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been definitely ascertained in execution, the plaintiff is certainly capable of ascertaining the exact amount which he claims, and the defendant knows definitely the amount of the liability which he is seeking to escape. I would, therefore, hold that the value of the present appeal is Rs. 16,011-5-0 and that ad valorem court-fee is payable on that amount. In calculating this court-fee allowance should be made for the amount of the ad valorem court-fee already paid on the appeal from the preliminary decree, since the appellant is not required to pay ad valorem court-fee twice: *Kanchan Mandar* v. *Kamla Prasad Choudhury*(1); but the attention of the Stamp Reporter should be drawn to the fact that unless ad valorem court-fee is paid on this appeal, the memorandum in First Appeal 117 of 1930 will be insufficiently stamped.

Order accordingly.

PRIVY COUNCIL.

J.C.*
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November, 22.

RAJA KIRTYANAND SINGH

v.

RAJA PRITHI CHAND LAL CHAUDHURY.

Limitation—Execution of Decree—Subsequent Order directing Payment—Order in different Suit—Order staying Execution—Debtor and Surety—Limitation Act (IX of 1908) *s.* 15—*Code of Civil Procedure (V of* 1908), *s.* 48(1)(*b*); *s.* 145.

Under section 48(1)(*b*) of the Code of Civil Procedure, 1908, a subsequent order directing payment does not postpone the commencement of the period limited for making a fresh application for execution of a decree unless the order is made in the suit in which the decree was made and directs payment by the debtor or surety of money due under the decree; the provision does not apply, therefore, where a receiver having been appointed in a different suit he is directed to make payments in discharge of the decree sought to be executed. Further, a statement in an order in that

* PRESENT: Lord Tomlin, Lord Thankerton and Sir Lancelot Sanderson.

(1) (1912) 16 Cal. L. J. 564.

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different suit that the holders of the decree sought to be executed must wait for payment is *not* an injunction or order staying execution of the decree within section 15 of the Limitation Act, 1908.

Semble if a person in his capacity as surety consents to a decree against the principal debtor the effect of section 145 of the Code of Civil Procedure, 1908, is that the decree can be executed against him as though he were a party to the suit and the principal debtor.

Decree of the High Court affirmed.

Appeal (no. 126 of 1930) from a decree of the High Court (July 10, 1929) affirming an order of the Subordinate Judge of Monghyr.

The question arising upon the appeal was whether an application by the present appellants on July 13, 1927, to execute a decree dated April 1, 1914, was barred by limitation. The respondent against whom it was sought to execute the decree was a surety for payment of the rent for which the decree was recovered, and assented to the decree which was a compromise of the claim in the suit. The material facts, and enactments appear from the judgment of the Judicial Committee.

The High Court (Kulwant Sahay and Macperson, JJ.) held, affirming the order appealed from, that the application was barred under s. 48 of the Code of Civil Procedure, 1908.

1932. Nov. 21, 22. *Sir Dawson Millar*, *K. C.* and *Hyam*, for the appellants.

Dunne, *K. C.* and *Wallach*, for the respondent.

The argument for the appellant is stated in the judgment; the respondent's counsel was not called upon.

The judgment of their Lordships was delivered by

LORD TOMLIN—This is an appeal from a decree of the High Court at Patna, which affirmed an Order dated 19th September, 1927, of the Court of the Subordinate Judge of Monghyr.

The question arises in this way. On the 1st April, 1914, a decree was made in certain rent suits

by which by consent the present appellants, or their predecessors, obtained a decree for Rs. 1,84,521, besides further interest thereon at 8 annas per cent. per month. It was provided by the decree that the plaintiff should not take out execution of the decree until March, 1915, so that there was a year's suspension.

The present respondent was a consenting party to the decree in his capacity as surety. The result of that apparently is that the decree can under section 145 of the Civil Procedure Code be executed against him as though he were a party to the suit and the principal debtor.

Having obtained that decree, the plaintiffs made a number of applications for execution.

The first was made on the 23rd June, 1915, and apparently was struck off on the 24th June, 1916, without there being any satisfaction of the decree. A second application was made on the 10th September, 1918, and that again was struck off on the 25th March, 1919, without any satisfaction of the decree. A third application was made on the 10th April, 1919; but in the meantime the defendants in the rent suits who apparently were, or claimed to be, interested in the Srinagar Raj, as one of their principal assets, had a suit commenced against them by a lady of the family, the nature of which does not very clearly appear but which was evidently a suit for the protection of the property in the interests of the family.

In the course of that suit apparently in January, 1920, a receiver was appointed, and on the 31st January an application was made in that suit by the appellants in the absence of the judgment-debtors and of the surety, which resulted in an Order in that suit for payment of Rs. 9,000 half-yearly by the receiver in that suit to the appellants in respect of their judgment debt in the rent suits. In fact, the receiver paid nothing.

