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to which we have called attention. We wish specifically to indicate our approval of the view taken by the District Magistrate, that the motive with which a public highway is obstructed is absolutely irrelevant. We also agree that any obstruction on a public road is a nuisance, whether in point of fact it causes practical inconvenience or not. The land upon which it is built may not be at the time necessary for the continuous use of the road. An increased traffic might make it so.

We may add that although the verdict of the majority of the jury must be accepted by the Magistrate, this means that the jury should have heard together and tried the matter which had been referred to them; the decision of three of them acting in the absence of the other two is wholly invalid. For these reasons we set aside the order of the 11th of July, refusing to grant to the jurors enlargement of time, and all proceedings and orders subsequent thereto. We direct the District Magistrate to take up the case from that point, and to deal with the application of the two jurors for enlargement of time to the best of his discretion.

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January 15.

APPELLATE CIVIL.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr Justice Banerji.
KALKA DUBE (DECREE-HOLDER) v. BISHESHAR PATAK AND OTHERS
(JUDGMENT-DEBTORS).*

Execution of decree—Limitation—Act No. XV of 1877 (Indian Limitation Act), Sch ii, Art. 179.

Held that an application for execution of a decree, which was defective only in that it stated incorrectly the date of a previous application for execution (such date being, under the circumstances of the case, quite immaterial), and which was amended within three days of an order of the executing Court requiring the amendment, could not be treated as an application not in accordance with law within the meaning of article 179 of the second schedule to the Indian Limitation Act, 1877. *Gopal Chunder Manna v. Gosain Das Kalay* (1), followed.

THE facts of this case sufficiently appear from the judgment of the Chief Justice.

* Second Appeal No 706 of 1898 from a decree of J. Denman, Esq., District Judge of Allahabad, dated the 30th June 1898, confirming a decree of Babu Mohan Lal, Subordinate Judge of Allahabad, dated the 29th January 1898.

(1) (1898) I. L. R., 25 Calc., 594.

Mr. J. Simeon, for the appellant.

Pandit *Sundar Lal*, for the respondents.

STRACHEY, C. J. (BANERJI, J., concurring).—We entirely agree with the view expressed by the Full Bench of the Calcutta High Court in *Gopal Chunder Manna v. Gosain Das Kalay*, (1). In the present case the decree was passed on the 10th September 1894. On the 10th September 1897, an application was made by the decree-holder for execution of the decree. That application was entirely in accordance with law, except in one particular: it stated a previous application for execution as having been made on the 8th September 1894, whereas the correct date was the 27th of August 1894. That defect was wholly immaterial, because, whether the correct date of the previous application was the 8th September or the 27th of August 1894, the application of the 10th September 1897 was equally within time. On the 17th of September 1897, the Court passed an order returning the application for amendment within two days, and the application was returned for amendment on the 18th of September. On the 21st September the order was complied with, and the application amended. On the 28th September 1897 the Court “struck off” the application on the ground that there had been delay in complying with the order,—a delay of two days only in making an amendment of this extremely trivial defect. On the 30th September the decree-holder made a fresh application for execution, and that has been dismissed on the ground that the application of the 10th September was not an application for execution in accordance with the law, so as to give a fresh starting point for limitation under article 179 of the second schedule of the Limitation Act, 1877. The result, then, of that trivial defect, which was remedied almost immediately, has been that execution of the decree has been altogether denied to this decree-holder, who now brings this appeal. The only possible way to deal with this case is to treat the defect as too trivial to prevent the application of the 10th September 1897 from being an application for execution substantially in accordance with law. We agree with the Calcutta and Madras High Courts in holding that that is what article 179 means. Any other view would only

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be in the interest of technicality, and would be productive of serious injustice to decree-holders. The appeal must be allowed, and the orders of the Courts below set aside, and we direct the first Court to proceed with the application of the 10th September 1897 for execution in accordance with law. The appellant will have his costs of this appeal.

Appeal decreed.

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January 18.

Before Mr. Justice Blair and Mr. Justice Aikman.

HAR SHANKAR PRASAD SINGH (JUDGMENT-DEBTOR) v. BAIJNATH DAS
AND OTHERS (DECREE-HOLDERS).*

Civil Procedure Code, section 266—Execution of decree—Attachment—Annuity payable to vendor by vendee of immovable property.

Held that where a person made over property to the Court of Wards, partly in consideration of a present payment, and partly in consideration of an annuity payable to the vendor, such annuity was property of the vendor which was capable of being attached in execution of a decree against the vendor. *Haridas Acharjia v. Baroda Kishore Acharjia* (1) and *Maniswar Das v. Baboo Bir Pertab Sahu* (2) referred to. *Syed Tuffuzzool Hossein Khan v. Rughoonath Pershad* (3) distinguished.

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

Munshi *Jang Bahadur Lal*, for the appellant.

Munshi *Gokul Prasad*, for the respondents.

BLAIR and AIKMAN, JJ.—One question—and one only—is urged in this appeal. A judgment-debtor sold his property to the Court of Wards for consideration, part of which was present payment, and part of which was an annuity payable to the judgment-debtor. We can see no distinction between the Court of Wards and other purchasers. It is urged upon us that under the deed of sale the judgment-debtor undertook not to alienate such annuity. In our opinion such a stipulation is wholly inoperative to defeat the claim of a judgment-creditor. It seems to us that the annuity falls within section 266 of the Code of Civil Procedure as being money belonging to the judgment-debtor.

The decree was obtained in 1874, and at that time and up to the period, not less than six years later, at which the property was

* First Appeal No. 81 of 1900, from a decree of Maulvi Syed Zain-ul-Abdin, Subordinate Judge of Ghazipur, dated the 15th January 1900.

(1) (1899) I. L. R., 27 Cal., 38.

(2) (1871) 6 B. L. R., 646.

(3) (1871) 14 Moo. I. A., 40.