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doubt to provide for her and not to leave her and her minor sons dependant upon a co-wife and step-mother. It may be said that as the two sons died minors, that one of the objects for which the gift was made no longer exists, but for all this the deed appears to us to contain nothing which in any way restricts the donee's title. It appears to us to give the property absolutely to the donee.

If the terms had been ambiguous, we might no doubt have to look behind it and consider the motives of the donor, but as there is no such ambiguity we are bound to give effect to the deed.

We reverse the decision of the Subordinate Judge and decree this appeal with costs and interest thereon payable by the respondent.

Appeal allowed.

[FULL BENCH.]

Before Mr. Justice Norman, Offg. Chief Justice, Mr. Justice Loch, Mr. Justice Bayley, Mr. Justice Macpherson, and Mr. Justice Mitter.

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 June 12.

RAM CHARAN BYSAK AND ANOTHER (DECREE-HOLDERS) v. LAKSHI KANT BANNIK AND OTHERS (JUDGMENT-DEBTORS).*

10 BLR 108 *Limitation—Act XIV of 1859, ss. 19 & 20—Execution of Decree.*

A decree of the High Court on appeal from the Mofussil, must be executed within three years, under section 20 of Act XIV 1859: Such decree is not a decree of a Court established by Royal Charter within the meaning of section 19:

THE appellants in this case held a decree against the respondents, dated the 30th December 1863, for a certain sum of money, being the amount of six hundis. The decree was passed by the Subordinate Judge of Dacca. On appeal, the High Court, on the 18th February 1865, by its decree simply dismissed the appeal with costs, without affirming the decree of the Court below. After several attempts to execute the decree, the appellants again applied for execution on 16th December 1869, when the judgment-debtor contended that the decree was:

* Miscellaneous Regular Appeal, No. 299 of 1870, from an order passed by the Subordinate Judge of Dacca, dated the 31st May 1870.

barred by lapse of time. The Subordinate Judge held that the decree was barred under section 20 of Act XIV of 1859, there not having been any *bond fide* attempt to execute the decree within three years of the application. The decree-holders appealed to the High Court. The case came on before a Division Bench, composed of Mr. Justice E. Jackson and Mr. Justice Mookerjee. At the hearing of the case, Baboo *Ramesh Chandra Mitter* for the appellants was heard to urge as ground of appeal, though not put forward in the memorandum of appeal, that the decree of the Subordinate Judge, on being confirmed by the High Court, became a decree of the High Court, and therefore the period of limitation prescribed for it was twelve years under section 19, and not three years under section 20. In consequence of a difference of opinion between Mr. Justice Jackson and Mr. Justice Mookerjee, and of a conflict of decisions, the case was referred to a Full Bench, by the learned Judges. The questions referred were stated by Mookerjee, J., as follows: *1st* whether a decree of the district court affirmed on appeal by the High Court becomes a decree of the last mentioned court. *2nd* whether execution of that decree of affirmance passed by the High Court is to be governed by the provisions of section 19, of the statute of limitation Act XIV, of 1859 or section 20 of that enactment *i. e.*, whether the rule of three years or of 12 will apply. The case of *Kishen Kinkur Ghose v. Buroda Kant Roy* (1) was cited on the one hand, and *Bipro Doss Gossain v. Chunder Seekur Bhuttacharjee* (2), *Onraet v. Sankar Dutt Sing* (3), and *Chowdhry Wahid Ali v. Mullick Intayet Ali* (4) were cited on the other.

Baboo *Ramesh Chandra Mitter* and *Kali Krishna Sein* for the appellants.—Under section 350 of Act VIII of 1859, the Appellate Court either confirms, reverses, or modifies the decree of the lower Court. Section 360 provides that the decree of the Appellate Court shall specify clearly the relief granted or other determination of the appeal. And it shall also state the amount of costs incurred in the original suit, and by what parties and in what

(1) 8 W. R., 470.

(3) 5 B. L. R., App., 60.

(2) Case No. 583 of 1866 : 31st May 1867. (4) 6 B. L. R., 52.

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proportion such costs are to be paid. These sections clearly show that the decree of the Appellate Court by itself alone is a complete embodiment of the whole determination of the suit. Hence, after a decree is confirmed by the Appellate Court, the former is merged in the decree of the Appellate Court.

On the second question the provisions of section 19 of Act XIV of 1859 will clearly apply to a decree passed by the High Court on its appellate side.

Baboo *Kalimohan Das* for the respondents.—A decree of the lower Court does not cease to be a decree of that Court, simply because it has been upheld or modified by the Appellate Court—*Tafuzzal Hossein Khan v. Bahadur Sing* (1).

(1) *Before Mr. Justice Kemp and Mr. Justice Glover.*

The 6th March 1869

TAFUZZAL HOSSEINKHAN (DECREE
 HOLDER v. BAHADUR SING AND
 OTHERS (JUDGMENT-DEBTORS).*

Messrs. *R. E. Titulale* and *C. Gregory*
 for the appellant.

Baboo *Mahini Mohan Roy* for the res-
 pondents

The facts of the case are fully stated in the judgment of the Court, which was delivered by.

GLOVER, J.—This was an application for execution of a decree. The original decree was passed on the 18th December 1862 and awarded possession of certain lands to the plaintiff (mortgagor) in that suit on condition of his depositing in Court a sum of Rs. 2,600. The defendant appealed specially to the High Court, which, on the 8th of January 1864 dismissed his application with costs and confirmed the order of the Court below.

The first application made to execute the mortgagor's decree, appears to have

been on the 21st November 1865. The Judge has considered that application not to have been made *bond fide* because it was a condition precedent to execution that the judgment-creditor should have deposited the Rs. 2,600 which the order of the Court directed him to do; and that not having done so, his application could not be said to have been a *bond fide* application within the meaning of the Act. It followed, therefore, that the present application of the 6th of April 1867 was out of time.

The first point taken in appeal in this case is, that the decree sought to be executed is in fact a decree of the High Court, and that, therefore, according to various rulings of this Court, the judgment-creditor would have twelve years instead of three wherein to execute his decree. On this we observe that the decree of the 8th of January 1864 merely rejected the appeal of the special appellant and confirmed the order of the first Court and the only way in which the position of the appellant was altered by that decree was that he had to pay the costs of the appeal.

It has been ruled in one or two cases by Division Benches of this Court, that

*Miscellaneous Special Appeal, No. 440 of 1868, from an order of the Judge of Patna, dated the 26th June 1868, reversing an order of the Moonsiff of that district dated the 30th November 1867.