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Oldfield, J., said that he was aware of no rule under which a submission to reference of this kind, *viz.*, a statement made under the peculiar circumstances set out in s. 8 of Act No. X of 1873, might not be revoked before the referee has given his evidence in pursuance of it. It appears to us that this is not the stand-point from which a proposal of the nature set out in s. 8 should be considered. When the proposal has been made by a party to a proceeding and the Court in pursuance of the proposal has asked the party required to take a particular form of oath whether he will do so, and the party so asked has agreed to take the oath, then, under such circumstances, no permission should be accorded to the party who made the proposal to withdraw from it, except upon the strongest possible grounds proved to the satisfaction of the Court to be genuine grounds for revoking the proposal. No such grounds were shown in the present case and the evidence given was, in our opinion, evidence by which the respondent was bound.

The respondent appealed against the order of the Munsif, and the District Judge, allowing the appeal, passed an order of remand under s. 562 of the Court of Civil Procedure, directing the Court of first instance to try the suit on its merits. The present appeal is from that order. For the reasons set out above we are of opinion that the appeal in the Court below should not have succeeded. We set aside the order of remand and restore the decree of the first Court dismissing the suit. The appellant will have his costs in this Court.

Appeal decreed.

Before Mr. Justice Aikman.

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RAM NEWAZ AND OTHERS (DECREE-HOLDERS) *v.* RAM CHARAN AND ANOTHER (JUDGMENT-DEBTORS).

Civil Procedure Code, s. 230—Execution of decree—Limitation.

B. N. and others obtained a simple money decree against R. S. and another on the 24th of February 1881. On the 2nd of May 1892, previous applications for execution having been unsucessful, the decree-holders made an application for execution in consequence of which certain property of the judgment-debtors was

* Second Appeal No. 1065 of 1894, from a decree of Kunwar Mohan Lal, Subordinate Judge of Gorakhpur, dated the 2nd June 1894, reversing an order of Maulvi Inamul Haq, Munsif of Basti, dated the 21st September 1893.

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attached. That application was subsequently struck off by the Court, the attachment being maintained. On the 7th of March 1893 a further application for execution was made.

Held that, whether the application of the 7th of March 1893 was or was not merely a continuation of the former application of the 2nd of May 1892, execution of the decree was barred by the rule prescribed by section 230 of the Code of Civil Procedure.

Held also that an order on an application for execution striking off the application, but maintaining attachment effected in pursuance thereof, was an order not warranted by law.

THE facts of this case sufficiently appear from the judgment of Aikman, J.

Babu *Durga Charan Banerji*, for the appellants.

Babu *Jogindro Nath Chaudhri*, for the respondents.

AIKMAN, J.—The appellants in this case obtained a simple money decree on the 23rd of February 1881, against the respondents. On the 2nd of May 1892 they applied to execute this decree. Several previous applications had been made, but proved infructuous. The Court in which the application of the 2nd of May 1892 was made, of its own motion struck off the application professing to maintain an attachment which had been made. In my opinion no order of such a nature can be passed. If there is no pending execution before the Court, it follows that there can be no subsisting attachment. The order which many subordinate Courts are in the habit of passing to strike off an execution case whilst maintaining an attachment which has been made in that case, is, I consider, a contradiction in terms. Such an order, it appears to me, can only have one object, and that is to prevent an execution case being shown as pending for an unduly long time on the files of the Court. If there is reason for maintaining an attachment there can be no reason for striking off the application in execution which led to its being made. On the 7th of March 1893 the decree-holders presented another application for the execution of their decree. The judgment-debtors objected that the application was barred by the twelve years' rule of limitation. Their objection was overruled by the Munsif, who held that the application of the 7th of March 1893 was in reality no fresh application, but was merely

in continuance of the application of the 2nd of May 1892. The judgment-debtors appealed to the Subordinate Judge, who held that the application of the 7th of March 1893 was a fresh application, and could not be executed, as the decree had become time-barred. Against this order of the Subordinate Judge the decree-holders have appealed to this Court. In my opinion whether the application of the 7th of March 1893 be considered to be a fresh application or merely an application in continuance of that of the 2nd of May 1892, it cannot be granted. Section 230 of the Code of Civil Procedure provides that where an application to execute a decree for the payment of money has been made under this section and has been granted, no subsequent application to execute the same decree shall be granted after the expiration of 12 years from the date of the decree sought to be enforced. It appears from the records of the previous case that although the previous applications failed for one reason or another to realise any money, at least two of them were "*granted*," inasmuch as property was attached in compliance with the request contained in the applications. It follows from this that a Court cannot now grant any application to execute, as it is forbidden to do so by the terms of section 230 of the Code of Civil Procedure. That section does not prescribe that no subsequent application shall be received after the expiration of 12 years; it forbids any application being *granted*. To comply with the request made by the decree-holders would be to disobey the law as contained in that section. The decree-holders endeavoured to prove that the judgment-debtor had by fraud prevented the execution of the decree within 12 years immediately preceding the date of their application, but this attempt failed.

For the above reasons the appeal fails and is dismissed with costs.

Appeal dismissed.