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On the 24th February, 1920, the third application for execution in the rent suits which was up till that moment pending, was struck out. About this time it appears that at the instance of the receiver in the Raj suit the proceedings in the rent suits were transferred from Monghyr, where they had theretofore been conducted, to Bhagalpur where the Raj suit was proceeding; and presently an application was made by the appellants in the Raj suit asking in effect that either the receiver might pay their debt, or that they might levy execution on the property of the Raj in the hands of the receiver.

That application seems to have come before the Subordinate Judge on many occasions, and on each occasion he saw fit to postpone decision and ultimately, according to the order-sheet, on the 16th September, 1922, he made an order that the appellants were to wait for some time for payment of the larger decree, and he directed an account of the smaller decree. That only means that the compromise decree was made up of two separate sums, a bigger sum and a smaller sum; so that the result of that was that they were left with nothing in the main to satisfy their debt. At that moment when that order was made, it is to be observed that there were in fact no execution proceedings pending at all. The appellants appealed against the last-mentioned order and on the 16th April, 1923, that is, seven months afterwards, the order was set aside.

On the 15th May, 1923, that is a month after the order was set aside, the appellants made their fourth application for execution in the rent suits. That was struck off on the 8th June, 1923, and there is no information as to why it was so struck off although it appears that in the meantime some sum had been paid to the appellants by the receiver in the Raj suit.

On the 11th June, 1923, that is, three days after the fourth application was struck off, the appellants

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made a fifth application for execution and that was struck off on the 30th March, 1926. But in the meantime, in some way or another, they had succeeded in getting an order for the sale of the Raj property, presumably in the Raj suit, and the Raj property was in fact sold and something over a lakh of rupees was realised and paid to them in satisfaction *pro tanto* of their judgment debt. But there remained a substantial sum still owing to them.

On the 15th June, 1925, they made a sixth application for execution in the rent suits. Their Lordships have no particulars of that application, or what happened to it, it probably suffered the fate of its prdecessors and was struck off without any particular result.

On the 13th July, 1927, there followed a seventh application for execution in the rent suits. It is to be observed that the six applications which have been mentioned up to this point were all applications against the judgment-debtors. The seventh application was, however, an application against the surety. This application founds the present appeal before their Lordships' Board, because objection was taken to it that it was out of time. That objection was upheld in both Courts below, and it is against that conclusion that the present appellants have appealed to His Majesty in Council.

Now two points are made by the appellants. The first is that though under section 48 of the Code of Civil Procedure it is *prima facie* barred, because a period of twelve years has run, it is saved by the order of the 31st January, 1920, by which the receiver was ordered to make half-yearly payments to the appellants, on the ground that that order is within the meaning of section 48 (1) (*b*) a subsequent order directing payment of money.

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The section is as follows:

"Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from: (*a*) the date of the decree sought to be executed, or (*b*) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree."

Their Lordships are of opinion that on the true construction of the section the subsequent order must be an order in the suit in which the decree is made, and an order which directs payment by the debtor or the surety of money in respect of the judgment debt. The order of the 31st January, 1920, satisfies none of these conditions. It is an order made at a time when some of the property which was believed to be the property of the debtors was the subject of some suit in the nature of an administration suit, in which a receiver had been appointed. The application for the order made in that suit, was made in the absence of the judgment-debtors and in the absence of the surety, and the order for payment was an order on the receiver in that suit. That, in their Lordships' opinion, is not such an order as is contemplated by section 48(1) (*b*) at all, and that point, therefore, fails.

The second point depends upon section 15 of the Indian Limitation Act, 1908, which is in these terms:

"(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded."

The point made by the appellants is this. They say that on the 16th September, 1922, the judge in the Raj suit ordered, according to the note in the order paper—their Lordships have not the order before them—that the decree-holders were to wait for some time for payment. That order was set aside on the

16th April, 1923. Therefore, there was an interval of seven months during which the order of the 16th September, 1922, was in operation. The appellants say that was a stay, and those seven months saved the situation for them, because if those seven months are not counted the present application was in time.

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Now the first thing to be observed is that at the time when that order was made, there was in fact no application for execution pending at all. It was an order, again, made in the Raj suit and not in the rent suits; it was an order made on an application by the decree-holders seeking leave to proceed against property in the hands of the receiver, in the Raj suit. It was an order which did not stay execution at all, but simply said that so far as that application in that suit was concerned the appellants were to wait. That seems to their Lordships not to be, in any sense within the meaning of the section, a stay of the execution by injunction or order. This point also fails.

A number of other points were discussed in the courts below, including the relation between section 48 of the Code of Civil Procedure and section 15 of the Indian Limitation Act, 1908; also the relation between section 48 of the Code of Civil Procedure and article 182 of the Limitation Act. Having regard to the view which their Lordships take of the two points that have been raised, those matters do not fall to be considered at all. The result must be that their Lordships will humbly advise His Majesty that this appeal should be dismissed and the appellants must pay the costs.

Solicitors for appellants: *Barrow, Rogers and Nevill.*

Solicitors for respondent: *H. S. Polak and Co.*