

1905

BANARSI
PRASAD
v.
FAZAL
AHMAD.

circumstances as to make the debtor liable upon it to some third person." Now here the plaintiff did state the consideration for the note, namely, money borrowed from him by the defendant. He states that security was given to him for the loan by the making of the note in question, and, therefore, it seems to us that it was open to him to give evidence *abundante* to prove the consideration, even though the note was not admissible in evidence. We, therefore, must allow the appeal, and, as the suit has not been properly tried, we set aside the decrees of both the lower Courts and remand it under section 562 of the Code of Civil Procedure to the Court of first instance through the lower appellate Court with directions that it be reinstated in the file of pending suits and be disposed of on the merits. The costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

Before Mr. Justice Banerji.

BHAGWAN DAS (JUDGMENT-DEBTOR) APPELLANT v. SUKHDEI
(DECREE-HOLDER) RESPONDENT.*

Execution of decree—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 179—Decree granting an injunction—Civil Procedure Code, section 260.

Article 179 of the second schedule to the Indian Limitation Act, 1877, does not apply to an application asking the Court to enforce a decree granting an injunction to abstain from some particular act. All that the Court has to see is whether the party bound by the decree has had an opportunity of obeying the decree or injunction, and has wilfully failed to obey it. *Ram Saran v. Chhatar Singh* (1), followed.

In 1899 Sheo Din obtained a decree against the appellant for possession of a house and an injunction restraining him from occupying the house. The respondent, Sukhdei, having stepped into the shoes of Sheo Din on his death, made in 1904 the present application for execution, alleging that the appellant had taken possession of the house and placed tenants in it, and praying, under section 260 of the Code of Civil Procedure, that the appellant should be ordered to comply with the injunction and further

* Second Appeal No. 511 of 1905, from a decree of Babu Ram Dhan Mukerji, Additional Judge of Allahabad, dated the 17th of May, 1905, confirming a decree of Pandit Raj Nath Sahib, Subordinate Judge of Allahabad, dated 21st of January, 1905.

(1) (1901) I. L. R., 23 All., 465.

1905
December 12.

praying for his arrest and the attachment of his property. The Court of first instance (Subordinate Judge of Allahabad) ordered execution to issue, and the order was affirmed by the lower appellate Court (Additional Judge of Allahabad). In this appeal it was urged that the application was time-barred, reliance being placed on article 179, schedule II of the Limitation Act.

Dr. *Sabish Chandra Banerji* and Dr. *Tej Bahadur Sapru*, for the appellant.

Babu Lalit Mohan Banerji, for the respondent.

BANERJI, J.—The facts which have given rise to this appeal are these:—On the 14th of June, 1899, one Sheo Din obtained a decree against the appellant for possession of a house and for an injunction restraining him from occupying the house. The respondent, who is the mother of the appellant, has stepped into the shoes of Sheo Din, who is now dead. She made the present application for execution and prayed, under section 260 of the Code of Civil Procedure, that the appellant should be ordered to comply with the injunction mentioned in the decree, and to remove his possession, and that an order should be issued for his arrest, and for the attachment of his property. The allegation was that in violation of the perpetual injunction made in the suit he had taken possession of the house and placed tenants in it. He opposed the application on two grounds: (1) that the application was time-barred; and (2) that Sheo Din had allowed him to occupy a part of the house. The allegation contained in the second objection has been found by both the Courts below to be unfounded, and they have also found that the appellant has, in disregard of the terms of the decree, placed a tenant in the house. The Court of first instance disallowed both objections and ordered execution to issue. This order has been affirmed by the lower appellate Court. The first contention raised in this appeal is that the application is time-barred. This contention is in my judgment without force. The decree was one ordering the appellant to abstain from a particular act, namely, the occupation of the house. He disobeyed that order, and put a tenant in the house. He thus committed a contempt of the authority of the Court, for which proceedings can be

1905

 BHAGWAN
 DAS
 2.
 SUKHERI.

1905

BHAGWAN
DAS
v.
SUKHDEI.

taken under section 260 of the Code of Civil Procedure. Article 179, schedule II, of the Limitation Act, upon which the appellant relies, is inapplicable, and does not preclude the Court from taking proceedings to enforce its authority. This was held in *Rum Saran v. Chhatar Singh* (1). Under section 260 of the Code of Civil Procedure the decree-holder was entitled to ask the Court to enforce the decree which was passed against the appellant for abstention from a particular act, and all that the Court had to see was whether the appellant had an opportunity of obeying the decree or injunction, and had wilfully failed to obey it. The decree was made so far back as 1899. The present application was made so long ago as the 26th of July, 1904. The appellant had thus ample opportunity for obeying the decree, and had failed to obey it. The Court below was therefore, justified in ordering enforcement of the decree. This appeal is untenable, and I dismiss it with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Banerji.

EMPEROR v. RAM SARUP.*

Act No. XI of 1878 (Indian Arms Act), sections 19 and 20—Definition—Concealment of arms on search being made by the Police—Mere denial of possession not concealment—Possession of unlicensed arms.

Held that the mere denial on the part of a person whose house is being searched by the police for unlicensed arms that he has any such arms in his possession does not constitute a concealment or attempt to conceal arms on search being made by the police within the meaning of the second paragraph of section 20 of Act No. XI of 1878.

Held also that where unlicensed arms are found concealed upon premises which, though legally the joint property of a joint Hindu family, are in fact at the time of the finding in the exclusive possession and control of one member of the family, that member of the family can properly be held to be in possession of such arms. *Queen-Empress v. Sangam Lal* (2) distinguished.

In this case one Ram Sarup, a member of a well-to-do family of zamindars and money-lenders in the Bareilly district, was tried by the Sessions Judge of Bareilly for various offences

* Criminal Appeal No. 820 of 1905.

(1) (1901) I. L. R., 23 All., 465.

(2) (1898) I. L. R., 15 All., 129.