read the Civil Procedure Code as to the words "appeal" and "decree" I only wish to touch upon one or two points. A Full Bench of this Court in *Lal Singh* v. *Kunjan* (1) in interpreting s. 540 of the Civil Procedure Code, has held that the word decree as used in that section does not mean an *ex parte* decree, and that from such a decree no appeal would lie, and another Full Bench of this Court in interpreting the same expression has read that section with s. 584 and has held that a second appeal from an *ex parte* decree is allowable: *Ajudhia Prasad* v. *Balmakund* (2). If we were thus to read in the provisions of the Civil Procedure Code as to whether an appeal does or does not lie from *ex parte* decree, the argument would raise more complications in this case than those expected by the arguments of the learned pleaders for the parties, because it so happens that over that question, I have not been able to agree with the majority of this Court in their ruling in *Lal Singh* v. *Kunjan* (1).

Then again, if we were to read the Civil Procedure Code into the provisions of the Limitation Act, another difficulty would arise, and again on account of the Full Bench ruling of this Court as to the meaning of the words "decree which is capable of execution," that is to say, whether it is the last decree passed in the case or also a decree which, though passed by the first Court, contains the mandatory portion of the decree which is capable of execution: *Shohrat Singh* v. *Bridyman* (3) explained in *Muhammad Sulaiman Khan* v. *Muhammad Yar Khan* (4).

These questions I have only touched upon to show that I do not find any reasons which would justify me in not interpreting the Limitation Act, XV of 1877, by the ordinary rules of interpretation. I hold that the Act is, so far as this point is concerned with

(1) I. L. R., 4 All., 387.
(2) I. L. R., 8 All., 354.
(3) I. L. R., 4 All., 376.
(4) I. L. R., 11 All., 267.

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limitation, *in pari materia* with the Civil Procedure Code, and that the Civil Procedure Code cannot be imported for deciding questions of limitation unless there is special reference in the Act. Such special reference occurs in the body of article 179. It occurs also in the later parts of the same article, but it is clear to my mind that, so far as explanation I of the article is concerned, the explanation, like explanation II of the article, is by its own words limited to clause (4) of the article. There are many reasons why the same rule and the same principle which apply to clause (4) as to the extension of the time within which execution is to be limited are not to be made to apply to clause (2). The main reason is that in explanation I the word "appeal" does not occur, and therefore the word "application" in that clause is not to be taken as applying to "appeal" nor even for extending limitation to any decree on account of its having been subjected to appeal. Then again as to explanation II, there is no difficulty connected with this case.

I only wish now to say that there is a vast distinction between cases in which an application for execution is made, there having been no appeal from the decree, and cases in which there has been an appeal as contemplated by clause (2), article 179. I am particularly anxious to say this, because what I have said in *Nur-ul-Hasan* v. *Muhammad Hasan* (1) in the second paragraph of my judgment has been somewhat misunderstood. I said then, "I think the decree-holders in this case might, as a consequence of the appeal by the rival pre-emptors, claim, by analogy, the same footing with reference to limitation for executing their decree as a decree-holder who has taken a step in aid of execution, which is another ground for extending the time for execution, as provided in the fourth clause of the article."

Now when I used the word "might," I meant in that case to which Mr. Justice Oldfield and I were parties, that we were not anxious to question the authority of the ruling in *Sangram Singh* v. *Bujharat Singh* (2), and we therefore distinguished it from the case before us, but it does not imply that we adopted it.

(1) I. L. R., 8 All., 573. (2) I. L. R., 4 All., 36.

