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FRANCIS  
LEGGE  
v.  
RAMBARAN  
SINGH.

we find him in *Durga v. Haider Ali* (1) expressly holding that claims declaratory in their nature were governed by Art. 120 of the Indian Limitation Act of 1877. To the same effect is the case of *Bhikaji Baji v. Pandu* (2) which was brought to our notice by the learned counsel for the appellant. The same learned counsel drew our attention to what the Privy Council had held in *Mahomed Riasat Ali v. Hasin Banu* (3). At page 163 their Lordships discuss the limitation applicable to such a suit, and say that Art. 120 should be applied unless it is clear that the suit is within some other article. We can find no such article, and no such article has been pointed out to us. We hold that the suit when instituted was barred by limitation and could not be maintained. We therefore allow this appeal, set aside the judgment and decree of the Court below and direct that the suit stand dismissed.

As regards costs, we think that, as the point was not raised in any of the Courts below, we should make no order, and we make none.

*Appeal decreed.*

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July 13.

### MISCELLANEOUS CIVIL.

*Before Mr. Justice Banerji and Mr. Justice Aikman.*

CHAIL BEHARI LAL (DEFENDANT) v. RAHMAL DAS AND ANOTHER  
(PLAINTIFFS).\*

*Civil Procedure Code, sections 372, 582—Parties to an appeal—Attaching creditor of decree-holder respondent seeking to be brought on to the record as a respondent.*

*Held* that a creditor of a decree-holder who had attached the decree pending an appeal against it was not entitled to be made a party respondent to the appeal under sections 372 and 582 of the Code of Civil Procedure.

THE facts of the case sufficiently appear from the order of the Court.

Munshi *Madho Prasad*, for the applicant.

BANERJI and AIKMAN, JJ.—This is an application under section 372 of the Code of Civil Procedure, read with section 582 of that Code, to be added as a respondent to an appeal

\* Application in First Appeal No. 232 of 1894.

(1) I. L. R., 7 All., 167.

(2) I. L. R., 19 Bom., 43.

(3) I. L. R., 21 Calc., 157.

pending in this Court. The applicant is a judgment-creditor of the respondent, and he caused the decree appealed against to be attached in execution of a decree held by him against the respondent. It is contended on his behalf that by reason of this attachment he has acquired an interest pending the suit and is therefore entitled to be joined as a party to the appeal under section 372. In our opinion the applicant is not a person in whose favour there has been an assignment, creation or devolution of any interest pending the appeal. It is conceded that he is not an assignee of the decree. What Mr *Madho Prasad* urges on his behalf is that an interest has been created in favour of the applicant by operation of law, that is, by the attachment which he has obtained over the decree held by the respondent. With this contention we are unable to agree. As stated on page 264 of *Daniel's Chancery Practice*, Vol. I.—“It is a general rule that no one should be made a party to an action against whom, if brought to a hearing, no order can be made.” The test therefore is whether the applicant is a person in whose favour or against whom a decree can be made in the appeal. We think that he is not such a person. Mr. *Madho Prasad* relied upon the case of *Wallis v. Smith* (1). That case in our opinion has no bearing upon the present question. That was a case in which, after decree had been obtained, the decree-holder, plaintiff, took out a garnishee order against one of the debtors of his judgment-debtor. The London and South Western Bank, which held a decree against the decree-holder plaintiff, and which had got the plaintiff's decree attached, applied to be made a party to the proceedings taken out by the plaintiff against his judgment-debtor, and that application was granted. A case like that is provided for by section 273 of the Code of Civil Procedure, according to which a judgment-creditor who has caused a decree to be attached may under certain circumstances himself apply for the execution of that decree and may take all the steps necessary to realize the amount of the decree attached by him. That is a very different

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(1) 51 L. J. Eq., 577.

thing from holding that an attaching creditor has a right to be heard as to the merits of the decree attached by him which is *sub judice* in appeal. For the above reasons we refuse the application with costs.

*Application refused.*

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## APPELLATE CRIMINAL.

*Before Mr. Justice Knox and Mr. Justice Burkitt.*

QUEEN-EMPRESS v. CHIDDA AND OTHERS.

*Criminal Procedure Code, sections 337 and 529—Pardon—Tender of pardon by a Magistrate having powers under section 337, but not being the Magistrate before whom inquiry was being held.*

A dacoity was committed in the district of Muttra and was being inquired into in that district. Pending such inquiry, one Partap Singh appeared before the Magistrate of the neighbouring district of Etah and obtained from him a tender of pardon in respect of the said dacoity, on the strength of which pardon he was examined as a witness by the Magistrate of the Etah district and made a statement implicating himself and others in the dacoity. Subsequently, on the case being committed to the Court of the Sessions Judge of Agra, the tender of pardon made by the District Magistrate of Etah was ignored and Partap Singh was tried and sentenced for the dacoity.

*Held*, on appeal to the High Court, that the Magistrate of the Etah District had no jurisdiction under the circumstances to make the tender of pardon which he did, and that his action in that respect was not covered by section 529 of the Code of Criminal Procedure.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Messrs. *A. E. Ryves* and *A. H. C. Hamilton*, for the appellants.

The Government Advocate (*Mr. E. Chamier*) for the Crown.  
KNOX and BURKITT, JJ.—Chidda, Kallu, Kana, Partap Singh, Sona and Tunya have been convicted of an offence under section 395 of the Indian Penal Code and have one and all been sentenced to transportation for life. They have all appealed, and their appeals are now before us for decision. One of them, Partap Singh, pleaded guilty in the Court of Session, but in that Court he also pleaded in bar of sentence the fact that he had obtained what he considered a pardon under section 337 of the Code of