

case, so long as the amount so ascertained does not exceed the sum agreed upon.

The method of assessing damages would be to ascertain the quantity of indigo which would have been pressed out of the stipulated amount of indigo plant, to ascertain the price at which indigo might have been fairly sold in the market during the season to which the contract relates, and to deduct from such price the ordinary charges of producing and selling the quantity of indigo in question. More than the amount so ascertained the plaintiff in our opinion is not entitled in equity to recover, and if that amount is decreed to him it would be a "reasonable compensation" for the breach of contract on which the suit is based.

With reference to these observations we decree this appeal, and setting aside the decree of the lower appellate Court remand the case to that Court under s. 562, Civil Procedure Code, the costs of this appeal to abide the result.

Cause remanded.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

RĀGHUBANS GIR (JUDGMENT-DEBTOR) v. SHEOSARAN GIR (DECREE-HOLDER.)*

1882

December 20.

Execution of decree—Application for execution—Intermediate suit—Fresh application—Revival of application—Act XV of 1877 (Limitation Act), sch. ii, Nos. 178, 179.

On the 27th March, 1878, the holder of a decree applied for execution. On the 27th May, 1878, the Court made an order directing that the application should be struck off, as the record of the former execution-proceedings was in the appellate Court, and that the decree-holder should make a fresh application when such record was returned. On the 28th May, 1881, the decree-holder renewed the application in accordance with such order.

Held, on the question whether this application was barred by limitation, that it was not an application within the meaning of No. 179, sch. ii of Act XV of 1877, but one to which No. 178 would apply; that limitation began to run when the record was returned; and that therefore, (three years not having elapsed from that time), the application in question was within time.

Kalyanbhai Dipchand v. Ghanashamlal Jadunathji (1) and Paras Ram v. Gardner (2) referred to.

* Second Appeal No. 18 of 1882, from an order of R. J. Leeds, Esq., Judge of Gorakhpur, dated the 9th January, 1882, affirming an order of Rai Izzat Rai, Munsif of Bansi, dated the 20th August, 1881.

(1) I. L. R., 5 Bom., 29. (2) I. L. R., 1 All., 355.

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

Munshi *Hanuman Prasad*, for the appellant.

Pandit *Ajudhia Nath* and Maulvi *Mehdi Hasan*, for the respondent.

The Court (OLDFIELD, J., and BRODURST, J.,) delivered the following judgment :

OLDFIELD J.—The respondent obtained a decree against the appellant on 6th February, 1877. He applied for the execution of this decree on 17th February, 1877. The judgment-debtor preferred objections, which were disallowed on 16th April, 1877. He then appealed, and the order was upheld on 17th February, 1878, and again upheld by the High Court on 31st May, 1878. He subsequently instituted a regular suit to contest the order in execution and was unsuccessful. In the meantime the decree-holder filed another application for execution by attachment and sale of property on the 27th March, 1878, and the Munsif passed an order on this application on 27th May, 1878, that it should be struck off the file, as it was impossible to proceed with it in the absence of the record which was in the appellate Court; and the Munsif directed the decree-holder to file a fresh application when the record should be returned from the High Court.

The decree-holder filed the present application on the 28th May, 1881, and he refers in it to his previous application and to the Munsif's order upon it, and asks that the case may be proceeded with according to his previous application.

The question before us is whether, as has been urged by the appellant, this application is barred by limitation under art. 179, Act XV. of 1877. We are of opinion that this is not strictly speaking an application under art. 179 for the execution of a decree or order of any Civil Court, so as to make the time run from the date of the former application of 27th March, 1878. It no doubt seeks as a result the execution of the decree, but it is primarily and essentially an application made in conformance with the direction of the Court given in its order dated 27th May, 1878, with the object of moving the Court to proceed in the matter of the former

application which had been postponed; and we think a distinction may certainly be drawn between an application of this nature and one of the nature of a fresh application for the execution of the decree, and that art. 178 will apply and the limitation will run from the time when the right to apply accrues—in this case from the date when the record was returned to the Munsif's Court, on disposal of the proceedings in the appellate Court. The order of the Munsif, dated 27th May, 1878, was in fact an order for postponement; and whether or not it was a proper order to make, under the circumstances it gave a right to the decree-holder to make the application which he has now made.

Our attention has been drawn to a case decided by the Bombay High Court—*Kalyanbhai Dipchand v. Ghanashamlal Jadurathji* (1)—which is similar to the one before us, and decided on analogous grounds, and the principle of our decision has already been recognised by this Court in the case of *Paras Ram v. Gardner* (2). We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

RADHA PRASAD SINGH (DEFENDANT) v. SALIK RAI (PLAINTIFF).*

Landholder and tenant—Ejection of tenant—Suit by tenant for declaration of right—Jurisdiction—Res judicata—Act XVIII of 1873 (N.-W. P. Rent Act), s. 93 (b)—Civil Procedure Code, s. 13.

An occupancy-tenant, who had been ejected, under ss. 34 and 93 (b) of the North-Western Provinces Rent Act, on the ground that he had committed an act mentioned in those sections, which rendered him liable to ejection, sued in the Civil Court for a declaration of his right of occupancy and to have the decree of the Revenue Court directing his ejection declared of no effect, on the ground that his act was not one of those rendering him liable to ejection, being author by local custom.

Held that the question of the plaintiff's liability to ejection on account of the act in question, being a matter the cognizance of which was limited to the Revenue Courts, and the decision of the Revenue Court against him having become final, the plaintiff's suit was barred by s. 13 of the Civil Procedure Code. *Raj Bahadur v. Birnha Singh* (5) distinguished.

* Second Appeal No. 584 of 1882, from a decree of J. W. Power, Esq., Judge of Ghazipur, dated the 13th March, 1882, affirming a decree of Maulvi Mahmud Baksh, Subordinate Judge of Ghazipur, dated the 10th November, 1881.

(1) I. L. R., 5 Bom., 29. (2) I. L. R., 1 All., 255.
(3) I. L. R. 3 All. 85.

1882

RAGHUBANS
GIR
v.
SHROSARAN
GIR.

1883.

January 3.