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Lal therefore argued that the result arrived at by the learned Judge was substantially right and ought not to be disturbed in revision. But in deciding whether or not we should interfere with the Judge's irregular order, we must look a little further into the matter and consider what would be the consequences of interfering or not interfering. If we refuse to interfere, the result is that the suit stands decreed. If we interfere, the result is that the suit stands dismissed. The reason why the Munsif ultimately dismissed the suit was that, according to the Full Bench ruling, it was barred by limitation. The Judge does not hold that the Munsif was wrong in this view. It has not been disputed that, assuming the Full Bench ruling to be applicable, the suit was barred. Although the question whether the Full Bench ruling was applicable has not been argued before us, it seems at least probable that it did apply. The Judge appears to assume that it did, but says that it is to the same effect as earlier rulings, and that its discovery was no ground for review. In one of the two memoranda of appeal to the Judge from the two connected orders of the Munsif there was no plea that the ruling was inapplicable. The result of our refusing to interfere with the Judge's order would therefore be that a suit which the Munsif dismissed is barred by limitation, which has not been shown to be within time, and which was probably beyond time, would stand decreed. We allow this application for revision, set aside the order of the Judge, and restore that of the Munsif with costs.

Application allowed.

APPELLATE CIVIL.

1898
December 21.

Before Mr. Justice Blair and Mr. Justice Aikman.

JIT MAL AND OTHERS (DECREE-HOLDERS) *v.* JWALA PRASAD (JUDGMENT-DEBTOR).*

Execution of decree—Limitation—Civil Procedure Code, section 230—Warrant of arrest—Warrant not exhausted if on one occasion the serving officer is unable to find the judgment-debtor.

The holders of a decree for money, dated the 2nd of December, 1885, after various infructuous applications for execution, applied, on the 4th of August,

*First Appeal No. 85 of 1898, from an order of Maulvi Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 15th January 1898.

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1897, for a warrant for the arrest of the judgment-debtor. That application was granted, but the peons sent to arrest the judgment-debtor reported that he had concealed himself, and the Court in consequence struck off the application for execution. On the 29th of November, 1897, the decree-holders again applied for the arrest of the judgment-debtor, but that application also was struck off without the arrest having been made. Against the order striking off this latter application the decree-holders appealed to the High Court, where, on objection made that the decree could no longer be executed, having regard to section 230 of the Code of Civil Procedure, it was *held* that the warrant of arrest issued on the decree-holders' application of the 4th of August, 1897, still subsisted and ought to be executed. *Anwar Ali Khan* v. *Phul Chand* (1) followed.

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

Munshi *Ratan Chand* for the appellants.

Babu *Satish Chandar Banerji* for the respondent.

BLAIR and AIKMAN, JJ.—This is an appeal on behalf of certain decree-holders, who, on the 2nd of December, 1885, got a money decree against the respondent, Jwala Prasad, for a sum of Rs. 8,228. The lower Court rejected the application filed on the 29th of November, 1897, for the arrest of the judgment-debtor. That application was presented within twelve years from the date of the decree. The decree-holders come here in appeal. The history of the case set forth by the lower Court in its finding of the 28th of September, 1898, is a melancholy and forcible illustration of the truth of the saying that a successful suitor's troubles only begin when he has obtained his decree. The decree, as stated above, was passed in December, 1885. On the 9th of January, 1886, the unfortunate decree-holders began their attempts to recover the money which had been found due to them. From that time onwards they have made one attempt after another to have the decree executed, with the result that only an insignificant portion of the decretal amount has been realized, and that the sum still due under the decree, with interest thereon, amounts to upwards of Rs. 10,000. The judgment-debtor has by one device or another succeeded in evading up to now payment of the money which was found due from him. That the satisfaction of the judgment-

(1) Weekly Notes, 1898, p. 137.

