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GAYA  
PRASAD  
v.  
BHAGAT  
SINGH.

"All these are circumstances which occur perhaps daily in every district in India, and having regard to the immense number of false charges made, (we) think it most desirable that there should be no doubt as to the law on the subject."

In the opinion of their Lordships, it would be a scandal if the remedy provided by this form of action were not available to innocent persons aggrieved by such unfounded charges, and they will humbly advise His Majesty that the appeal ought to be allowed and the decree of the Judicial Commissioner set aside, with costs, and that of the Subordinate Judge confirmed. The respondents must pay the costs of the appeal.

*Appeal allowed.*

Solicitors for the appellant:—*Sanderson, Adkin, Lee and Eddis.*

J. V. W.

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June 5.

## APPELLATE CIVIL.

*Before Mr. Justice Aikman and Mr. Justice Karamat Husain.*

JUMAI KANJAR (DECREE-HOLDER) v. ABDUL KARIM KHAN (JUDGMENT-DEBTOR).\*

*Execution of decree—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 179 (5)—Civil Procedure Code, section 248—Date of issuing notice.*

*Held* that the expression "the date of issuing notice under the Code of Civil Procedure, section 248," as used in article 179 (5) of the second schedule to the Indian Limitation Act, 1877, means the date upon which the Court passes an order for issue of a notice under section 248, not the date upon which such order actually issues.

THIS was an appeal arising out of proceedings for the execution of a decree. The decree-holders applied for execution, within time, on the 15th of January 1904. On the 21st of January 1904, the Court passed an order that notice should issue to the judgment-debtor under section 248 of the Code of Civil Procedure. The notice actually was issued on the 25th of January 1904. The next application for execution was presented on the 24th of January 1907, and it was then objected to as being barred

\*Second Appeal No. 1180 of 1907 from a decree of Muhammad Ali, District Judge of Mirzapur, dated the 9th of July 1907, confirming a decree of Behari Lal Mehra, Munsif of Mirzapur, dated the 4th of May 1907.

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by limitation. The Court of first instance (Munsif of Mirzapur) sustained this objection and dismissed the application for execution, and this order was upheld in appeal by the District Judge.

The decree-holder appealed to the High Court.

The Hon'ble Pandit *Madan Mohan Malaviya* and Munshi *Iswar Saran*, for the appellant.

Mr. *J. Simeon*, for the respondent.

AIKMAN and KARAMAT HUSAIN, JJ.—This is a decree-holder's appeal. The Courts below have held that the present application to execute is barred by limitation. The application to execute was presented on the 24th of January 1907. The last preceding application was made on the 15th of January 1904. On the 21st of January 1904, the Court passed an order that notice should issue to the judgment-debtor under section 248 of the Code of Civil Procedure. The notice was actually issued on the 25th January 1904. Article 179 of schedule II of the Limitation Act allows three years from "the date of issuing notice under the Code of Civil Procedure, section 248." If the date of issuing notice be taken to be the date on which it is actually issued, the application is within time. But if it be taken to be the date on which the Court passed an order for issue of notice under section 248, the application is too late. There is a great conflict of opinion in the different High Courts as to the meaning of the words quoted above. In this conflict we are bound to follow the rulings of our own Court, and the learned vakil for the appellant admits that those rulings are against him.\* We accordingly hold that this appeal must fail, and we dismiss it with costs.

*Appeal dismissed.*

\* The rulings referred to were *Udit Narain v. Ram Partab Singh* (Weekly Notes, 1881, p. 120) and *Baldeo v. Harrison* (Weekly Notes, 1890, p. 244).