

1885

DEBI DAS  
v.  
LACHMAN  
SINGH.

a contract. It was a debt between the parties which could be recovered. The learned Chief Justice has defined a contract, and has shown that the facts alleged by the plaintiff constitute a contract within the meaning of s. 6 of Act XI of 1865. I never had any doubt that the preliminary objection to the hearing of this appeal was a sound one, and that the suit was of the nature of those cognizable by Small Cause Courts.

I may add that there are no less than nine cases reported in the *Weekly Notes* and the *Indian Law Reports* of decisions of this Court on this point, that a contract exists under circumstances such as that asserted by the plaintiff in this suit. Under these circumstances, an appeal does not lie to this Court, and this appeal must be dismissed with costs.

*Appeal dismissed.*

1885  
July 18.

*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

SHIB LAL (DECREE-HOLDER) v. RADHA KISHEN (JUDGMENT-DEBTOR.)\*

*Act XV of 1877 (Limitation Act), sch. ii, No. 179—“ Step in aid of execution of decree.”*

R, in a suit against S and other persons, obtained a decree on the 24th December 1878, S being exempted from the decree, and being awarded costs against the plaintiff. In executing his decree, R, on the 16th June, 1880, sought to set on the costs awarded to S against the amount due to himself. On the 6th August, 1880, S preferred objections to this course. On the 19th July, 1882, S applied for execution of his decree for costs.

*Held* that the application was barred by limitation, inasmuch as art. 179 (4) of the Limitation Act requires that the decree-holder should make a direct and independent application for execution on his own account, and it was not sufficient to satisfy the requirements of the law to offer objections under the circumstances under which they were offered in the present case.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Pandits *Ajudhia Nath* and *Nand Lal*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondent.

STRAIGHT and TYRRELL, JJ.—This appeal is presented under the following circumstances:—The plaintiff-respondent sued the defendant-appellant and certain other persons. He got a decree

\* Second Appeal No. 51 of 1885 from an order of W. T. Martin, Esq., Officiating Additional Judge of Aligarh, dated the 27th March, 1885, affirming an order of Maulvi Muhammad Sami-ulla Khan, Subordinate Judge of Aligarh, dated the 9th May, 1884.

against those other persons, but the defendant was exempted from the decree, and costs were awarded to him against the plaintiff-respondent, and the former was thus a decree-holder for the amount of costs against the plaintiff-respondent. This decree was dated the 24th December, 1878. On the 16th June, 1880, the plaintiff sought to execute his decree against those other persons, and he sought to set off the costs awarded to the respondent against the amount due to him. On the 6th August, 1880, the appellant preferred objections to his costs being set off in this manner, and, on the 2nd September, 1880, his objections were disposed of. The appellant then, on the 19th July, 1883, applied for execution of his decree for costs. The application has been rejected on the ground that it was not made within three years from the date of the decree. The appellant contends that his application was within time; that is, within three years from the date of the objection to the application of June, 1880. In other words, he contends that by filing his objections he took a step in aid of the execution of his own decree.

1885

---

 SHIB LAE  
 v.  
 RADHA  
 KISHEN.

This contention is not sustainable. We think that art. 179 of the Limitation Act requires that the decree-holder should make a direct and independent application for execution of his own decree on his own account; and it is not sufficient to satisfy the requirements of the law to offer objections under the circumstances under which they were offered in the present case. Were we to allow this contention, we should have to hold that resistance to another person's decree is a step in execution of a man's own decree. In this view of the matter, we dismiss the appeal with costs.

*Appeal dismissed.*

---

## FULL BENCH.

---

*Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst and Mr. Justice Tyrrell.*

BRADLEY (DEFENDANT) v. ATKINSON (PLAINTIFF)\*

*Landlord and tenant—Notice to quit—Act IV of 1882 (Transfer of Property Act), s. 106.*

On the 11th December, 1882, A, who had, on the 1st July, 1882, let rooms in a dwelling house to B, sent a letter to the tenant in the following terms:—

---

 1885  
 July 18.

---

\* Appeal No. 2 of 1885, under s. 10 of Letters Patent.