

FULL BENCH.

Before Sir Richard Couch, Kt. Chief Justice, Mr. Justice Phear, Mr. Justice Glover, Mr. Justice Mitter, and Mr. Justice Ainslie.

1872

Dec. 16.

WISE (DECREE-HOLDER) *v.* RAJNARAIN CHUCKERBUTTY (ONE OF THE JUDGMENT-DEBTORS).*

Limitation—Execution—Decree—Act XIV of 1859, s. 20.

Where a decree was given for arrears of rent against two persons, and one of them was afterwards declared on appeal to be liable for the rents for a certain period only, and execution was taken out against him only, held that the decree must be taken as a separate decree against each defendant for the portion for which each was declared to be liable, and consequently that execution proceedings against one would not prevent the law of limitation applying to bar execution against the other.

THE facts of this case were as follows :—

A suit was brought in 1853 by Mrs. Catherine Arathoon against Gourisunker Chuckerbutty and Mr. Gasper for arrears of rent of a putni talook for 28 years, from 1232 (1825) to 1259 (1853). It appeared that Gourisunker was the original proprietor, and had afterwards transferred the talook to Gasper. The Munsif gave a decree for the plaintiff, declaring Gasper to be liable only for the few months of 1259 (1853) during which he had been in possession, and Gourisunker for the rest of the arrears decreed. On appeal, the Principal Sudder Ameen of Nymensing, in 1856, modified that decree, and allowed the whole of the arrears claimed in the suit “against the persons in possession.” The decree, which had been subsequently transferred by sale to Wise, was then registered at Dowlutkhan in Backergunge for execution against Mr. Bagram, who had in the meantime become the representative of Gasper. In an execution proceeding, Bagram was declared by the Judge to be liable for the whole decree. On appeal by Bagram, the High Court in 1868, held that Bagram was liable for the year 1259 (1853) only.

* Miscellaneous Special appeal, No. 148 of 1872, from an order of the Officiating Judge of Mymensing, dated the 8th February 1872, reversing an order of the Officiating Munsif of that district, dated the 4th of October 1871.

In 1871 application was made by the decree-holder for execution against Gourirsunker's heirs (Gourisunker being dead), and against the property left by him.

Gourisunker's sons presented a petition objecting to the issue of any process of execution, upon the ground, among others, that no steps had been taken to execute the decree against their father for three years preceding the application. The Munsif allowed the execution to proceed, on the ground that the wording of the order of the High Court of 1868 was not clear, and that therefore, the decree-holder was not guilty of any laches. The Judge, on appeal, held that the decree was barred, and was not capable of being executed against Gourisunker's heirs. Wise appealed to the High Court. The case was heard before Couch, C. J., and Bayley, J., who, in consequence of the conflicting decisions in *Mohesh Chunder Chowdhry v. Mohun Lal Sircar* (1) and *Khema Debea v. Kumolakant Bukshi* (2), referred

1872
 WISE
 v.
 RAJNARAIN
 CHUCKER-
 BUTTY.

(1) 8 W. R., 80.

(2) *Before Mr. Justice Bayley and Mr. Justice Markby.*

KHEMA DEBEA AND OTHERS (DECREE-HOLDERS) v. KUMOLAKANT BUKSHI AND OTHERS (JUDGMENT-DEBTORS)*

The 3rd June 1868.

Limitation—Execution of Decree against several Defendants with separate Liability.

Baboo Issur Chunder Chuckerbutty for the appellants.

The respondents were not represented.

The judgment of the Court was delivered by

MARKBY, J.—The appellants in this case are seeking to execute a decree, dated 21st March 1863, which declares that certain of the defendants in the suit, being six in number, should pay to the plaintiff Rs. 749-0-9; that certain others of the defendants, being five in number, should pay to the plaintiff Rs. 91-8-2; that certain others of the

defendants, being three in number, should pay to the plaintiff Rs. 60-8-6; and that the remainder of the defendants, being seven in number, should pay the sum of Rs. 280-0-9; in all Rs. 1,181-5, which, with costs in proportion, the defendants were to pay according to their respective shares.

The suit was brought by one of several persons jointly interested in land against his co-sharers, the ground of his action being that he had been compelled to pay the whole Government revenue due in respect of the land, and he now sought to recover from his co-sharers that which he paid in excess of his own proper share. The result of the suit was that he got a decree in his favor in the form stated above.

The obligation of the co-sharers in some way or other to satisfy this demand is well known, though there has been occasionally some difficulty and some misunderstanding as to the exact nature of the obligation, the mode in which it

* Miscellaneous Appeal, No. 470 of 1867 from a decree of the Judge of Rajshahye, dated the 7th June 1867, affirming an order passed by the Principal Sudder Ameen of that district, dated the 12th January 1867.