debt was delayed by the poverty of the judgment-debtor, we cannot believe. The history of what has taken place during the past twelve years is sufficient to show that it is not from want of means that he has not paid his debts. He has blocked the execution by transfers made in the names of his sons and son-in-law. Property, which was on the point of being attached, was removed. When warrants of arrest were issued, the ministerial officers of the Court sent to execute the warrants seem to have been seized with sudden blindness and incapacity to discover the whereabouts of this judgment-debtor. On one occasion only is he said to have been found, and then, according to the report, he managed, with the help of his friends, to make his escape from the custody of the peons. On the 4th of August, 1897, the decree-holders applied for and obtained an order of the Court for the judgment-debtor's arrest. As usual the peon reported that the judgment-debtor had concealed himself; and thereupon the Court lost no time in striking off the case. What impresses us in these proceedings is the singular want of sympathy exhibited by the Court towards the decree-holders. We should have thought that in a case like this the lower Court would have taken some pains to see that its order was carried out, and not have hastened to strike off the case on the mere report of its peons that the judgment-debtor had concealed himself. The last application was made on the 29th of November, 1897. In this also the decree-holders asked that the judgment-debtor should be arrested. The judgment-debtor filed an objection. That objection was allowed by the Court on grounds which appear to us, looking to the past history of the case, to be quite inadequate, and the case was struck off on the 20th February, 1898. When the appeal was last before us, a difficulty presented itself to us, arising out of the wording of section 230 of the Code of Civil Procedure, namely, that even if we were of opinion that the Court was wrong in striking off the application of the 29th of November, 1897, it would be impossible to grant it now, looking to the fact that upwards of twelve years has elapsed since the date of the decree sought to be enforced and that previous applications

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for execution have been granted. The learned vakil for the appellants contended, with reference to this difficulty, that his clients were entitled to the benefit of the proviso contained in the last paragraph of the section just quoted, namely, that notwithstanding the lapse of twelve years, they were still entitled to execute their decree owing to the fact that previous applications for execution had been defeated by the judgment-debtor through fraud or force. In order to enable us to dispose of this plea, we asked the lower Court for a finding on the issue as to whether execution had been prevented by the fraud or force of the judgment-debtor. The return to this order of reference is, that no fraud or force on the judgment-debtor's part, preventing the execution of the decree, has been established. To this finding objections have been taken. In the view, however, which we now take of the case, we deem it unnecessary to express any opinion whether or not the finding is warranted by the evidence. We have the fact that in August, 1897, the Court issued an order that the judgment-debtor should be arrested, and that order has not yet been carried out. With reference to this we may quote the following passage from a recent judgment of this Court in the case of *Anwar Ali Khan* v. *Phul Chand* (1):—"The mere fact that a warrant issued and came back unexecuted is not, in our opinion, sufficient evidence of the proceeding for execution in pursuance of which it issued being exhausted and thereby determined." With this view we are in entire accord. The learned vakil for the respondent argues that the application of the 29th of November, 1897, is in terms a fresh application under section 235 of the Code of Civil Procedure. We do not think that this is material. In our judgment that application is merely ancillary to the previous application. To yield to the contention of the learned vakil for the respondent, we should have to hold that the order passed on the application of August, 1897, is exhausted by the return of the warrant, stating that the peons had been unable to find the judgment-debtor,

(1) Weekly Notes, 1898, p. 187.

That is a position which, as stated above, cannot, in our opinion, be maintained. For the above reasons we allow the appeal with costs, and, setting aside the order of the lower Court, we direct the execution to proceed. We must, in conclusion, express a hope that the Judge of the lower Court will devote his personal and particular attention to the execution of this decree, and will see that trustworthy men are sent to carry into effect the order for arrest.

Appeal decreed.

REVISIONAL CRIMINAL.

1898
December 21.

Before Mr. Justice Banerji.

QUEEN-EMPRESS *v.* ZAKIR HUSAIN.*

Act No. XLV of 1860 *(Indian Penal Code), sections* 192 *and* 123—*Fabricating false evidence—False entry made by a Police officer in a special diary.*

Held that a Police officer who made a false entry in the special diary relating to a case which was being investigated by him could not be convicted therefor of the offence of fabricating false evidence as defined in section 192 of the Indian Penal Code, inasmuch as the document in which the alleged false entry was made was not one which was admissible in evidence. *Empress* v. *Gauri Shankar* (1) and *Keilasum Putter* (2) referred to.

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

Alston, for the applicant.

The Officiating Government Advocate (*Ryves*) for the Crown.

BANERJI, J.—The applicant, Zakir Husain, has been convicted, under section 193 of the Indian Penal Code, upon the two following charges:—

First, that on or about the 30th July 1898, he fabricated the special diary of July 29th, in the case of *Queen-Empress* v. *Balla and others,* so as to make it appear that the list of stolen property was furnished on that date; and, secondly, that

* Criminal Revision, No. 600 of 1898.

(1) (1883) I. L. R., 6 All., 42. (2) (1870) 5 Mad., H. C. Rep., 373.