

fact, no application for execution was made by the present appellants, the heirs of the decree-holder, until the 30th August, 1883, and it is in connection with the application then made that the present appeal has been preferred.

The Court of first instance, regarding the judgment of the District Judge as conclusive as to the validity of the former application, entertained the present as within time. There was however no such adjudication as would be covered by the Privy Council ruling in the case of *Ram Kirpal v. Rup Kuari* (1), and therefore the District Judge on appeal held that execution of the decree was barred. The appeal has now come before us, and the whole matter depends on the question whether the application for execution of the 13th February, 1883, was such an application or step in aid of execution of decree as would prevent limitation from running out in regard to this application. Now it is clear, and it has been admitted, that the decree-holder had died two days before the application was made. No valid application could be made by his pleaders, because the authority of a pleader ceases at the moment of his client's death, and therefore we hold that the period of limitation should be calculated from the date of the decree up to the date of the present application, and that being a period of more than three years, the application is barred, and the appeal must be dismissed with costs.

BRODHURST, J., concurred.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

AIMAD KHAN (JUDGMENT-DEBTOR) v. MADHO DAS (OBJECTOR)*.

Civil Procedure Code, ss. 322B, 322D—Dispute as to extent of judgment-debtor's liability to claim—Appeal from order disposing of dispute—Nature of appeal—Act VII of 1870 (Court Fees Act), sch. ii, No. 11.

An appeal from the decision of a dispute under s. 322B of the Civil Procedure Code falls directly within the exception of art. 11 of sch. ii of the Court-Fees Act (VII of 1870), and the memorandum of appeal should therefore be presented as for a decree in a suit, upon an *ad valorem* stamp.

Srinivasa Ayyinga v. Peria Tambi Nayakar (2) dissented from.

* First Appeal No 141 of 1884, from an order of J. L. Denniston, Esq., Offg. District Judge of Ghazipur, dated the 13th May, 1884.

(1) L. L. R., 6 All 269; L. R., 11 Ind. Ap. 37.

(2) L. L. R., 4 Mad. 420.

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THE facts of this case are sufficiently stated for the purposes of this report in the order of Straight, J.

Shah *Asad Ali*, for the appellant.

The *Senior Government Pleader (Lala Juala Prasad)* and *Munshi Hanuman Prasad*, for the respondent.

STRAIGHT, J.—It will be convenient, in order to make the question of law raised for our decision clear, to state the following facts:—A money decree was obtained against the appellant Ahmad Khan, and it was transferred to the Collector under the Rules of 1880, prepared in pursuance of s. 320 of the Civil Procedure Code. The Collector thereupon issued notices in manner provided by s. 322A, and thereupon the respondent Madho Das submitted a claim showing that Ahmad Khan was indebted to him in an aggregate amount of Rs. 13,014-4-6 due in respect of an hypothecation bond and two hundis. Ahmad Khan disputed the accuracy of the amount of this demand, alleging, among other matters, that he had made certain payments for which he had not been given credit, that the conditions of the bond as to payment of interest on default were penal, and that no interest was recoverable in respect of the hundis after due date. A dispute thus having arisen, within the meaning of the 3rd paragraph of s. 322B, the Collector struck certain issues, and submitted them as therein provided to the Judge for his determination. That officer dealing with the matter remarks:—“These were virtually the issues of the Civil Court for some thousands of rupees.” He further, in accordance with findings recorded by his predecessor in office on the subject, declared that the bond should bear interest at the given rate or rates, and the same with regard to the hundis; and he forwarded to the Collector a statement of the accounts as embodying his decision. Ahmad Khan, being injuriously affected by this decision, now appeals, as from a miscellaneous order, on various grounds, and a preliminary objection is taken by the respondent to the hearing of the appeal, on the ground that, looking to the terms of s. 322D, it should have been presented as from a decree in a suit upon an *ad valorem* stamp, and not as an appeal from an order on a Rs. 2 stamp. I think this contention is a sound one and must prevail. By art. 11 of sch. ii of the Court-Fees Act

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it is provided that the stamp payable in respect of a memorandum of appeal to a High Court, "when the appeal is not from an order respecting a plaint or from a decree or order having the force of a decree" shall be two rupees. Now, s. 322D of the Procedure Code explicitly enacts that the decision of a dispute under s. 322B "shall, as between the parties thereto, have the force of, and be appealable as, a decree." The appeal before us, therefore, is an appeal from a decision which is declared to have the force of a decree and to be appealable as such, and it falls directly within the exception of art. 11 of sch. ii of the Court-Fees Act above-mentioned. It should, therefore, in my opinion, have been preferred upon the stamp provided for appeals from decrees, and, being insufficiently stamped, we cannot entertain it. I am aware that in taking this view I have the authority of Turner, C. J. [*Srinivasa Ayyangar v. Peria Tambi Nayakar* (1)] to the contrary; but I regret I am unable to accept it. With deference to that learned Judge, I cannot help thinking that his attention was not directed to the article of the Court-Fees Act, which, according to my view, determines the question. It seems to me that, looking to the nature of the proceedings to be held under s. 322B for the investigation of the nature and extent of decrees and claims, and the determination of the priorities of such decrees and claims, it was intended that those decree-holders or claimants, who chose to submit their decrees or claims to the Collector pursuant to s. 322A, should, when a dispute arises of the kind mentioned in s. 322B., be bound, if it is referred for decision to the Civil Court, by the decision of such Civil Court, as by a decree in a suit; moreover, it may be remarked that this decision might, as in the case now before us, often determine very important questions, the investigation of which would require the bestowal of much time and labour by the Civil Court. In view of this state of things, it does not appear to me to be unusual or unwarrantable that appeals from such a decision should be held to require an *ad valorem* stamp. The memorandum of appeal must be returned to the appellant in order that he may supply the requisite stamp-paper within one month from this order.

BRODHURST, J.—I concur.

(1) I. L. R., 4 Mad. 420.