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which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive." Even if it be assumed that the provision of a right to appeal from an order of an Assistant Collector, second class, is somewhat inconsistent with the provisions of rule 63, that rule will be inapplicable only so far as the inconsistency extends. That is to say, an appeal would be entertained where no appeal would otherwise have lain. But there is no inconsistency between the right to file a civil suit and a right to appeal under the Tenancy Act. It is to be noted that order XXI of the Code of Civil Procedure has been made applicable, with two exceptions, to execution proceedings under the Agra Tenancy Act (schedule II, list 2, serial Nos. 12 and 13).

It is obvious that a very large property may well be attached in execution of a very small amount. The policy of the legislature could not have been to make an order passed by an Assistant Collector or by a Collector in appeal final in such matters. Agreeing with the view explained by the learned single Judge of this Court, we dismiss this appeal with costs.

Before Mr. Justice Mukerji and Mr. Justice Bennet.

DHAPO (JUDGMENT-DEBTOR) v. BAQRIDI (DECREE-HOLDER).*

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March, 31.

Civil Procedure Code, section 144—Restitution—Refund of money paid on attachment in execution of first court decree—Limitation—Terminus a quo—Limitation Act (IX of 1908), article 181—Whether period runs from date of lower appellate court's decree or from date of High Court's decree.

In execution of a decree for money certain property was attached and a sum of money was paid to the decree-holder and the attachment was removed. Subsequently the decree was reversed on appeal, and the decision of the appellate court was upheld by the High Court in second appeal. On an application for restitution of the money which had been paid

*Second Appeal No. 1374 of 1930, from a decree of A. P. Ghildial, Subordinate Judge of Meerut, dated the 29th of July, 1930, reversing a decree of B. P. Elhence, Munsif of Meerut, dated the 25th of March, 1930.

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in execution of the trial court's decree, *Held* that article 181 of the Limitation Act applied and the period of three years prescribed by it was to be counted from the date of the lower appellate court's decree reversing the decree of the trial court, on which date the right to apply for restitution accrued, and not from the date of the High Court's decree confirming that of the lower appellate court; the right to apply for restitution was not in any way suspended by the fact of the second appeal to the High Court.

Messrs. *U. S. Bajpai* and *S. B. L. Gaur*, for the appellant.

Mr. S. N. Gupta, for the respondent.

MUKERJI and BENNET, JJ. :—Two points have been raised in this appeal, one is really a question of fact, and the other is a question of law. If we had to decide the question of fact, we, probably, would have been inclined to remit an issue, but that is not necessary in the view we take of the point of law.

One Ramji Lal got a decree for money on the 29th of August, 1925, against the respondent Baqridi. Having got his decree, Ramji Lal proceeded to realise by attachment of an immovable property. Ramzan, Baqridi's brother, laid claim to that property. The claimant and the decree-holder came to terms, and the property was released from attachment on Ramzan paying a sum of Rs. 400 towards the decree.

Baqridi appealed against the decree passed in favour of Ramji Lal, and his appeal was allowed on the 6th of May, 1926. Ramji Lal filed a second appeal which was dismissed on the 7th of February, 1927.

Baqridi made an application under section 144 of the Code of Civil Procedure against Ramji Lal's widow, Mst. Dhapo, the appellant before us, for recovery of the sum of Rs. 400 which had been paid by Ramzan to Ramji Lal. This application was presented on the 16th of January, 1930. Mst. Dhapo objected to the application on two grounds; the first is that

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Baqriddi is not entitled to recover the money, he himself not having paid it, and the second is that the application is time-barred. The first court dismissed the application on the ground of limitation, and the second court has allowed the application.

As we have stated, there were two questions, one of fact and the other of law. The question of fact is whether it was Baqriddi's money that was paid to Ramji Lal, or whether it was Ramzan's money that Ramji Lal got. If Ramzan, in order to have a clear title to his property, paid money to Ramji Lal, Baqriddi would have no right to recover it. As there was no clear finding on this point, if we had to decide it, it would have been necessary for us to remand an issue. But the appeal succeeds on the ground of limitation.

To this application of Baqriddi article 181 applies. This is the view taken in this Court. Then the limitation of three years begins to run from the date on which the right to apply accrues. The question is, did the right to apply for restitution accrue on the 6th of May, 1926, or on the 7th of February, 1927? The right to apply for restitution accrued as soon as Baqriddi's appeal succeeded in the first appellate court. That right to apply for restitution was not in any way suspended by the fact that Ramji Lal filed a second appeal.

It has been argued that Baqriddi took the precaution of waiting to see how the second appeal fared. That may be a matter of precaution, good for Baqriddi to take, but that was no reason why he should wait for three years after the decision of the High Court. He had more than two years within which to apply after the decision of the High Court, and the taking of the precaution mentioned need not have hurt him. We have the simple words of the third column of article 181 to interpret, and the only way in which we can interpret it is to say that the right to apply accrued

as soon as the decree in favour of Ramji Lal was reversed.

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We are fortified in our opinion by the decision of three learned Judges of the Calcutta High Court in the case of *Hari Mohan Dalal v. Parmeshwar Shau* (1).

The learned counsel for the respondent has referred us to the case of *Rambujhawan Thakur v. Bankey Thakur* (2). In that case the learned Judges considered that the second appellate court's date was the material date. But the facts were such as did not call for any inquiry as to whether the lower appellate court's date, or the date of the judgment of the High Court, was the material date. The application was one for ascertainment of mesne profits. That application could be made only when delivery of possession had been made in favour of the applicant. The delivery took place some time in 1925, and the application was amply within three years from that date. In this view, the investigation of the learned Judges would appear to have been unnecessary. In any case we prefer to follow the Calcutta case, which is in accordance with our own opinion.

We allow the appeal, set aside the decree of the lower appellate court and restore the order of the court of first instance, namely dismissing Baqriddi's application for restitution. The appellant will have her costs throughout.

(1) (1928) I.L.R., 56 Cal., 61.

(2) (1928) I.L.R., 7 Pat., 794.