

plaintiff's pleader was not followed in a later decision of that Court, — *Gumna Dambarshet v. Bhiku Hariba* (1); and the ruling of this Court in *Madho Singh v. Thakur Pershad* (2) was followed by this Court on several occasions—S.A. No. 461 of 1879, decided the 23rd August, 1879 (3). It was pressed upon us that a decision of the Judicial Committee—*Janeswar Dass v. Mahabeer Singh* (4)—took a different view. But the circumstances of that case were peculiar, as the suit against the defendants Nos. 2 and 3 had for its object a sale of the land hypothecated in a bond of which they had become purchasers under a subsequent mortgage-bond. It was therefore as against them a claim founded not upon the contract to pay the money, but upon the hypothecation of the land. The ruling in this case does not affect the decision of this Court referred to above, that part-payment of a debt contracted when Act XIV of 1859 was in force, after default, does not affect the limitation. The last instalment was paid, if paid at all *bonâ fide*, on the 2nd June, 1871, and twelve years have passed since the first default occurred on the 28th June, 1866. The term of twelve years expired on the 28th June, 1878. No waiver could affect the limitation law until art. 75, sch. ii, was published in Act IX of 1871, which came into force on the 1st July, 1871, and nothing has been paid since 2nd June, 1871. The suit was brought on the 12th March, 1878. The intermediate alleged payment of interest has not been proved; so clearly more than six years have passed since the 2nd June, 1871, and neither Act IX of 1871 nor Act XV of 1877 could help the plaintiff's case. We dismiss the appeal and affirm the decree with costs.

Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

RAM ANUJ SEWAK SINGH (OBJECTOR) v. HINGU LAL (DECREE-HOLDER).*

Application for Execution of Decree—Legal representatives of deceased judgment-debtor—Act XV of 1877 (Limitation Act), sch. ii, No. 179.

An application for execution of a decree against one of the several legal representatives of the deceased judgment-debtor, takes effect, for the purposes of limitation, against them all.

* First Appeal, No. 151 of 1880, from an order of Rai Bhagwan Prasad, Subordinate Judge of Azamgarh, dated the 12th July, 1880.

(1) I. L. R., 1 Bom. 125.

(3) Unreported.

(2) N.-W. P. H. C. Rep. 1873, p. 35.

(4) I. L. R., 1 Calc., 168.

1881 S.

—
AHMAD A
v.
HAFIZA B S

1881 S.
February 10.

1881

RAM ANUJ
WAK SINGH
v.
LINGU LAL.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *Spankie* and *Munshi Kashi Prasad*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*), for the respondent.

The judgment of the Court (*PEARSON, J., and OLDFIELD, J.,*) was delivered by

OLDFIELD, J.—In this case the decree-holder obtained a decree against a sole judgment-debtor. Application for execution of the decree was made against the judgment-debtor within time, and on his death execution was taken out against two representatives of the deceased, his son *Rai Nar Singh*, and his widow *Ab-lakhi Kuar*, also within time, the last application being made on the 5th April, 1880. On the 17th May the decree-holder petitioned the Court executing the decree that his application of the 5th April, 1880, might be amended by adding the name of *Ram Anuj Sewak Singh*, the minor grandson of deceased, under the guardianship of *Rai Nar Singh*, and execution should proceed against him, the decree-holder having now obtained information that he was one of the heirs of the deceased judgment-debtor and in possession of the property. The Court ordered that the petition be filed and notice should issue to the said *Ram Anuj Sewak Singh*. The latter objected that the execution of the decree was barred by limitation against him, and the Court disallowing the objection this appeal has been instituted. The application which is the subject of this appeal has been made within time from the date of the last application against the son and widow of the deceased, but it is contended that the application to execute the decree against the other representatives of the deceased is not an application within the meaning of cl. 4, art. 179, Limitation Act, so as to give a period from which limitation will run. We have to determine the question entirely with reference to the provisions of cl. 4, art. 179. What the law requires is that within the period allowed there shall have been an application "in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order." It cannot be said that the application against

the representatives of the judgment-debtor does not meet the above requirements of the law. The omission to ask for execution in it against the appellant as one of the representatives of the judgment-debtor does not affect its legality. The appellant can only succeed in his contention, if it can be held that the application for execution made against one legal representative of a sole judgment-debtor, although it may meet the requirements of the law, shall not take effect for the purpose of saving limitation against another representative of the judgment-debtor who is only liable for the property in his possession. But the law makes no such provision, and its omission to do so is significant, for Explanation I to art. 179 provides that "where the decree has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against." Had it been intended that the legal representatives of a sole judgment-debtor or of jointly liable judgment-debtors should have the benefit of a similar provision on the analogous grounds that they are only liable to the extent of the property in their possession, it is reasonable to suppose that the Legislature would have extended the provision to them. The position, however, of several representatives of a sole judgment-debtor is very different *quoad* the decree-holder from that of several judgment-debtors with separate liabilities found by the decree. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Spankie and Mr. Justice Straight.

KANAHI LAL AND OTHERS (DEFENDANTS) v. NAUBAT RAI (PLAINTIFF).*

Dismissal of appeal on the merits in the absence of appellant—Act X of 1877 (Civil Procedure Code), ss. 556, 558—Second appeal.

An appellate Court, the appellant not attending in person or by his pleader, instead of dismissing the appeal for default, as provided by s. 556 of Act X of 1877, proceeded, in contravention of the provisions of that law, to dispose of the appeal on the merits, and dismissed it. The appellant preferred a second appeal to the High Court, contending that the appellate Court had acted contrary to law. *Held*

* Second Appeal, No. 873 of 1880, from a decree of W. Young, Esq., Judge of Bareilly, dated the 11th May, 1880, affirming a decree of Maulvi Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 28th February, 1880.