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fraudulent preference, make this payment or this charge it shall be wholly done away with except in cases where the person you have so favoured is wholly ignorant of your intention to favour him and receives payment simply for valuable consideration and *bonâ fide*, that is, without any notice of any intention on your part fraudulently to favour one creditor above another." If there had been a new advance given by Gokuldás to the appellant, the conduct of the latter would not, perhaps, have been an act of bankruptcy. In the present case, however, the creditor was aware that the debtor was in embarrassed circumstances, and got an assignment of nearly the whole of his property only four days before a decree was passed against him. There was, clearly, an unfair preference shown to Gokuldás by the debtor, although the latter did not apply to be declared an insolvent for nearly two years afterwards. As a matter of fact, he applied as soon as execution of the decree was sought in the very suit, during the pendency of which he passed the bond charging his property with Rs. 600. This transaction the lower Court held to be a fraudulent preference; and we would not be justified in interfering with the lower Court's decision, unless we were satisfied to the contrary. We must, therefore, confirm the order of the Subordinate Judge.

Order confirmed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

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August 17.

HARI (ASSIGNEE OF DECREE-HOLDER), APPELLANT, *v.* NA'RA'YAN *alias* SAMBHOJI, A MINOR, BY HIS GUARDIAN CHIMA'BA'I, (JUDGMENT-DEBTOR), RESPONDENTS.*

Execution of decree—Limitation—Application for execution in accordance with law—Limitation Act, XV of 1877, Sch. II, Art. 179—Decree against a minor—Application for execution against minor's mother personally, but not as his guardian.

On the 31st July, 1879, a decree was passed against N., a minor, represented by his mother and guardian C. In December, 1880, the first application for execution was made. Through mistake execution was sought against C. herself, as 'widow of B.', and not as guardian of the minor N. That application was granted, and cer-

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tain property belonging to the minor was attached. On the 29th November, 1883, the second application for execution was made against the minor as represented by his guardian C. The present application for execution was made on the 3rd December, 1884. This application was rejected as time-barred by the District Court in appeal, on the ground that the first application having been made against a wrong person, could not be taken into account; that, therefore, it could not keep the decree alive, and that the present application was barred.

Held, reversing the decision of the lower Court, that the decree-holder ought not to be deprived of the fruit of his decree on account of a technical defect in his application of 1880. The minor was substantially and for all practical purposes represented by his mother.

THIS was an appeal from the order of C. G. W. Macpherson, Acting District Judge of Sátára, in Appeal No. 279 of 1885.

On the 31st July, 1879, the plaintiff Vithobá bin Málápá obtained a decree against Náráyan Bábáji, a minor, represented by his mother and guardian, Chimábái.

On the 1st December, 1880, Vithobá applied for execution of the decree against Chimábái herself, describing her as "widow and heir of Bábáji, deceased," and not as guardian of the minor Náráyan. The Court issued a notice to Chimábái, but she did not appear to contest the application. The Court accordingly ordered execution to issue.

On the 29th November, 1883, the decree-holder presented a second *darkhást* for execution. On this occasion he did not omit to put the minor on the record. Nothing, however, was done on this application.

On the 3rd December, 1884, the present application for execution was made by Hari bin Irápá, to whom the decree had been assigned.

The application was resisted, on the ground that it was time-barred. It was contended, on the minor's behalf, that as the decree-holder had ignored him, and proceeded against a wrong party under his first *darkhást*, that application should be treated as a nullity, and, therefore, was of no effect in keeping the decree alive.

The Court of first instance held, on the authority of the rulings in *Syud Mahomed* v. *Syud Abedoollah*[1] and *Fuzloor Ruhman* v.

(1) 12 Calc. L. R., 279.

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Altaf Hassen[1], that though the first application for execution was defective and informal, it could not be treated as a nullity, and that, therefore, it was sufficient to keep the decree alive. The Court accordingly ordered execution to issue.

On appeal, the District Judge was of opinion that the first *darkhást* was not an application for execution "in accordance with law," as the minor had been ignored, and execution sought against a wrong person.

He, therefore, rejected the present *darkhást* as time-barred.

Against this decision a second appeal was preferred to the High Court.

Telang (with him *Mánekshá Jehángirshá* and *Dáji Ábáji Khare*) for the appellant:—The first *darkhást* was not correctly worded. There was a mistake in the description of the widow. But that was a mere irregularity. The minor was effectively represented by his mother and guardian. She represented her son as well as the estate fully and for all practical purposes. The proceedings taken against her are binding on the minor—*Ishan Chunder Mitter* v. *Buksh Ali Soudagur*[2]; *The General Manager of the Ráj Durbhunga under the Court of Wards* v. *Mahárájáh Coomár Rámáput Sing*[3].

Macpherson (with him *Ganesh Rámchandra Kirloskar*) for the respondent:—Schedule II, article 179 of Act XV of 1877 requires an application for execution to be made "in accordance with law." The execution must be sought against the judgment-debtor alone. He must be put on the record. Otherwise proceedings taken against a third party will not bind him. In the present case the minor, against whom the decree was passed, was ignored. Execution was sought against his mother, not as his guardian, but in her own right. The first application for execution is, therefore, not "in accordance with law." It, therefore, does not save limitation—*Denonath Chuckerbutty* v. *Lallit Coomar Gangopadhya*[4]; *Rámásámi* v. *Bágirathi*[5]; *Akobá Dádá* v. *Sakhárám*[6].

(1) I. L. R., 10 Calc., 541.
(2) Mars., 614.
(3) 14 Moore's I. A., 605.
(4) I. L. R., 9 Calc., 633.
(5) I. L. R., 6 Mad., 180.
(6) I. L. R., 9 Bom., 429.

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WEST, J.:—The decree in this case having been obtained against the infant Náráyan, son of Bábáji, represented in the case by his mother Chimábái, the judgment-creditor in 1880 sought execution for the costs awarded to him by the decree. Through error, however, he sought that execution against Chimábái herself, instead of merely as guardian of her son. There was another application, in 1883, against Náráyan, but nothing was done on it. It would prevent the bar of limitation if the earlier application could be considered as a sufficient one for the purposes of Act XV of 1877, Sch. II, art. 179, but not otherwise. The District Judge has thought that the earlier application was not to be taken into account at all; but, having regard to the case of *The General Manager of the Ráj Durbhunga under the Court of Wards* v. *Mahárájáh Coomár Rámáput Sing*[1], we are of opinion that the mortgagor need not and ought not to be deprived of the fruit of his decree on account of the technical defect in his application of 1880. There was at that time no one to think or act for the infant Náráyan except his mother Chimábái. What was brought home to her consciousness was, for all practical purposes, brought home to the consciousness of her son, and the execution in 1880 was not resisted by her. It proceeded against the property held by her then, as now, really for her son.

We, therefore, reverse the decree of the District Court, and restore that of the Subordinate Judge in execution. Each party to bear his own costs throughout.

Decree reversed.

(1) 14 Moo. I. A., 605.