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Besides the rulings to which I have referred, Mr. *Durga Charan Banerji* has relied upon the following authorities:—*Ram Lal* v. *Jaggannath* (1), *Kishan Sahai* v. *The Collector of Allahabad* (2), *Narsingh Sewak Singh* v. *Madho Das* (3), *Basant Lal* v. *Najm-un-nissa* (4), *Mullick Ahmed Zumma* v. *Muhammad Syad* (5), *Gunga Moyee Dassee* v. *Shib Shunker Bhuttacharjee* (6), *Chedoo Lal* v. *Nand Coomar Lal* (7). Mr. *Madho Prasad* relies upon the following rulings: —*Hur Proshaud Roy* v. *Enayet Hussein* (8), *J. P. Wise* v. *Rajnarain Chuckerbutty* (9), *Sreenath Mojoomdar* v. *Brojonath Mojoomdar* (10), *Khema Debea* v. *Kamola Kant Bukshee* (11). Those authorities I have of course read with profound respect, but it would be taking up more time of the Court than necessary if I dealt with each of them separately. It seems to me that those rulings which relate to enactments antecedent to Act XV of 1877, are applicable only to cases to which those Acts applied. At least the Full Bench ruling in *J. P. Wise* v. *Rajnarain Chuckerbutty* (9), as also the ruling in *Sreenath Mojoomdar* v. *Brojonath Mojoomdar* (10), have no reference to the present enactment, although, if the same case arose with reference to this enactment, I should have considered it necessary to say more than what I have already said. The rulings antecedent to the enactment then do not throw much light on the present case. I still adhere to the views expressed by me in the case of *Nurul Hasan* v. *Muhammad Hasan* (12), *viz.*, that art. 179 cl. (2) of the Limitation Act (XV of 1877) must be construed as intended to apply without any exceptions to decrees from which an appeal has been lodged by any of the parties to the litigation in the original proceedings.

For those reasons I would decree the appeal and, setting aside the order of the lower appellate Court, remand the case under s. 562 of the Civil Procedure Code for being dealt with according to law, because the learned Judge of the lower appellate Court

(1) Weekly Notes 1884, p. 138.
(2) I. L. R., 4 All., 137.
(3) I. L. R., 4 All., 274.
(4) I. L. R., 6 All., 14.
(5) I. L. R., 6 Cal., 194.
(6) 3 C. L. R., 430.
(7) 6 W. R. Misc., 60.
(8) 2 Cal. L. R., 471.
(9) 10 W. R., 30; 11, B. L. R., 258.
(10) 13 W. R., 309.
(11) 10 W. R., 10; 10 B. L. R. 259 note.
(12) I. L. R., 8 All., 573.

has reversed the order of the first Court only upon the ground of limitation. As to costs I would make them abide the final result.

STRAIGHT, J.—This is a second appeal upon the execution side, and it arises under the following circumstances. One Musammat Mashiat-un-nissa brought a suit against seven persons, among whom were two persons, named Mohan Singh and Udai Singh, and a third person called Musammat Rani, who is the judgment-debtor, respondent to this appeal. She brought the suit as the daughter of her father Ghulam Raza who had died on the 8th August 1869, and she claimed that Mujib-un-nissa, her mother, having also died on the 22nd February 1876, as against her brother Ibrar Husain, who also was a defendant to the suit, she was entitled to obtain one-third of the estate of which he had obtained possession, he being only entitled to retain two-thirds. It will therefore be seen that the principal defendant to that case was Ibrar Husain, her brother, and it is clear from the plaint that all the other defendants were included in the suit as being in possession of portions of the estate as transferees either directly or indirectly from Ibrar Husain. Each of these defendants put in a separate statement of defence, except Udai Singh and Mohan Singh, who put in a joint defence in which they said, with respect to the property in their possession, that they were in possession of it under certain special circumstances, while as for the respondent Musammat Rani, she said that in respect of the village of Barai, which was the village claimed as against her in the suit, and of which recovery was sought from her, she had bought it from one Behari, who in his turn had obtained it at an auction sale of the rights of Ghulam Raza prior to his death. The Subordinate Judge who tried the case as the Court of first instance went fully and specifically into the various defences raised by the various defendants, and in the result he decreed the claim of Musammat Mashiat-un-nissa against all the defendants with one reservation, namely, that "excepting the mortgagee rights in the village of Gulba and in the grove, she be put in possession of the other property. Costs to be borne by all the defendants with the exception of Bhuri Singh." To give effect to the judgment of

