

of the Code of Civil Procedure, he would deprive him of the appeal given by the law against a similar decision under section 480 of the Code of Criminal Procedure. Where a witness denies, on oath, that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding.

We reverse the order as made without jurisdiction, and direct that the fine paid by the applicant be restored to him.

*Order reversed.*

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

LAKSEMIBAI BA'PUJI OKA, (ORIGINAL APPLICANT), APPELLANT, *v.*  
MA'DHAVRA'V BA'PUJI OKA AND OTHERS, (ORIGINAL OPPONENTS),  
RESPONDENTS.\*

1887.  
March 23

*Decree—Execution—Maintenance—Decree for payment of an annuity without specifying date of payment—Default in paying such annuity—Enforcement of payment by execution of decree—Limitation—Computation of time.*

A Hindu widow obtained a decree dated 7th September, 1865, directing that a sum of Rs. 36 should be paid to her every year on account of her maintenance. The judgment-debtors paid the annuity for some years. In 1881 the widow applied for execution of the decree, and recovered three years' arrears. In 1885 payments having again fallen into arrear, she again applied for execution, but her application was rejected as barred by limitation, having been made more than three years after the last preceding application.

*Held*, that the application was not time-barred. The decree created a periodically recurring right. Though no precise date was specified in the decree for payment of the annuity, the judgment-debtors were liable to make the payment on the day year from its date, and thenceforward on the corresponding date year after year. The decree was, as to each year's annuity, to be regarded as speaking on the day upon which for that year it became operative, and separately for each year. The right to execute accruing on a particular day, limitation should be computed from that day should the judgment-debtor fail to obey the order of the Court.

*Sakhārām Dikshīt v. Ganesh Sāthē*(1) followed.

*Sabhanatha Dikshatar v. Subbā Lakshmi Ammal*(2) and *Fusufkhān v. Sirdār Khān*(3) distinguished.

\* Second Appeal, No. 112 of 1886.

(1) I. L. R., 3 Bom., 193.

(2) I. L. R., 7 Mad., 80.

(3) I. L. R., 7 Mad., 83.

1887.

LAKSHMIBÁI  
BÁPUJI OKA  
v.  
MÁDHAYRÁV  
BÁPUJI OKA.

THIS was a second appeal from the order of C. B. Izon, District Judge of Ratnágiri, confirming the order of Ráv Sáheb P. B. Gádgil, Second Class Subordinate Judge of Chiplún, in *darlkáust* No. 703 of 1885.

One Lakshmi báí, widow of Náráyan Bápuji Oka, obtained a decree, dated 7th September, 1865, directing certain property to be delivered up to her for her maintenance, or else a sum of Rs. 36 to be paid to her every year for the same purpose. The judgment-debtors did not assign the property to the widow, but paid the annuity till 1878. In August, 1881, the widow applied for execution of the decree, and recovered three years' arrears of maintenance. The payment having again fallen into arrear, the present application for execution was made. It was dated 6th June, 1885. It was rejected by the Subordinate Judge as barred by limitation, more than three years having elapsed since the last preceding application. This order was confirmed, on appeal, by the District Judge.

Thereupon the decree-holder presented a second appeal to the High Court.

*Dáji Abáji Khare* for the appellant.—The decree in the present case is to be construed in the same way as a decree ordering payment by instalments or payment of an annuity. Such a decree comes into operation on the day on which such instalment or annuity becomes due. Limitation should, therefore, be computed from that date—*Sukhárám Díkshít v. Ganesh Sáthe*<sup>(1)</sup>; *Lakshman Rámchandra Joshi v. Satyabhámábái*<sup>(2)</sup>; *Vishnu Shámhbog v. Manjamma*<sup>(3)</sup>.

There was no appearance for the respondents.

WEST, J.:—In the present case a decree, dated 7th September, 1865, ordered the delivery of property to the plaintiff, a widow, for her maintenance, or else payment to her of Rs. 36 a year for the same purpose. The property was not delivered, but the annuity was paid for some years; when a default occurred, the widow sought and obtained execution through the Court for three years' arrears due in August, 1881.

(1) I. L. R., 3 Bom., 193.

(2) I. L. R., 2 Bom., 494.

(3) I. L. R., 9 Bom., 108.

