1890.

THE COLLECTOR OF KÁNARA v. KRISHNÁPPÁ HEDGE.

under section 97 or 98. In the present case, there was no adjudication of the rights of the parties, and the plaintiff cannot, therefore, be said to have failed in the suit. The case does not fall within the terms of section 412 at all. It follows that the Subordinate Judge would have had no jurisdiction to make the order desired by the Collector. We must, therefore, discharge the rule *nisi* granted in this case.

Rule nisi discharged.

APPELLATE CIVIL.

Before Mr. Justice Bayley and Mr. Justice Parsons.

1890.
July 22.

BA LUBHA'I DA'YA'BHA'I AND OTHERS, (ORIGINAL APPLICANTS), APPELLANTS, *v.* NASAR BIN ABDUL HABIB FAZLY, DECEASED, BY HIS HEIRS ABDULLA AND OTHERS, (ORIGINAL OPPONENTS), RESPONDENTS.*

Succession Certificate Act (VII of 1889*), Section* 4, *Sub-section* 1, *Clause (b)—Not applicable to proceedings in execution taken before, and pending at the time at which the Act came into force.*

Clause (*b*) of sub-section 1 of section 4 of the Succession Certificate Act (VII of 1889) does not apply to applications or proceedings in execution of a decree made before and pending at the time at which the Act came into force.

The application therein mentioned must mean one made after the Act is in force, and the proceeding of the Court in execution must be an initial one under that application, and not one in continuation of proceedings taken on applications made before the Act came into force.

APPEAL from the order of Khán Bahádur B. E. Modi, First Class Subordinate Judge of Surat, in application for execution No. 76 of 1888.

The appellants sought to execute a decree passed by the High Court in Original Suit No. 533 of 1871.

The plaintiffs Naginbhái and Rupchand having died after the decree, the present appellants were put on the record as the legal representatives of the deceased decree-holders.

The decree was then transferred for execution to the Court of the First Class Subordinate Judge of Surat.

* Appeal, No. 103 of 1889.

1890.

BÁLUBHAI DÁYÁBHÁI v. NASAR BIN ABDUL HABIB FAZLY.

In February, 1888, the present appellants presented a *darkhást* (No. 76 of 1888) for execution of the decree. The *darkhást* was granted, and the judgment-debtor's property was ordered to be attached.

On the 1st May, 1889, during the pendency of the execution proceedings under the above application, the Succession Certificate Act (VII of 1889) came into force. Thereupon the judgment-debtors objected to the appellants proceeding with execution until they had obtained a certificate under Act VII of 1889.

This objection was allowed, and, on the appellants refusing to produce the certificate, the Subordinate Judge dismissed the application.

Against this order of dismissal, the present appeal was preferred to the High Court.

Gokaldás Káhándás Párikh for appellants:—Section 4 of Act VII of 1889 is not retrospective. It does not apply to applications for execution made before the Act came into force—General Clauses Act I of 1868, sec. 6; *In the matter of the Petition of Ratansi Kalliánji*(1); *The Gujarát Trading Company* v. *Trikamji Velji*(2).

There was no appearance for the respondents.

BAYLEY, J.:—The decree sought to be executed in the present proceedings was passed by the High Court on its Original Side in Suit No. 533 of 1871. After decree the original plaintiff died, and the present appellants were placed on the record as his representatives. The decree was then transferred to the District Court of Surat for execution. On the 23rd February, 1888, the present appellants made an application for execution which was granted, and on it several attachment orders were made. The proceedings, however, had not terminated, but were still pending, on the 1st May, 1889, when the Succession Certificate Act came into force. Thereupon, on the 15th July, 1889, the Subordinate Judge called on the appellants to take out a certificate under that Act, and, in default of their doing so within the time allowed by him, he dismissed their application.

(1) I. L. R., 2 Bom., 148. (2) 3 Bom. H. C. Rep., O. C. J., 45.

The point is whether clause (*b*) of sub-section 1 of section 4 of the Succession Certificate Act (VII of 1889) applies to proceedings in execution pending at the time at which the Act came into force. We think that it does not. According to the ordinary rule of construction, statutes are *primâ facie* deemed to be prospective only—*Doolubdáss Pettámberdáss* v. *Rámloll Thackoorseydáss*[1]. When the law is altered while a suit is pending, the law as it existed when the action was commenced must decide the rights of the parties, unless the legislature by the language used shows a clear intention to vary the mutual relations of such parties—*The Gujarát Trading Company* v. *Trikamji Velji*[2] and see *Frámji Bomanji* v. *Hormasji Barjorji*[3] *and Bungsheedhur Doss* v. *Sheik Mahomed Khuleel*[4]. In the present case the words of the clause are sufficient in themselves to show that they were not intended to apply to applications or proceedings made before, and pending at, the time at which the Act came into force. The application therein mentioned must mean one made after the Act is in force, and the proceeding of the Court in execution must be an initial one under that application, and not one in continuation of proceedings taken on applications made before the Act came into force.

We, therefore, reverse the order passed by the Subordinate Judge, and remand the execution proceeedings to him, in order that they may be disposed of on the merits, in accordance with law. Costs of this appeal to be costs in the cause.

Order reversed.

(1) 5 Moore's I. A., 109.
(2) 3 Bom. H. C. Rep., O. C. J., 45.
(3) 3 Bom. H. C. Rep., O. C. J., p. 49.
(4) 1 Hay, 369.