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the Sub-Judge on the 12th December 1881, a decree was drawn up, which, it has been conceded by my brother Mahmood, was a decree severally as against all the defendants individually and in no sense against them jointly, and which specifically stated the proportions of which they were severally and separately in possession, as also the amount of costs each of them was to pay to the plaintiff. Consequently there was no difficulty in the way of the decree-holder doing what explanation II, art. 179 contemplates, *viz.*, making an application for execution against all or any of the judgment-debtors to the decree. With the exception of Udai Singh and Mohan Singh all the judgment-debtors, including the respondent Musammat Rani, remained content with the decree and made no move to obtain a modification or reversal of it by appealing, and, in my opinion, it became a final decree against them according to law. Udai Singh and Mohan Singh, however, did prefer an appeal to the Court of the Judge. I have carefully studied the terms of their memorandum of appeal and there is not to be found in it one single word assailing the decree in respect of any right or ground common to themselves and all or any of the other defendants. On the contrary the pleas taken simply assailed the decree in respect of the specific property alleged to be in the hands of those defendants-appellants as to which they had set up the bar of limitation and other special grounds of defence. Consequently in the Judge's Court the appeal, and the only appeal preferred, was by Mohan Singh and Udai Singh against Musammat Mashiat-un-nissa, and this was the appeal the Judge proceeded to hear and heard. For the reasons given in his judgment he decided that the plaintiff as against Mohan Singh and Udai Singh, could not maintain her suit in the shape in which she had brought it, and consequently he allowed the appeal and reversed the judgment of the Subordinate Judge in respect of those two defendants and dismissed her suit as to them. She in due course of law preferred a second appeal to this Court which came before Mr. Justice Oldfield and my brother Tyrrell; and they, having considered the judgment of the Judge, were of opinion that it was necessary that certain issues should be tried by the Court

below, and accordingly remanded them under s. 566. The result of the findings on remand was that Mr. Justice Oldfield and my brother Tyrrell practically restored the decision of the first Court in favour of the plaintiff as to those two defendants. It will thus be seen that from the 12th December 1881, there had been standing as against all the defendants with the exception of Udai Singh and Mohan Singh, an unappealed and executable decree in the hands of Musammat Mashiat-un-nissa, the decree-holder, which, I may remark in passing, it has been conceded there was nothing to prevent her from executing against any of the judgment-debtors with the exception of Udai Singh and Mohan Singh. It is this decree, and not the decree of this Court in appeal to which those two particular defendants alone were parties, that is the subject-matter of the execution proceedings now sought to be taken. Musammat Mashiat-un-nissa has now made an application for execution of that decree of 1881, as against Musammat Rani the respondent here, and to this Musammat Rani raises objections and says, "upon the face of it, the decree is barred by limitation, because the decree is dated the 12th December 1881, and here are you making your first application to enforce it in the year 1886." To this the decree-holder responds. "I am all right, because there has been an appeal, and therefore I am saved by the terms of art. 179, 3 column, para. 2, of the Limitation Act." In my opinion it was the duty of the Court which was asked by the decree-holder to execute the decree to see whether there had been an appeal, not by one or two defendants simply assailing a part of the decree specifically and separately affecting them, but an appeal which, though preferred by only two of the defendants, assailed a decree which disposed of the suit on grounds common to themselves and the rest of the defendants. The decree which was passed on the 12th December 1881, did not proceed on grounds common to the defendants; on the contrary, as I have already pointed out, it was several and specific as to each of them and distinguished the proportion of the property deliverable. In other words there were several separate decrees included in one. In so far as it affected the respondent Musammat Rani there never was any appeal, and it seems to me the learned Judge could not have

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taken any other view than he did, namely, that there had been no appeal. I do think that for the purpose of dealing with such a decree as that of a Civil Court of a Subordinate Judge acting under the Civil Procedure Code we are entitled to look to the Civil Procedure Code for information as to what the words "appeal" and "decree" mean, and I am not aware that there is any rule of interpretation or of law that should prevent us from doing so. The principle upon which I have founded my view of this case has been specifically stated, no doubt before the present Limitation Act came into force, by Sir Richard Couch in *J. P. Wise* v. *Rajnarain Chuckerbutty* (1). The same principle has also been recognised by Mr. Justice Pontifex in *Mullick Ahmed Zumma* v. *Muhammad Syad* (2). It seems to me to be a reasonable principle, and it is difficult to understand why one judgment-debtor whose liability is independent of and apart from that of another judgment-debtor under the same decree, under circumstances such as are disclosed in the present case, should have the period of limitation for execution of the decree as against him almost, if not quite, indefinitely postponed because the other judgment-debtor, in respect of matters alien to him and his liability, prefers an appeal. I entirely agree with what my brother Tyrrell has said, and that the appeal ought to be dismissed with costs.

