

in regard to the next instalment, and so on. Our opinion therefore is that the contract is a valid one.

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With respect to the second of the two points submitted in the third question, we are of opinion that, on the death of one of the co-contractor, the whole liability to the plaintiff attached to the surviving joint co-contractors, and that the plaintiff was entitled to the general judgment which has been passed against them.

Upon the other point we can say nothing, as it has not arisen in the suit. It may hereafter arise in a suit brought by the plaintiff against the legal personal representative of either of the joint debtors or by the defendants or some of them for contribution.

### Appellate Jurisdiction. (a)

*Referred Case No. 20 of 1869.*

K. SANJEEVIYAH, *against* NANJIYAH.

A suit does not lie to enforce a liability specifically by the decree of a Civil Court in the Mofussil, the right of suit in such case being taken away by Section 11 of Act XXIII of 1861.

**T**HIS was a case stated under Section 22, Act XI of 1865, by P. Terumul Row, District Munsif of Purgli.

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The case was as follows :—

This is an action to recover the sum of rupees 29-0-3 being the amount of principal and interest of a decree of this Court in Original Suit No. 73 of 1863, under date the 19th February 1863.

The facts of the case are these :—

The plaintiff sued the defendant for the recovery of rupees 16 on a bond in Original Suit No. 73 of 1863 on the regular file of this Court, and obtained a decree on the 19th February 1863. On the 20th January 1865, the plaintiff moved, in decree Execution Case

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No. 237 of 1865, for the execution of the said decree, but the application was withdrawn on the 21st February 1865 without any satisfaction, and no step was subsequently taken, up to this date, to enforce the decree, for the amount of which the plaintiff now sues. He states that as (under Section 20, Act XIV of 1859), he could not apply for the execution of the decree, in consequence of no proceedings have been taken to enforce the decree within three years before this, he has instituted the present suit ; and that as this suit is brought (although on the decree which was passed more than six years back,) yet within six years from the date of the last proceedings in the Execution Department, his suit is not barred by the Law of Limitation.

On perusal of the plaint, and Sections 2 and 32 of the Code of Civil Procedure, and Section 11, Act XXIII of 1861, and questioning the plaintiff's vakil, I thought it desirable to submit the following questions for the opinion of the Honorable Judges of the High Court before I admit and register the plaint, as the nature of this suit is so new that none of this kind has been hitherto instituted in this Court, and I wish to be well prepared to dispose of the case before it comes for trial.

*Question I.*—Can a suit be brought for the amount of a decree ?

*Question II.*—If a suit can be brought, what is the time limited by law, and from what date the period is to be computed, whether from the date of the decree, or from the date of the subsequent proceedings in Execution Department ?

With reference to the first question, my opinion is as follows :—

The High Courts of Calcutta and Madras are unanimous in deeming that an action to recover a judgment-debt is maintainable, and it is similar to an action to recover a debt created by Statute (vide *Thomson's Commentary on the Limitation Act*, p. 243 ; and *Madras Jurist*, vol. IV, 127). Now, I only doubt as to whether or not these rulings are

applicable to the Mofussil Courts : true, the Privy Council in the case of *Gopeemohan Thakoor and others v. Rajah Radhunath*, where the guardian and agent of a minor Zemindar borrowed money to pay the arrears of the revenue of the minor's estate, and gave a bond upon which a decree was passed in the Supreme Court, for the amount of which one of them was also kept in Jail, held that the decree-holders could recover the judgment-debt from the Zemindar, after he attained the full age, by a suit in the Mofussil Civil Court (*Sutherland's Privy Council Judgments*, p. 8.) But as this judgment is passed so far back as 1834, I doubt as to whether or not the law (such as Act XXXIII of 1852) to facilitate the enforcement of judgments in places beyond the jurisdiction of the Court was then in force. If the rulings of the High Courts abovementioned are applicable to the Mofussil Courts, whether or not the Court can interfere with the judgment of the former suit if it appear necessary in the course of trial ? If the Court in the second suit is *not* to interfere with the former decree, even in such instances as I now proceed to narrate, I think the second suit is not maintainable.

The plaintiff by his own neglect or mistake failed to endeavour to keep the decree alive by reviving through the proceedings in Execution Department within the limited period, and could not therefore move for its execution under Section 20, Act XIV of 1859 ; (and at the termination of the period the law presumes conclusively that the claim is satisfied). The subject matter of the present suit is one doubtless tried and determined and one that could not be re-opened under Section 2 of the Code of Civil Procedure as observed by Mr. Kindersley, the Judicial Commissioner of Mysore, in his judgment in a case quite similar to the present one, " that a person was " not liable to be sued a second time, and that such a suit " could not be brought, the matter having become " *res-judicata* could not be tried again" (*Madras Jurist*, III, 267.) Then Section 11, Act XXIII of 1861, strictly prohibits the institution of a separate suit in regard to the execution of the decree passed between the same parties. If, with all these hostile provisions of the law, the plaintiff

