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and occupation of land, must be regarded from a limitation point of view as being a suit for compensation for breach of contract. I do not understand why, when this article (110) apparently plainly provides for the case now before me, I should go out of my way and hold that article 116 applies. Apparently, as all leases for more than a year reserving annual rent must be registered, the consequence would be that article 110 would be practically useless and superfluous. I cannot think it was the intention of the Legislature when framing article 110 that there should be read into the first column the words "due on an unregistered lease." I must therefore on this point allow the appeal and modify the decree of the Court below. I give a decree severally against each defendant according to the specification mentioned in the decree for their share of the rent for three years immediately preceding the date of the institution of the suit. This modification of the decree will apply of course only to the cases of the defendants appellants, Ajudhia, Ram Narain, Bandi Din and Shankar Lal. As to the other defendants who have not appealed no order will be made. The appellants are entitled to the costs of this appeal.

Decree modified.

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July 16.

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Burkitt.
BENI PRASAD (JUDGMENT-DEBTOR) v. SARJU PRASAD AND OTHERS
(DECREE-HOLDERS).*

Act No. XV of 1877 (Indian Limitation Act), Schedule II, Article 178—Execution of decree—Execution suspended by action of the Court—Limitation.

Application for execution of a decree for sale on a mortgage, passed on the 30th of March 1893, was made in March 1896, and the property mortgaged was advertised for sale on the 20th of May 1897. A suit was, however, filed by the minor son of the judgment-debtor, in consequence of which the sale was, on the 17th of May 1897, stayed "pending the decision of the suit." A decree was given in favour of the son on the 2nd of August 1897; but this was reversed in appeal on the 9th of February 1898, and the son's suit was dismissed. But there was a further appeal to the High Court, which, on the 29th of June 1900, set aside the decree of the lower appellate Court and remanded the record for trial on the merits. Finally the decree of the 2nd of August 1897 was

* Second Appeal No. 281 of 1902, from a decree of W. Tudball, Esq., District Judge of Gorakhpur, dated the 6th of January 1902, reversing an order of Pandit Alopi Prasad, Officiating Subordinate Judge of Gorakhpur, dated the 28th of September 1901.

reversed and the son's suit dismissed on the 29th of March 1901. On the 11th of May 1891 the decree-holder presented an application praying the Court to take up and proceed with the application which had been stayed by the order of the 17th of May 1897.

Held that time began to run against the decree-holder from the 9th of February 1898, but, inasmuch as by the action of the Court execution of the decree had been from time to time suspended, the only periods which could be counted against the decree-holder were from the 9th of February 1898 to the 29th of June 1900, and again from the 29th of March 1901 to the 11th of May 1901. Those periods together not amounting to three years, the decree-holder's application of the 11th of May 1901 was within time.

This was an appeal arising out of proceedings in execution of a decree. On the 30th of March 1893 Sarju Prasad and others obtained a decree for sale on a mortgage against Beni Prasad. Application for sale of the mortgaged property was made in March 1896, and the property was advertised for sale on the 20th of May 1897. Meanwhile the minor son of the judgment-debtor instituted a suit to get the mortgage decree set aside on the ground that he had not been made a party to the suit in which it was passed, and in this suit he applied for a stay of sale, which was granted by the Subordinate Judge on the 17th of May 1897, "pending the decision of the suit." On the 2nd of August 1897 the son's suit was decreed. But there was an appeal to the District Judge, and on the 9th of February 1898 the suit was dismissed. The decree-holders then appealed to the High Court, and, on the 29th of June 1900 the High Court set aside the lower appellate Court's decree and remanded the appeal under section 562 of the Code of Civil Procedure for trial on the merits by the District Judge. Ultimately the Subordinate Judge's decree of the 2nd of August 1897 was reversed and the son's suit was dismissed on the 28th of March 1901. On May 11th, 1901, the decree-holders applied for execution, asking the Court to take up and proceed with the application which had been stayed by the order of the 17th of May 1897. The first Court (officiating Subordinate Judge of Gorakhpur) rejected this application; but on appeal it was granted by the District Judge. The judgment-debtor thereupon appealed to the High Court.

Babu Jogindro Nath Chaudhri, for the appellant.

Munshi Jang Bahadur Lal, for the respondent.

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BURKITT, J.—This is an appeal in execution against an appellate order of the learned District Judge of Gorakhpur granting the respondents' application for execution of their decree which had been rejected by the Subordinate Judge.