EDGE, C.J.—The facts of the case have been very clearly stated by my brother Straight in his judgment just delivered, and I may say at once that I agree with the conclusions at which he has arrived. There is no doubt considerable difficulty in determining what cl. (2), art. 179, sch. II of the Limitation Act XV of 1877, really means. On the one hand it is not an unreasonable construction which has been put upon that clause by my brothers Brodhurst and Mahmood, but it appears to me that to put that construction upon it would be to extend the period of limitation as against persons who were in no way concerned with an appeal, and whose rights under a decree could not be affected by an appeal to which they were not parties, or whose liabilities under a decree could neither be limited or extended or varied by an appeal to which they were not

(1) 10 W. R., 30. (2) I. L. R., 6 Cal., 194; 6 C. L. R., 573.

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parties unless such appeal came within the scope of s. 544 of the Code of Civil Procedure. I cannot see why, in a case such as the present, when it was perfectly competent to the appellant before us to execute the decree of the first Court against those defendants who had not appealed, we should extend the period of limitation by holding the clause I have referred to to mean an appeal by any party to the suit. I think myself that an indication of what was the intention of the persons who drafted the clause in question may be found by examining explanation I to art. 179. It is quite true, as pointed out by my brother Mahmood in the course of the argument, that explanation I does not directly refer to clause (2); but still in the explanation we find it explained that when a decree is a several decree against different persons, the running of limitation will not be suspended by reason only of an application being made for execution against one of the several judgment-debtors. The case to which my brother Straight referred, the Full Bench case of *J. P. Wise* v. *Rajnarain Chuckerbutty* (1), is, I think, consistent with sound common sense. It is true that the case was decided under Act XIV of 1859, and not under the Limitation Act in question here. I infer from the judgment which was delivered by Pontifex and McDonell, JJ., in *Mullick Ahmed Zumman* v. *Muhammad Syad* (2) that they took the same view of the law which the majority of this Bench now take, notwithstanding the cases which have been cited to the contrary. I think cl. 2, art. 179, applies only to those cases in which the parties to the execution proceedings were parties to the proceedings in appeal, or the class of cases to which s. 544 of the Civil Procedure Code applies. On the facts of the case stated by my brother Straight it was not a case in which s. 544 of the Code of Civil Procedure would apply, as there was nothing common between the case of the defendants who appealed from the original decree and the other defendants. The defendants who appealed were fighting their own battle which did not concern the consideration of the case of the other defendants in the suit. I am of opinion that the appeal here should be dismissed with costs. As the

(1) 10 W. R., 30. (2) I. L. R., 6 Calc., 194.

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majority of the Court are of this opinion, the appeal is dismissed with costs.

BRODHURST, J.—Numerous rulings of this Court and of the Calcutta High Court have been referred to by the learned pleader for the appellant in support of his pleas. The rulings of this Court include judgments delivered even by a majority of this Court as now constituted. In *Nur-ul Hasan* v. *Muhammad Hasan* (1) Mr. Justice Oldfield in the course of his judgment remarked—"Nur-ul Hasan, the purchaser of the property, has now preferred this appeal on the ground that the application for execution is barred, having been filed more than three years after the passing of the decree. In my opinion the appeal fails because art. 179, cl. (2), being the limitation law applicable, the time should run from the date of the decree of the appellate Court. It is contended that that law is inapplicable because the appellant did not appeal from the original decree, and so far as he is concerned the respondents ought to have executed the decree irrespectively of the fact that an appeal had been preferred by some of the defendants. On this point certain decisions have been brought to our notice, *viz.*, *Hur Prashad Roy* v. *Enayet Hussain*, *Sangram Singh* v. *Bujharat Singh*. I think those cases are distinguishable from the present case, as in this case, although only one set of defendants appealed against the original decree, the grounds of such appeal imperilled the rights of the plaintiffs-respondents which they had obtained by a decree against all the defendants. Had the appeal of the second set of pre-emptors succeeded, the property decreed to the respondents would have passed away from them, and there would have been no decree for them to execute against the present appellant. I think this circumstance marks the distinction between the present case and the cases cited; but for my own part I think the terms of art. 179, cl. (2), are so clear and distinct that they scarcely admit of any such distinction being drawn. Under that law the period for the execution of a decree will begin to run, where there has been an appeal, from the date of the final decree or order of the appellate Court. It

