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vendors had clearly discontinued the enjoyment of the right which their father had commenced.

For the reasons given above, we hold that there is no force in this appeal and we dismiss it with costs.

*Before Mr. Justice Bennet, Acting Chief Justice, and
Mr. Justice Verma.*

BABU RAM (DECREE-HOLDER) v. GOPAL SAHAI
(JUDGMENT-DEBTOR)*

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August, 1

Limitation Act (IX of 1908), articles 181, 182—Execution of conditional decree—Decree for money in defendant's favour, in suit for dissolution of partnership, conditional on payment of necessary court fee—When decree becomes executable—Court Fees Act (VII of 1870), section 11—Court fee paid after three years—Discretion of court to accept—Civil Procedure Code, section 149.

In a suit for dissolution of partnership a decree for a sum of money was passed in favour of the defendant, conditional on his depositing the necessary court fee. More than three years afterwards the defendant tendered the court fee and it was accepted by the court. The question then arose whether the decree could be executed or whether it was barred by limitation:

Held, that under section 149 of the Civil Procedure Code the court had an absolute discretion in the matter of accepting the payment of the court fee at any stage; and as according to the condition in the decree itself, and also to section 11 of the Court Fees Act, the decree was not complete or capable of being executed until the payment of the court fee, limitation for execution of the decree could run only from the date on which the court fee was paid.

Sri Narain Tewari v. Brij Narain Rai (1), distinguished.

Messrs. *Shiva Prasad Sinha* and *G. S. Pathak*, for the appellants.

Dr. N. P. Asthana, for the respondent.

BENNET, A.C.J., and VERMA, J.:—This is a Letters Patent appeal by Babu Ram, son of Jhau Lal decree-holder in a suit. The suit was one for dissolution of

*Appeal No. 7 of 1937, under section 10 of the Letters Patent.
(1) [1931] A.L.J. 319.

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partnership brought by Gopal Sahai, the respondent before us, and one Sham Lal against Jhau Lal, the father of the appellant before us, and others. On the 12th of December, 1927, Jhau Lal was given a final decree for Rs.353-4 to be paid by Gopal Sahai alone on condition that the necessary court fees were deposited. Gopal Sahai had a decree for Rs.185-7 against Jhau Lal and others. In 1931 Gopal Sahai executed his decree against Jhau Lal alone. Jhau Lal objected that his decree against Gopal Sahai was for a larger amount and that there should be a set-off. Gopal Sahai replied that as Jhau Lal had not paid the court fee he was not entitled to execute his decree. Thereupon Jhau Lal tendered the court fee on his decree on the 2nd of April, 1932, and the court accepted it. Gopal Sahai then pleaded that Jhau Lal's decree was barred by time. The execution court of first instance disallowed the objection. The lower appellate court held that the decree of Jhau Lal was barred by time, and SULAIMAN, C.J., has upheld that order. The question before us is, was the execution of the decree of Jhau Lal for Rs.353-4 barred by time? Now learned counsel and the learned CHIEF JUSTICE have relied for the view that the decree was barred by time on certain rulings, one of which is *Sri Narain Tewari v. Brij Narain Rai* (1). This was a ruling of a Bench of which one of us was a member and the case there was of a decree under which the decree-holder was granted a right to recover possession of property in the hands of the defendants, contingent on the decree-holder paying a certain sum of money to the defendants, but no date was fixed for the payment. It was held that on the passing of that decree article 181 of the Limitation Act applied, and the decree-holder had a right to make the payment to the judgment-debtor on the passing of the decree, and therefore limitation for his right to apply began to run from the time when the right to apply accrued, that is, the passing of the decree, and he was

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barred by three years' limitation as he did not make the payment within three years from the date of the decree. The application made more than three years from the date of the decree was therefore held to be barred under article 181. Now it will be noted that that was a payment to be made by one party to the other. The condition in the present case is otherwise, as the condition in the present case is the payment of court fee. Now for court fee there is a section in the Civil Procedure Code, section 149, which provides as follows:—"Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance." This section gives the court discretion at any stage to allow the person by whom a court fee is payable to pay the court fee. The court of original jurisdiction has in the present case allowed the payment of the court fee on the 2nd of April, 1932, on the application of Jhau Lal. The question is, was the court entitled to accept that payment or not? Section 149 of the Civil Procedure Code in our opinion gives the court an absolute discretion in this matter. Learned counsel argued that the application to pay the court fee could not be made later than three years after the date of the decree because such an application would be barred under article 182 of the Limitation Act. But in our view the decree was not complete until the payment of the court fee and until that date there was no decree which could be executed. In our view also the proceeding had not become final in the court of first instance until the court either accepted the court fee from Jhau Lal or had held that his claim was dismissed on account of his failing to pay the court fee. We may

also refer to the provisions in section 11 of the Court Fees Act which deals, among other matters, with the payment of court fee in a case like the present which is a suit for an account. That section provides: "The decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or the amount so decreed shall have been paid to the proper officer." This shows that until the payment is made there is no decree capable of execution. In our view until there is a decree capable of execution it cannot be said that limitation has begun to run under article 182 of the Limitation Act.

For these reasons we allow this Letters Patent appeal with costs throughout and we restore the order of the execution court of first instance.

REVISIONAL CIVIL

Before Mr. Justice Mulla

BRIJ BEHARI LAL (DEFENDANT) *v.* UDAI NATH SHAH
(PLAINTIFF)*

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August, 2

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 1(2) and 7(b)—Excluded areas—"United Provinces"—Applicability of section 7 to the excluded areas—Interpretation of statutes—Conflict between sections.

The provisions of section 7 of the U. P. Encumbered Estates Act are applicable to suits or proceedings in any civil or revenue court in the United Provinces, including any such court in the areas excluded by section 1(2) of the Act.

There is an apparent conflict between the provisions of section 7 of the Act, the operation of which is expressed to be throughout the "United Provinces", and the provisions of section 1(2) of the Act which excludes certain areas from the operation of the Act. Having regard to the scheme and purpose of the Act and all the relevant provisions, this conflict