The facts of the case are as follows:—

A decree for sale on a mortgage under the Transfer of Property Act was obtained by the respondents against the appellant on March 30th, 1893. An application for execution by sale of the mortgaged property was made in March 1896, and the property was advertised to be sold on May 20th, 1897. Meanwhile a suit had been instituted by the minor son of the judgment-debtor, who contended that the decree was bad, inasmuch as he had not been made a party to the suit in which it had been obtained. He prayed that the sale might be stayed pending the decision of his suit. This prayer was granted by the Subordinate Judge, who on May 17th, 1897, directed the sale to be stayed "pending the decision of the suit." This was accordingly done, the record being withdrawn from the Collector, to whom it had been sent for execution under section 320 of the Code of Civil Procedure. The Subordinate Judge gave a decree in favour of the son on August 2nd, 1897. The effect of this decree was to continue the injunction restraining the sale, which would have been discharged if the son's suit had been dismissed.

On appeal to the District Judge the son's suit was dismissed on February 9th, 1898.

The effect of that dismissal was to remove the obstruction which the stay order of May 17th, 1897, had placed in the way of the decree-holders executing their decree. Had nothing further then taken place, I would have held, for the reasons given by me in my judgment in Execution Second Appeal No. 652 of 1902 (*Rudrar Singh and others v. Dhanpat Singh*), that under article 178 of the second schedule to the Limitation Act of 1877 time began to run against the decree-holder from February 9th, 1893, and that the application now before me, which was filed on May 11th, 1901, was time-barred. But the decree-holders filed a second appeal before the High Court against the decree of February 9th, 1898. The High Court, on

June 29th, 1900, set aside that decree and re-ran the record for trial on the merits under section 562 of the Code of Civil Procedure.

The effect of this decree of the High Court I take to be that by reason of it the District Judge's decree of February 9th, 1898, (under which time was running against the decree-holder) disappeared, and that the Subordinate Judge's decree of August 2nd, 1897, was revived pending the decision of the appeal against it on the merits. The appeal against the Subordinate Judge's decree was restored to the list of pending appeals in the Court of the District Judge, and that decree was the only decree in the suit pending the appeal. Finally in that appeal the decree of August 2nd, 1897, was reversed and the son's suit dismissed on the 28th March 1901. The present application for execution was made on May 11th, 1901, and asked the execution Court to take up and proceed with the application which had been stayed by the order of May 17th, 1897.

Now the earliest date on which the decree-holders could have made an application for execution was the 9th February 1898, when the District Judge dismissed the suit in which the stay of execution had been granted. They could have applied at any time between that date and June 29th, 1900, when the High Court set aside the decision of the District Judge. But under article 178 they had three years from that date within which they could apply. About two years and four months of that period had passed, and when nearly eight months were still unexpired, the High Court by its decree of June 29th, 1900, again imposed a bar on execution by reviving the Subordinate Judge's decree of August 2nd, 1897.

It is to my mind perfectly clear that there was, by reason of the revival of the decree of the Subordinate Judge, which carried with it a stay of execution, an obstacle in the way of the decree-holders' taking steps in execution during the period between June 29th, 1900, and March 29th, 1901, when the District Judge by dismissing the suit again removed the bar. That period cannot, I think, be taken into account in computing the limitation period in this case. Section 9 of the Limitation Act is not, I think, applicable to such facts. The

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only periods during which time can be considered to have run against the decree-holder are from February 9th, 1898, up to June 29th, 1900, and from March 29th, 1901, to May 11th, 1901, when the present application was made. These two periods added together do not make up three years. On that short ground, therefore, and without deciding whether the decree-holders had three years from March 29th, 1901, within which to apply, I am of opinion that the decision under appeal is right. I would dismiss this appeal with costs.

I would point out to the learned District Judge that he has fallen into an error in holding that the order of the Subordinate Judge directing a stay of execution pending the "decision of the suit" was effectual up to the final decree in the suit. The Subordinate Judge's authority in that respect lasted only as long as the suit was pending before him. It was the form of his decree by which he held that the property was not liable to sale under the respondent's decree, which had the effect of continuing the stay on the sale up to the date of the appellants' decree in the Court of the District Judge. For authority on this matter, I would refer the learned Judge to the reported cases of *Chunni Kuar v. Durga Prasad* (1), *Shaikh Moheooddeen v. Shaikh Ahmad Hossein* (2) and *Desraj Singh v. Karam Khan* (3).

STANLEY, C. J.—I concur.

Appeal dismissed.

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July 17.

REVISIONAL CRIMINAL.

Before Mr. Justice Knox and Mr. Justice Aikman.

MAHARAJ TEWARI AND OTHERS v. HAR CHARAN RAI.*

Statutes 24 and 25 Vic, Cap., CIV., section 15—Criminal Procedure Code, sections 435 (3) and 145—High Court's powers of revision.

Held that section 15 of the Charter Act, 24 and 25 Vic, Cap. CIV, does not override section 435 of the Code of Criminal Procedure, so as to enable the High Court in the exercise of its powers of superintendence to interfere with an order passed by a Court having jurisdiction under Chapter XII of the Code,

* Criminal Revision No. 277 of 1908.

(1) Weekly Notes, 1887, p. 297. (2) (1870) 14 W. R., 364.
(3) (1896) I. L. R., 19 All., 71.