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accordance with law within the meaning of Article 179, Schedule II of the Limitation Act of 1877, and in *Mangal Sen* v. *Baldeo Prasad* (1), MAHMOOD, J., held that an application for execution of a decree by attachment of moveable property of the judgement-debtor, unaccompanied by an inventory of the property sought to be attached, was not an application in accordance with law within the meaning of Article 179, Schedule II of the Limitation Act of 1877. The learned Vakil for the appellants has been unable to refer us to any case in which these decisions have been disapproved. But he has referred us to several cases in which defective applications for execution have been amended beyond limitation and the courts have held that the amendment related back to the date of the application. Such cases have no bearing on the present appeal. Here although the decree-holder was given time to amend his application, he did not amend it, and it is impossible for us, some years afterwards, to allow him to amend an application which was struck off on account of his failure to comply with the order of the court requiring him to amend it. We must follow the decisions of this Court reported in the Weekly Notes for 1892 and hold that the application for execution put in on August 23rd, 1913, was not an application in accordance with law within the meaning of Article 182, Schedule I of the Limitation Act of 1908 which governs the present case. If the application of 1913 is put out of the way, the present application of June 1914, is clearly barred by limitation as held by the court below. The appeal fails and is dismissed with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball,

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May, 27.

SABODRA BIBI (PLAINTIFF) *v.* BAGESHWARI SINGH AND ANOTHER (DEFENDANTS).*

Pre-emption—Right of pre-emptor to put vendor to proof of title—Suit must be for entire property sold.

Held that a pre-emptor is not entitled in a pre-emption suit to put the vendor on proof of his title to the property which he purports to sell. The principle of pre-emption is substitution. A pre-emptor is therefore bound to

* Second Appeal No. 821 of 1914, from a decree of E. M. Nanavati, Subordinate Judge of Jaunpur, dated the 2nd of March, 1914, confirming a decree of Kesri Narain Chand, City Munsif of Jaunpur, dated the 25th of November, 1913.

(1) Weekly Notes, 1892, p. 70.

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take the title which the vendee was ready to take. Further, that a pre-emptor cannot sue to pre-empt only a portion of the property sold.

THE facts of this case were as follows:—

THE defendant second party sold certain property of his a portion of which was situate in mahal Harballampur and another portion in mahal Mirganj to the defendant first party. The plaintiff brought the present suit to pre-empt the whole of the property in muhalla Harballampur, but only a portion of the property in mahal Mirganj. His case was that the vendor was only entitled to a much smaller share in mahal Mirganj than that which he purported to sell. He added in his plaint a statement to the effect that if the court found that the vendor was really entitled to all the property in mahal Mirganj which he purported to sell, then he was willing to pre-empt that as well. The courts below dimissed the suit on the ground that he did not seek to pre-empt the entire property. The plaintiff preferred a second appeal to the High Court.

Munshi *Harbans Sahai*, for the appellant.

Babu *Lalit Mohan Banerji*, for the respondents.

RICHARDS, C. J., and TUDBALL, J.—This appeal arises out of a suit for pre-emption. Portion of the property was situate in one mahal and portion in another. The plaintiff claimed pre-emption of the whole of the property in Harballampur but only a portion of the property in Mirganj. He said that the vendor was only entitled to a much smaller share in Mirganj than that which he purported to sell. He added to his plaint a statement that if the court found that the vendor was really entitled to all the property in Mirganj which he purported to sell, then he was willing to pre-empt that also. Both the courts below have dismissed the plaintiff's suit on the ground that he did not seek pre-emption of the entire property. In our opinion this decision was correct. A pre-emptor is not entitled in a pre-emption suit to put the vendor on proof of his title to the property which he purports to sell. The principle of pre-emption is substitution. A pre-emptor is, therefore, bound to take the title which the vendee was ready to take. He is not entitled to say to the vendor, I will take all the property to which you prove you have a title but I will not take property which you fail to prove

belongs to yourself. We need hardly say, that we do not decide that a vendor is entitled fraudulently to insert property, to which he has no title, in the sale deed for the purpose of inflating the price or otherwise fraudulently to defeat pre-emption. In the present case it is perfectly clear from what took place in the court below that the vendor has (or *bona fide* thinks he has) some title not necessarily a perfect title, to the property which the plaintiff in the present suit claims belongs to his son. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Chamier and Mr. Justice Piggott.

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May, 11.

DAMBAR SINGH (DECREE-HOLDER) *v.* MUNAWAR ALI KHAN AND ANOTHER (JUDGEMENT-DEBTORS).*

Execution of decree—Plea of adjustment—Previous adjudication.

Upon an application being made for the execution of a decree, a compromise was entered into between the decree-holder and the respondents by which the latter were exempted from liability for costs. The assignee of the decree-holder applied for execution against the respondents. The respondents objected and their objections were upheld by the High Court. Notwithstanding this the decree was again put into execution against the respondents who again objected but allowed their objection to be dismissed for default.

Held, that the dismissal of the objection for default must be taken to be an adjudication that the decree had not been adjusted, and that the later decision neutralised the earlier one and the respondents were consequently liable for the balance of the decretal amount.

THE facts of the case were as follows :—

A decree was put into execution against the respondents and others. The matter was compromised between the decree-holder and the respondents and the decree-holder absolved them from liability under the decree. After that the appellant as an attaching creditor of the decree-holder put in execution the same decree against the respondents, upon whose objection the court decided that they had been fully absolved by the compromise and were not liable under the decree. This decision was upheld by the High Court on appeal. But the appellant again put the decree into execution against them and attached a sum of money lying in court to their credit. They objected

* First Appeal No. 96 of 1914, from a decree of Udit Narain Sinha, Subordinate Judge of Meerut, dated the 19th of January, 1914.