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is allowed to sue on an alleged unsatisfied decree, in my humble opinion, I think the defendant also can be allowed to set up any plea either against the justification of the former decree and the genuineness and validity of the documents, &c., merged therein if the decree is passed on *ex-parte* trial, and the defendant had had no opportunity of availing himself of the provisions under Section 119 of the Code of Civil Procedure, or against the enforcement of the former decree now sued on, on the ground of its being satisfied through (private) adjustment, but not certified to the Court under Section 206 of the Code of Civil Procedure. Under the Judgment of the High Court in Referred Case No. 11 of 1866 (*Madras High Court Reports*, III, 188) the decree-debtor cannot sue the creditor by a separate suit for the money that he paid out of the Court for the decree, the amount of which the creditor levied from the debtor through the process of the Court. If this ruling debars the defendant also to plead and prove the private adjustment of the decree on which he is again sued, it will be hard on the part of defendants. The law must protect both parties from all abuses and injuries. When the plaintiff is allowed to bring his suit on a decree which cannot be executed solely on plaintiff's exceeding or neglecting the provisions of the law, I think the defendant also must be allowed in the second suit to plead and prove the private satisfaction of the decree, which he could not do in Execution Department on the ground of his neglecting the provision of the law. Again, I think the Court can interfere with the former decree, for *Baron Parke* (in the case of *Williams v. Jones*, 13 M. and W. 628 quoted by both the High Courts of Calcutta and Madras in their rulings abovementioned) says; "The principle on which this action is founded is, that where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum on which an action of debt to enforce the judgment may be maintained. It is in this way that the judgments in Foreign and Colonial Courts are supported and enforced, and the same rule applies to inferior Courts in this country, and applies equally whether they be Courts of record or not,

From the words that the rule in regard to the Foreign judgments is applicable to such cases, I see no reason why the rule of evidence in respect of Foreign judgments "that a Court which is called on to enforce a foreign judgment may examine into that judgment to see whether it has been rightfully obtained or not." (*Tudor's Leading Cases on Mercantile Law*, p. 213, quoted by Mr. Norton in Section 494 of his *Treatise on Evidence*) cannot be applied to such a case as the present one. Under these circumstances, I am of opinion that the suit is maintainable only if the defendant is to have the liberty of pleading and proving either against the justification of the decree and its merged documents, if the decree is passed on *ex-parte* trial, and if the defendant had had no opportunity of defending it under Section 119 of the Code of Civil Procedure, or that satisfaction has been obtained of the decree now sued on, whether through the Court or not.

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In regard to the second question.

If the suit is maintainable even in the Mofussil Courts under the recent rules of the High Court, the period of limitation is six years under clause 16, Section 1, Act XIV of 1859, as is already settled; but I humbly pray to be informed from what date the period is to be computed, and whether or not the time, during which the plaintiff was engaged in executing the decree, should be excluded from computation. I think the period is to be computed from the date of the decree and not from the date of the subsequent proceedings not coupled with the defendant's acts in the Execution Department amounting to an admission under Section 4, Act XIV of 1859. If there is a written admission on the record in Execution Department, whether or not it operates to reckon a fresh period from the date of such admission; and if the decree provides the instalments under Section 194 of the Code of Civil Procedure for the payment of its amount, whether the computation is to be made from the date of the decree, or from the date of the instalment, are also questions which may probably arise, if the authoritative rule for the admission of such claims be introduced, but I cannot solicit for instructions thereon, as

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these matters have not immediately arisen in the case under reference.

I think the present case is barred by the Law of Limitation; even the period during which the plaintiff was engaged in executing the decree is excluded, under Section 14, Act XIV of 1859, from computation (as was held by the Calcutta High Court that the word "Suit" in this Section includes such proceedings in Execution Department, *Madras Jurist*, III, 268) for the decree is dated the 19th February 1863, from which the time of six years expired on the 19th February 1869; and even if the time of thirty-three days (viz. from 20th January to 21st February 1865), occupied by the plaintiff in Execution Department, is excluded from computation, the period of six years had expired on the 22nd March 1869.

The defendant may raise an objection for costs of the second suit which is brought by the plaintiff on a decree, which, if he did not neglect, might have been enforced in due time, but the judgment will, of course, depend on the discretion of this Court under Section 187 of the Code of Civil Procedure.

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—As to the first question referred in this case, we are of opinion that a suit does not lie to enforce a liability specifically imposed by the decree of a Civil Court in the Mofussil, the right of suit in such a case being taken away by Section 11 of Act XXIII of 1861.

That Section provides that all questions regarding mesne profits reserved for adjustment in the execution of the decree, or mesne profits or interest payable between the date of the suit and execution of the decree, as well as questions relating to alleged payments in discharge or satisfaction of the decree or the like, "and any other questions arising between the parties to the suit in which the decree was passed and relating to the execution of the decree shall be determined by order of

“ the Court executing the decree and not by separate suit.” 1869.  
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 Section 283 of Act VIII of 1859 for which it was substituted R. C. No. 20  
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 and we have no doubt that its terms were intended to have their full operation. So read, the effect of the Section, we think, is to take away from the parties to the suit the right to raise by a fresh suit any question relating to their rights and liabilities under the decree, and in accordance with the whole policy of the law of Procedure, to make every such question determinable upon a proceeding before the same Court and in the same suit. It substitutes a hearing in course of execution for a trial in a suit.

And by this restriction no reasonable advantage is lost to the parties, for an appeal from the orders made in the prescribed proceeding is given, and a simple course of procedure is provided in Act VIII of 1859, Section 284, *et seq.*, by which a decree of one Court may be speedily and effectually enforced by process of execution within the jurisdiction of any other Court in the British territories in India.

As therefore the suit in which the present question has arisen was brought to compel payment of the debt specifically decreed and which but for the Act of Limitations would have been enforceable by process of execution, we think its reception by the District Munsif was clearly prohibited by the above enactment. The case reported in 4, *Madras Jurist* 127, to which the District Munsif has referred, arose in a suit upon the judgment of a Court which was not governed by the Code of Civil Procedure and is therefore not applicable to the present case.

It becomes unnecessary to say anything in regard to the second question referred.

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