(1) I. L. R., 8 All., 573.

contains nothing as to whether the appeal shall have been made by all the parties, or by one, or how far the appellate Court's order may or may not affect the rights of parties who have not appealed. It seems to me to give a plain and clear rule that in all cases where there has been an appeal the date of the final decision of the appellate Court shall be the date from which the time for execution will begin to run. In support of the view I am taking that in the present case limitation should run from the date of the appellate Court's decree, I may refer to *Mullick Ahmed Zumma* v. *Muhammad Syad* and *Ram Lal* v. *Jagannath*." And my brother Mahmood observed: "I have arived at exactly the same conclusion as my learned brother, but I wish to say that the ground of distinction which he has drawn between the present case and those referred to is to my mind very clear. The present case is not necessarily inconsistent with what was ruled there. In the second clause of art. 179 there are no words limiting or qualifying the application of those words to decrees in which only one or more of the parties have appealed; the clause as framed must be looked upon as intended to apply without any exceptions to decrees from which an appeal has been lodged by any of the parties to the original proceedings."

These rulings have not been refuted by the judgment of any Bench of a High Court that has been reported or that I have had an opportunity of considering. I concur in these rulings, and I would therefore allow the appeal and remand the case to the lower appellate Court, under s. 562 of the Civil Procedure Code, for disposal of the other points raised before it. Costs should abide the result.

TYRRELL, J.—In my opinion the limitation applicable is that of art. 179, cl. (i), sch. ii, of the Limitation Act (XV of 1877) and time against the decree-holder began to run from the date of the decree of the Subordinate Judge of Moradabad, which is the only decree passed in the cause between the decree-holder and the respondent, a decree which had become final long before the institution of the

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present proceedings in execution. As there was no appeal in the case between the parties to those proceedings, I am of opinion that the limitation of art. 179, clause (2), is inapplicable to this case. Several cases were cited on behalf of the appellant in which art. 179, cl. (2), was applied against judgment-debtors, who had not been parties to an appeal that had been made between other parties to the case; but most, if not all of these, were cases which either fell within the scope of s. 544 of the Civil Procedure Code now in force or would be amenable to the principle explained by Mr. Justice Oldfield in *Nur-ul Hasan* v. *Muhammad Hasan* (1), that is to say, they were cases in which the whole decree was appealed against, and the appellate Court dealt with the decree as a whole upon questions affecting all the parties to the decree, or cases in which the integrity of the decree as affecting the parties in the cause was imperilled. But the case before us, as well as the case of *Sangram Singh* v. *Bujharat Singh* (2) seems to me to be of an essentially different character. In both these cases the decree though one in form was in effect a decree awarding several reliefs having nothing in common as touching the individuals thereby severally affected. I think the distinction I have endeavoured to draw between the two classes of cases above referred to is justified, by way of analogy at least, by the rules contained in the explanation appended to cl. 4 of art. 179 and by the principles laid down in many cases, among which I may mention *Sreenath Mojoomdar* v. *Brojonath Mojoomdar* (3) and *Mullick Ahmed Zumma* v. *Muhammad Syad* (4). Accordingly I am of opinion that the rule followed by my brother Straight and myself in *Sangram Singh* v. *Bujharat Singh* (2) is applicable to the conditions of the present case, and therefore that the appeal of the decree-holder ought to be dismissed with costs.

Appeal dismissed.

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(1) I. L. R., 8 All., 573.
(2) I. L. R., 4 All., 36.
(3) 13 W. R., 309.
(4) I. L. R., 6 Cal., 194; 6 C. L. R., 573.