The 3rd January 1867.

Present:

The Hon'ble G. Loch and A. G. Macpherson, *Judges.*

Limitation—Execution—Sections 20 and 21, Act XIV. of 1859.

Case No. 666 of 1866.

Miscellaneous Appeal from an order passed by the Judge of Sarun, dated the 31st August 1866.

Kalee Pershad Singh (Decree-holder), *Appellant,*

versus

Jankee Deo Narain (Judgment-debtor), *Respondent.*

Mr. R. T. Allan and *Baboos Dwarkanath Mitter* and *Kishen Succa Mookerjee* for Appellant.

Baboos Jugodanund Mookerjee, Onookool Chunder Mookerjee, and *Mohesh Chunder Chowdhry* for Respondent.

The attachment of property in execution of a decree, although attachment is afterwards set aside, is a sufficient issuing of process of execution within the meaning of Section 21, Act XIV. of 1859.

An appeal from an order setting aside an attachment is a *bonâ-fide* proceeding to keep alive the decree under Section 20.

Macpherson, J.—The mother of two minors, of whom the petitioner Kalee Pershad is one, obtained a decree in 1841 as guardian of her minor sons, for a sum of money due to the estate of her deceased husband. The guardian never put the decree in force. The elder minor attained his majority in 1845, but no steps were taken by him either to enforce the decree. The younger son, Kalee Pershad, came of age in 1849. In 1860 he applied for execution; his application was granted, process issued, and certain property was attached under it in April 1861. On the 13th July 1861, the attachment was set aside by the Court, and the order setting it aside was confirmed on appeal on the 26th of March 1862. On the 18th of March 1865. the present application was made.

We think the Lower Appellate Court is wrong in holding that the application of Kalee Pershad in 1860 was barred by lapse of time. The same rules as to limitation have always been applied in the execution of decrees under the procedure which prevailed prior to the enactment of Act VIII. of 1859 as were applied in ordinary suits under that procedure. In the present case, the Court of first instance rightly held that Kalee Pershad might apply for execution at any time within 12 years from the date on which he came of age—there being no doubt that, at any time within 12 years of his attaining his majority, he might have instituted a suit in respect of a cause of action which had accrued during his minority.

The application, then, being in time, we have next to consider whether, under the circumstances which have occurred, there was any issue of "process of execution" within the meaning of Section 21 of Act XIV. of 1859, such as to keep the decree alive. We are of opinion that, however limited may be the construction put upon the words of Section 21, the issuing the attachment and attaching property under the warwant in April 1861 was certainly a sufficient issuing of process of execution within the meaning of the Section referred to. It seems to us that the process was none the less issued, because it was afterwards set aside.

Process of execution having been issued so as to keep the decree alive under Section 21, it remains for us to determine whether, within the meaning of Section 20 of Act XIV. of 1859, any proceeding to enforce the decree, or to keep it in force, was taken within three years next preceding the application, out of which the present appeal arises. The answer to this question depends on whether the proceedings in appeal from the order of July 13th, 1861, are "proceedings to enforce" the decree, or to keep it alive; for, unless the three years are to be calculated from the date of the dismissal of the appeal on the 26th of March 1862, there is no doubt that the present application is barred as having been made more than three years subsequently to that date. In our opinion, the applicant is entitled to the benefit of these proceedings, and is within time. There is nothing in Section 20 which limits the proceedings therein mentioned to *original* proceedings, and it appears to us that the appeal from the order setting aside the attachment cannot be regarded as other than a proceeding, the *bonâ-fide* object of which was (as its effect would have been if the appeal had been successful) to enforce the decree.

While we hold that Kalee Pershad is entitled to enforce this decree, we think that he is entitled to do so only as regards his own interest in it, that is to say, as regards a one-half share in it. The rights of the elder brother are barred, he having taken no steps to enforce the decree. It has been contended

that, inasmuch as Kalee Pershad has applied in time, his brother, who must be taken to have had a joint interest in the decree, gets the benefit of Kalee Pershad's application. But, although the guardian originally sued on behalf of both the minors, their position now is not that of two persons who have jointly obtained a decree. Kalee Pershad rests his application to execute the decree so far as it relates to his brother's share, on an assignment of that share to him by his brother. But that assignment was made by the brother after his right was barred, and could pass to Kalee Pershad no right which the assignor did not himself have. Moreover, there is a certain discretion vested in the Courts as regards the issue of execution on the application of only one of several decree-holders or on the application of the assignee of the original decree-holders (*see* Sections 207, 208, and 221 of Act VIII. of 1859); and, in the present case, considering the very great length of time which has elapsed since the decree was passed, and the very great laches of all those (including Kalee Pershad) interested in the decree, we think that the execution issued should be limited in amount to one-half of the whole sum due under the decree.

The 3rd January 1867.

Present:

The Hon'ble G. Loch and A. G. Macpherson, *Judges.*

Limitation—Execution—Section 20, Act XIV. of 1859.

Case No. 636 of 1866.

Micellaneous Appeal from an order passed by the Judge of Moorshedabad, dated the 22nd June 1866, affirming an order passed by the Sudder Moonsiff of that District, dated the 7th April 1866.

Shoo Chand Chunder (Decree-holder), *Appellant,*

versus

Mr. D. Grant (Judgment-debtor), *Respondent.*

Baboo Gopal Lall Mitter for Appellant.

No one for Respondent.

Where an application for execution was made, and notice was issued thereupon to the judgment-debtor, the proceeding, being apparently *bonâ fide*, was held sufficient to keep the decree alive under Section 20, Act XIV. of 1859.

Macpherson, J.—We think that the Lower Court is wrong, and that the appellant's right to issue execution is not barred. The decree is dated the 23rd August 1862. On the 19th August 1865, an application for execution was made, and notice was issued thereupon to the judgment-debtor. It is true that nothing more was then done, and that the application was struck off eventually for want of prosecution. Still there is nothing to lead to the conclusion that the proceeding was not *bonâ fide*. Such a proceeding is sufficient to keep the decree alive under Section 20 of Act XIV. of 1859. Then the present application (for attachment of the person of the debtor) was made on the 7th March 1866, within three years of previous proceedings.

We reverse the order of the Lower Appellate Court, and direct that execution do issue.

The 3rd January 1867.

Present:

The Hon'ble G. Loch and A. G. Macpherson, *Judges.*

Attachment of debts—Notice—Execution of joint decree—Sections 207 and 236, Act VIII. of 1859.

Case No. 613 of 1866.

Miscellaneous Appeal from an order passed by the Officiating Judge of Moorshedabad, dated the 11th June 1866, reversing an order passed by the Sudder Ameen of that District, dated the 26th February 1866.

Thakoor Dass Sing (Judgment-debtor), *Appellant,*

versus

Luchmeeput Doogur (Decree-holder), *Respondent.*

Baboo Hem Chunder Banerjee for Appellant.

Baboos Onookool Chunder Mookerjee and *Bungshee Buddun Milter* for Respondent.

When the property to be attached consists of debts, a written notice of attachment is necessary under Section 236, Act VIII. of 1859. Until the debtor receives such notice, he is bound to pay the amount of his debt to the creditor, whose right to receive it has been declared by a decree of Court; and it is no part of the duty of the debtor to make enquiries whether his creditor is or is not entitled to receive the money.

Though one of two or more decree-holders may, with the permission of the Court, take out execution of a joint decree under Section 207, the execution must be for the whole decree, and not for any fractional share to which the decree-holder may consider himself entitled, the Court making such order as may be necessary for protecting the interests of other decree-holders.

Loch, J.—The facts stated to us are as follows: Shumboonath Roy and two others