The application, with which we have now to deal, was made on the 6th June, 1885. The District Court has agreed with the Subordinate Judge in holding the application was barred by limitation as having been made more than three years after the last preceding application under the same decree. For this decision the Courts rely on the cases *Sabhanatha Dikshatar v. Subbá Lakshmi Ammal*<sup>(1)</sup>, *Yusufkhán v. Sindúr Kkán*<sup>(2)</sup>; but it is to be observed that the former of these cases turned rather on the circumstance that the decree sought to be executed was declaratory only as to the future right, not a command to satisfy it by specified payments. The distinction is important as indicated by the cases *Lakshman Rámchandra Joshi v. Satyabhámábái*<sup>(3)</sup>; *Vishnu Shámhbhog v. Manjamma*<sup>(4)</sup>. A Court in executing a decree cannot itself make a new decree. It can only give effect to a positive command, and dispose of such questions as arise incidentally in giving effect to it. In the present case there was a positive alternative command by the Court, that the defendant should pay the plaintiff Rs. 36 a year, and such a decree would, we think, be subject to the principle laid down in *Sakhárám Dikshit v. Ganesh Sáthe*<sup>(5)</sup>. There is no precise date specified for payment of the annuity, and this, according to one of the Madras cases, would be an important circumstance against the judgment-creditor; but construing the decree, as it ought to be construed, most favourably to him on whom it bore, we must say that he became liable to pay Rs. 36 on the day year from its date, and thenceforward on the corresponding date year after year. The decree was, as to each year's annuity, to be regarded as speaking on the day upon which for that year it became operative, and separately for each year. If this were not so, the judgment-debtor, by paying regularly for three years, and so intercepting an application to the Court, could escape payment for ever afterwards. The right to execute accruing on a particular day, limitation is, we think, to be computed from that day, should the judgment-debtor fail to obey the order of the Court. Should he omit to pay, he may,

1887.

LAKSHMI  
BAPUJI OGA  
2.  
MADHAVAR  
BAPUJI OGA.

(1) I. L. R., 7 Mad., 80.

(2) I. L. R., 2 Bom., 494.

(3) I. L. R., 7 Mad., 83.

(4) I. L. R., 9 Bom., 108.

(5) I. L. R., 3 Bom., 193

1887.

LAKSHMIBÁI  
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BÁPUJI OKA.

as to the particular sum, have the benefit of limitation where that comes in to protect him.

We reverse the decrees below, with costs throughout on the respondents, who are to pay the annuity claimed for each time of payment falling within three years of the application.

*Decree reversed*

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

1887.

March 29.

PA'RVATIBAI BY HER AGENT SADA'SHIV B. SA'THE', (ORIGINAL PLAINTIFF), APPELLANT, v. VINA'YEK PA'NDURANG AND OTHERS, (ORIGINAL DEFENDANTS) RESPONDENTS.\*

*Recognized agent—Civil Procedure Code (Act XIV of 1882), Sec. 37—Agent's right to execute decree obtained by him as agent—Waiver—Execution of decree.*

P. filed a suit in the Second Class Subordinate Judge's Court at Mahád. As P. resided at Thána, outside the jurisdiction of the Court of Mahád, she authorized her agent, under a general power of attorney, to conduct the suit on her behalf. The agent carried on the litigation up to the final decree passed by the High Court on appeal in P.'s favour. The agent then sought to execute the decree. The Court at Mahád passed an order upon his *darkhást* granting only partial execution. Against this order the agent filed an appeal in the District Court at Thána. Then, for the first time, the judgment-debtors challenged the agent's right to represent P., who was residing within the District Court's jurisdiction. This objection prevailed, and the appeal was dismissed.

*Held*, that the agent could not be prevented from executing the decree which he had obtained as agent. No objection had been taken to the agent's right to represent P. at any stage of the litigation prior to the final decree. That objection must, therefore, be deemed to have been virtually waived, and could not be raised after the defendants had had their chance of success in the litigation.

THIS was a second appeal from the decree of Ráv Bahádúr Chuniálál Máneklál, First Class Subordinate Judge of Thána with appellate powers, in Appeal No. 445 of 1885.

One Párvatibái brought a suit in the Court of the Second Class Subordinate Judge at Mahád to recover certain property. Párvatibái was a resident of Thána, outside the territorial jurisdic-

\* Second Appeal, No. 358 of