

## APPELLATE CIVIL.

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August*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.*DEŚRAJ SINGH AND OTHERS (DECREE-HOLDERS) v. KARAM KHAN  
(JUDGMENT-DEBTOR).\**Execution of decree—Act No. XV of 1877 (Indian Limitation Act), Sch. ii,  
Art. 178—Limitation.*

Certain holders of a decree for sale under section 88 of the Transfer of Property Act applied for execution of their decree on the 6th of January 1887, and the application was granted. A third party, however, appeared and filed an objection under section 278 of the Code of Civil Procedure which was allowed. Thereupon the decree-holders brought a suit under section 283 of the Code. They obtained a decree on the 5th of June 1888; but the intervenor appealed, and the final decree in appeal was not passed until the 28th of May 1892. On the 27th of April 1892, the decree-holders again applied for execution of the decree. *Held* that execution was time-barred under article 178 of the second schedule to Act No. XV of 1877.

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

Munshi *Ram Prasad* and Pandit *Moti Lal* for the appellants.

Pandit *Sundar Lal* and Maulvi *Ghulam Mujtaba* for the respondent.

EDGE, C. J., and BLENNERHASSETT, J.—A decree for sale upon a mortgage bond was obtained on the 26th of March 1885. On the 6th January 1887 an application for an order for sale was made, and that application was allowed. Apparently the Civil Court transferred the proceedings to the Collector under section 320 of the Code of Civil Procedure. The wife of the judgment-debtor filed an objection under section 278 of the Code of Civil Procedure claiming the property as hers. On the 17th of January 1888 her objection was allowed under section 280 of the Code, and the attachment was removed. Thereupon the decree-holders brought a suit in accordance with section 283 of the Code against the successful objector, and on the 5th of June 1888 obtained a decree declaring that the property was liable to be sold under the

\* Second Appeal No. 416 of 1894, from an order of G. E. Gill, Esq., District Judge of Mainpuri, dated the 3rd April 1894, confirming an order of Pandit Rai Indar Narain, Subordinate Judge of Mainpuri, dated the 3rd December 1892.

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decree and order for sale of the decree-holders. From that decree the successful objector appealed; her appeal was dismissed by the District Judge on the 3rd of August 1888, and her appeal from the decree of the District Judge to the High Court was dismissed on the 28th of May 1892. On the 27th of April, 1892, the decree-holders applied for the execution of their decree of the 26th of March 1885. Their application was dismissed on the ground that it was time-barred. They then appealed to the Court of the District Judge and their appeal was dismissed. They have brought this appeal.

The appellants have relied upon *Basant Lal v. Batul Bibi* (1), upon *Chintaman Damodar Agashe v. Balshastri* (2), and the Full Bench ruling of this Court in *Paras Ram v. Gardner* (3).

On the other side the respondent has relied upon an unreported judgment of this Court in F. A. No. 91 of 1891, decided on the 13th of May 1893.

It appears to us that the first two cases relied upon on behalf of the appellants are not in point. Apparently in the case in I. L. R., 6 All., 23, the execution proceedings had been stayed under an order passed under section 492 of the Code of Civil Procedure. The Full Bench case, whether the Full Bench rightly or wrongly decided the case, appears to us to be in favour of the respondent. It shows that the decree-holders had a right to apply for execution or to proceed with their application immediately on the passing of the decree of the 5th of June 1888 declaring that the property was liable to be sold. In our view the allowance of the objection and the passing of the order on the objection under section 280 of the Code of Civil Procedure determined that application, and the making of the order under section 283 would have finally determined the right to bring the property to sale, if the suit against the successful objector had not been brought within the year and decided in favour of the holders of the decree for sale. In our opinion Art. 178 of the second schedule of the Indian Limitation

(1) I. L. R., 6 All., 28.

(2) I. L. R., 16 Bom., 294.

(3) I. L. R., 1 All., 855.

Act, 1877, applies, and, more than three years having elapsed after the 5th of June 1838 before the present application was made, the application was time-barred. We dismiss the appeal with costs.

*Appeal dismissed.*

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## REVISIONAL CRIMINAL.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Aikman.*

MANJHLI (APPLICANT) v. MANIK CHAND AND ANOTHER (OPPOSITE PARTY).\*

*Criminal Procedure Code, section 560—Compensation for frivolous and vexatious complaint—Order in the alternative for imprisonment.*

It is not competent to a court in awarding compensation under section 560 of the Code of Civil Procedure against a complainant for making a frivolous and vexatious complaint to order at the same time that in default of payment of the compensation the person against whom the order is made suffer imprisonment. *Queen-Empress v. Punna* (1) approved.

THIS was a reference under section 438 of the Code of Criminal Procedure made by the Sessions Judge of Jhānsi. The facts of the case were as follows:—

A Magistrate of the first class, after he had tried a case in which one Musammat Manjhli was complainant and Manik Chand and Musammat Amano were accused, discharged the accused, and, being satisfied that the accusation against them was false and malicious, directed Musammat Manjhli to pay Rs. 50 to Manik Chand and Rs. 10 to Musammat Amano. He further directed that these amounts should be levied as fines, and if they could not be realised, that Musammat Manjhli shall suffer 30 days' simple imprisonment.

The Sessions Judge, before whom this order was brought on an application in revision, took exception to the order on the ground that Magistrate in passing it had not complied with the provisions of clause (a) or of clause (b) of section 560 of the Code of Criminal

\* Criminal Revision No. 256 of 1896, from an order of Pandit Jawahir Lal, first class Magistrate of Jalaun, dated the 6th March 1896.