APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

1887. *March 3.*

MOTICHAND, (ORIGINAL JUDGMENT-DEBTOR), APPELLANT, *v.* KRISHNA'-RA'V GANESH, (DECREE-HOLDER AND APPLICANT), RESPONDENT.*

Decree—Execution—Decree more than twelve years old—Limitation—Civil Procedure Codes (Act X of 1877 and Act XIV of 1882), Sec. 230.

An application for execution of a decree obtained against the judgment-debtor in 1870 was presented by the applicant on the 26th January, 1885. Several previous applications for execution had been made, and the last two, *viz.*, on the 29th July, 1881, and 29th June, 1882, had been granted. The judgment-debtor was arrested and brought before the Court. He contended that execution of the decree was barred. Both the lower Courts were of opinion that the decree was not barred, and allowed execution to issue. On appeal by the judgment-debtor to the High Court,

Held, that the application for execution was too late. As there had been an application made and granted on the 29th July, 1881, under the Code of 1877, and twelve years from the date of the decree would have elapsed before June, 1885, the application in question was barred, and was not saved by the concluding clause of section 230 of the Code (Act XIV of 1882).

THIS was a second appeal from a decision of J. W. Walker, District Judge of Ahmedabad.

On the 26th January, 1885, the applicant, Krishnaráv, presented to the Subordinate Judge of Borsad, in the Ahmedabad District, an application for execution of a decree obtained against the judgment-debtor in Suit No. 682 of 1870. The judgment-debtor Motichand was arrested and brought before the Court. He claimed to be released, on the ground that the execution of the decree was barred. Applications for execution of the decree in question had been made in 1875, 1876, 1877, 1878, and 1879; and on the 29th July, 1881, and 29th June, 1882 applications had also been made and were granted.

The Subordinate Judge ordered execution to issue. The judgment-debtor appealed to the District Judge, who confirmed the order of the lower Court.

From this order the judgment-debtor preferred a second appeal to the High Court.

* Second Appeal, No. 441 of 1885.

Nagindás Tulsidás for the appellant:—The application for execution is barred. On the 29th June, 1882, an application was made and granted, and, therefore, the case of *Anandráv Chimuji* v. *Thákarchand*[1], relied on by the lower Court, does not apply in the present case. This application is to be governed by the Civil Procedure Code (Act XIV of 1882), which came into force on the 1st June, 1882. The last application under the Code of 1877 was made on the 29th July, 1881, and, therefore, the last clause of section 230 of the Code would not save the limitation. The case of *Goluck Chandra* v. *Haraprìah Debi*[2] followed in *Dave Kálidás Bhukhanji* v. *Mia Aloo Jita* [3] is exactly in point. The debtor, therefore, cannot be arrested in execution of the decree.

There was no appearance for the other party.

SARGENT, C.J.:—The District Judge has lost sight of the application for execution on the 29th June, 1882, which was granted, and takes the case out of the decision in *Anandráv Chimuji* v. *Thákarchand*[4]. This application having been made after the Code of 1882 came into force, which was on 1st June, 1882, the case falls under section 230 of that Code, and the present *darkhást* in January, 1885, having been presented more than twelve years after the date of the decree in 1871, is too late, unless it is saved by the concluding clause of the section. It is within three years after the Code of 1882 came into force; but it remains to be considered whether it "would not have been barred by the law in force immediately before the passing of the Code" before the expiration of the three years.

The "law in force immediately before the passing of the Code" was construed by the majority of the Allahabad Full Bench as confined to article 179 of the Statute of Limitation, and that the former Code of 1877 could not be taken into consideration—*Musharraf Begam* v. *Ghálib Ali*[5]. In *Goluck Chandra* v. *Haraprìah Debi*[6], this view was dissented from, and the words construed as including the "whole law on the subject." Such is their plain grammatical meaning, and, in the absence of other

(1) I. L. R., 5 Bom., 245.
(2) I. L. R., 12 Calc., 559.
(3) Printed Judgments for 1884, p. 66.
(4) I. L. R., 5 Bom., 245.
(5) I. L. R., 6 All., 189.
(6) I. L. R., 12 Calc., 559.

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words to show a contrary intention, should, we think, on the ordinary principle of construction, be the one adopted. The circumstance relied on by the majority of the Allahabad Full Bench, that the words are identical in the third paragraph of section 230 of both the Codes, does not seem to us to affect the question of construction. The language is doubtless the same so far as they both speak of the law in force, but the periods to which they refer are different. Upon the whole, we agree with the view taken by the Calcutta Court, and we may add that this view has already been acted on by this High Court in *Dave Kálidás Bhukhanji* v. *Mia Aloo Jita*[1]. As there was here an application made and granted on the 29th July, 1881, *i. e.*, under the Code of 1877, and twelve years would have elapsed before June, 1885, we must hold that the *darkhást* in question was not saved by the concluding clause of section 230 of the Code of 1882. We must, therefore, discharge the order of the District Judge, and declare that the *darkhást* is too late. Appellant to have his costs in the lower Courts.

(1) Printed Judgments for 1884, p. 66.

FULL BENCH.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nánábhái Haridás, and Mr. Justice Birdwood.

1887. *March* 8.

HARICHAND, PLAINTIFF, *v.* JIVNA SUBHA'NA, DEFENDANT.*

Stamp—Court Fees' Act VII of 1870, *Sch. I, Art.* 8—*Copies of originals returned to the party—Liability of such copies to stamp duty.*

In the course of a suit the plaintiff put in evidence certain entries from his day-books and ledger. The books had been produced in Court, and had been returned to the plaintiff, as usual, on his furnishing copies of the said entries The Subordinate Judge feeling doubt as to whether such copies should be furnished on stamped paper, referred the question to the High Court.

Held, that the original entries not having been in the hand-writing of the debtor, were not liable to stamp duty under Schedule 1, article 1 of the Stamp Act I of 1879, and that, therefore, the copies of them were not chargeable with any court fees under Schedule 1, article 8 of the Court Fees' Act VII of 1870

* Civil Reference, No. 47 of 1885.