

at the time of making the first demand, made the invocation in the presence of witnesses called *talab-i-ishtishhad*. It has been urged that the *talab-i-ishtishhad* was not performed in compliance with the Muhaminadan law, inasmuch as it was made in the presence of persons who were the servants of the plaintiff, and who, it is said, were on that account not competent witnesses according to that law. We may observe that the disability as competent witnesses under the Muhammadan law is limited to minors and persons convicted of slander and does not extend to servants. There is therefore no basis for the contention that the servants of the plaintiff, in whose presence the *talab-i-ishtishhad* was performed, were not competent witnesses. Further, it is laid down in Baillie's Muhammadan law, at p. 489, that "invocation of witnesses is not required to give validity to that demand, but only in order that the pre-emptor may be provided with proof, in case the purchaser should deny the demand." That being the object of the invocation of witnesses, any persons who under the law as now administered would be competent witnesses can attest the fact of the demand with invocation being made.

These being the only pleas pressed before us, this appeal fails and is dismissed with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

MADHO PRASAD (DECREE-HOLDER) v. KESHO PRASAD (OBJECTOR).*

Execution of decree—Limitation—Act No XV of 1877 (Indian Limitation Act), Sch. ii, Art. 179—Civil Procedure Code, sections 234, 248—Applications for execution made without any representative of the deceased judgment-debtor being brought on to the record.

Applications for the execution of a decree made after the death of the judgment-debtor and without either any representative of the judgment-debtor being brought upon the record or there being any subsisting attachment of the property against which execution is sought are not good applications for the purpose of saving limitation. *Sheo Prasad v. Hira Lal* (1) distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

* First Appeal No. 8 of 1895 from a decree of Rai Anant Ram, Subordinate Judge of Jaunpur, dated the 28th September 1894.

1897

MUHAMMAD
YUNUS KHAN
v.
MUHAMMAD
YUSUF.

1897

March 15.

1897

MADHO
PRASAD
v.
KESHO
PRASAD.

Munshi *Ram Prasad* and Pandit *Sundar Lal* for the appellant.

Munshi *Jwala Prasad* for the respondent.

EDGE, C. J. and BLAIR, J.—This appeal arises in the execution of a decree. The decree was passed on the 25th of January, 1878. On the 9th of January, 1879, the first application was made for execution. On the 19th of March, 1880, the second application was made. On the 8th of June, 1880, the third application was made. After the last-mentioned application had been made, one Sheo Dial filed an objection to the execution of the decree against this property. His objection was filed under section 278 of the Code of Civil Procedure. The objection was allowed. The allowance of that objection had the effect of determining any attachment or any order for sale which had previously been made. The decree-holder brought his suit under section 283 of the Code to have his right declared to execute his decree against this property. In that suit he ultimately succeeded, but the decree establishing his right did not restate the attachment or any order for sale, if any, which may have been made. The decree-holder having by his suit established his right to execute his decree against this property, it was for him to take the necessary steps to put his decree in execution. On the 21st of August, 1886, he filed an application for the execution of his decree. Before the 21st of August, 1886, the judgment-debtor had died. The decree-holder appears to have assumed that he had a decree *in rem* which he could proceed to execute without bringing upon the record or giving notice to any representative of the deceased judgment-debtor. On the 4th of December, 1887, he filed another application, still without anyone to represent the estate of the deceased judgment-debtor. On the 23rd of July, 1889, he filed his sixth and last application. On the 21st of December, 1888, he had obtained an order for attachment, there being at that time no respondent to his application representing the estate or the interest which had been in the deceased judgment-debtor.

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).*

1897
March 17.

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

* 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.