

It appears to us that this was a case to which section 34 and section 248 of the Code of Civil Procedure applied, and that the proceedings in execution after the death of the judgment-debtor made in the absence of and without notice to the representative of the judgment-debtor were ineffectual proceedings. The Subordinate Judge in the present case has held that the present application for execution is barred by limitation, and he has so held having come to the conclusion that the applications which were made when there was no representative of the deceased judgment-debtor on the record were ineffectual. On behalf of the decree-holder appellant the decision of the Full Bench in *Sheo Prasad v. Hira Lal* (1) was relied upon. That case is not in point. In that case in the life-time of the judgment-debtor a valid attachment had been made, which continued after his death, and an order for sale had been made, and nothing remained but to carry into effect the order for sale. The decree-holder has only himself or his advisers to thank for the position in which he finds himself. There is quite sufficient irregularity in the execution of decrees in this country without our introducing the novel system that a decree can be executed against the estate of a deceased judgment-debtor without any notice to his representative and without anyone to protect the property being brought upon the record.

We dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Knox and Mr. Justice Burkitt.

THE CROWN BREWERY, MUSSOORIE (OPPOSITE PARTY) v. THE
COLLECTOR OF DEHRA DUN (APPLICANT).*

Act No. X of 1870 (Land Acquisition Act), Section 15—Reference by Collector to Judge—Land in respect of which the reference is made claimed by Collector on behalf of Government—Jurisdiction.

The Collector has no power to make a reference to the District Judge under section 15 of Act No. X of 1870 in cases in which he claims the land in respect of which such reference is made on behalf of Government, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or

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* First Appeal No. 89 of 1895 from an order of H. Bateman, Esqr., District Judge of Saharanpur, dated the 8th February 1895.

(1) I. L. R., 12-All, 440.

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determine such reference. *Indad Ali Khan v. The Collector of Farakhabad* (1) followed.

THE facts of this case are fully stated in the judgment of the Court.

Mr. *C. Ross Alston*, for the appellant.

Mr. *E. Channier*, for the respondent.

KNOX and BURKITT, JJ.—This is an appeal from an order passed by the Judge of Saharanpur on a reference made to him on the 16th of February, 1894, by the Superintendent of the Dun. The reference was made under section 15 of Act No. X of 1870, as Act No. I of 1894 did not come into force till the 1st of March, 1894. The Collector (Superintendent) described the land proposed to be taken up as being land situated in Kinlock's State Crown Brewery, Jharipani, consisting of 17 acres, 6 poles. He described the Crown Brewery as being the "persons interested" in the land, and stated that he had offered 476 Rupees as compensation for that land, standing trees, &c., to this he added 15 per cent. for forcible acquisition, the total amount offered being Rs. 616-7-8, a sum which he says the manager of the Brewery refused as being insufficient.

In the reference the Superintendent of Dehra Dun alludes to a claim made by the Brewery as to a spring of water and for compensation for the same, but he adds that the spring clearly belongs to Government. He did not propose to take it up under the Act.

The case first came on for hearing before the District Judge on the 20th of April, 1894, when three issues were fixed, namely:—

1. The value of the land, trees, &c.?

This was a perfectly proper issue and the only one that arose in the case.

The next two issues were:—

2. The right to the water, *i.e.*, could the claimants claim a right to it against Government?

3. If so, the value of the water right?

These two issues did not arise on the reference and were improperly fixed for trial by the Judge as issues in the case.

The evidence of one witness, Mr. Campbell, was taken and the case was adjourned to the 28th of January 1895. Before that date arrived Mr. Winter, who had succeeded Mr. Tweedie as Superintendent of the Dún, addressed to the Judge a letter, dated the 9th of November 1894, (No. 25 on the record) appended to which, with referencē to his predecessor's reference of the 16th of February 1894, he submitted what he called "a further note on the subject" together with copies of certain documents. The "note" is referred to in the Judge's memorandum of the 28th January 1895 as a "long written statement" filed by the Collector. We have no hesitation in saying that the Collector was wrong in addressing such a communication to the Judge, and the Judge was equally wrong in receiving and filing it. When the appeal was being argued, Mr. *Chamier*, who appeared for the Government, very rightly admitted that such proceedings should never have taken place and did not attempt to support them.

In his decision the learned District Judge found, firstly, that the Brewery had no title to the land, and, secondly, that the Brewery had no title to the spring and the water. But, as the Collector had offered Rs. 616-7-8, he confirmed that award. Thus it will be seen that he did not decide the issue as to the value of the land which had been raised at the first hearing, which, as we have pointed out, was the only real issue in the case. The Crown Brewery has appealed.

It is contended that the Judge was wrong in entering into the question of the title of the Crown Brewery to the land as against the Government. In our opinion the contention is a sound one and must be supported. We fully concur in the rule of law laid down in the case of *Imdad Ali Khan v. The Collector of Farakhabad* (1) in which it was held:—"The Collector has no power to make a reference to the District Judge under section 15 in cases in which he claims the land in question on behalf of Government or the Municipality, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine

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such reference." If Mr. Winter desired to deny the title of the Crown Brewery to the land, &c., proposed to be taken up, his proper course, we conceive, would have been to withdraw the reference, but his not having done so did not in our opinion give the District Judge jurisdiction to decide the question of title. It therefore follows that whatever the Judge has decided in his judgment as to the title of the Brewery to the land is irrelevant and not called for by the reference. As to the spring and water, we have pointed out that the Collector did not propose to take them up under the Act; no question respecting them was before the Judge, and his finding on this point also is equally irrelevant and without jurisdiction.

There was one point and one point only awaiting decision, namely, the value of the land. On this point no decision has been given: it must now be decided. We set aside the order of the Court below and refer, under section 566 of the Code of Civil Procedure, that point for the determination of the Judge, namely, what is the value of the 17 acres 6 poles of the land together with the trees standing thereon, which the Collector proposes to take up, and what amount of compensation should be given under the Act? As both parties have had full opportunity of giving evidence, no further evidence will be taken. The Judge will send a reply to this reference in two months. On its return ten days will be allowed for objections by either party and the appeal then put up for hearing.

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Before Mr. Justice Banerji and Mr. Justice Aikman.
SIYADAT-UN-NISSA (DEFENDANT) v. MUHAMMAD MAHMUD
(PLAINTIFF).*

Act No. XV of 1877 (Indian Limitation Act), sections 5 and 12, Sch. ii, Art. 152--Appeal--Limitation--Exclusion of time necessary for obtaining copies of decree and judgment.

If the period prescribed by the second schedule of the Indian Limitation Act, 1877, for the presentation of an appeal expires on a day on which the

* Second Appeal No. 432 of 1895, from a decree of Pandit Raj Nath, Subordinate Judge of Moradabad, dated the 18th January 1895, confirming a decree of Munshi Anant Prasad, Munsif of Anroha, dated the 17th September 1894.