that, when there was an order to pay costs under section 148 by the Magistrate deciding the case, another Magistrate had jurisdiction to assess the amount of the costs. We are not, therefore, prepared to follow the case of *Bhojal Sonar* v. *Nirban Singh* (1), and we reject the application.

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Mahomed Ershad Ali Khan Choudhry

v. Saroda Prosad Shaha.

S. C. B.

Rule discharged.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

CHHOTAY LAL AND ANOTHER (JUDGMENT-DEBTORS) v. PURAN MULL
AND ANOTHER (DEGREE-HOLDERS.) **

1895 July 26.

Limitation—Jurisdiction of the Court to which a decree is sent for execution
—Code of Civil Procedure, 1882, sections 323, 328, 339.

The Court to which a decree is sent for execution under section 223 of the Civil Procedure Code has jurisdiction to decide whether or not the execution was barred by limitation.

Leake v. Daniel (2), Nursing Doyal v. Hurryhur Saha (3), Jassoda Kooer v. Land Mortgage Bank of India (4), Srihary Mundul v. Murari Chowdhry (5) referred to.

Soomut Dass v. Bhoobun Lall (6); Lootfoollah v. Keerut Chand (7) and Ramu Rai v. Dayal Singh (8) dissented from.

This case relates to a decree which was transferred for execution by the Court of the Munsif of Patna, to the Court of the Munsif of Behar. The facts, so far as they are necessary for this report, fully appear in the judgment of the High Court. The Munsif of Behar (the Court of first instance) in his judgment said: "The decree is dated 21st July 1886 and was passed by the first Court of the Munsif, Patna, and the first petition for execution

* Appeal from Order No. 437 of 1894, against the order of J. Tweedie, Esq., District Judge of Patna, dated the 14th of September 1894, reversing the order of Babu Jogendra Nath Mukerjee, Munsif of Behar, dated the 31st of March 1894.

(1) I. L. R., 21 Calc., 609.

(2) B. L. R., Sup. Vol., 970; 10 W. R., F. B. 10.

(3) I. L. R., 5 Calc., 897.

(4) I. L. R., 8 Calc., 916.

(5) I. L. R., 13 Calc., 257.

(6) 21 W. R., 292.

(7) 21 W. R., 330 : 13 B. L. R., Ap., 30.

(8) I. L. R., 16. All., 390.

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was made in that Court on 30th November 1889 for transmission of the decree to this Court for execution. It was alleged in that petition that Rs. 119 was realized from the judgment-debtor, and PURAN MULL, the Court sent the decree to this Court with the usual certificate.

"The first contention of the judgment-debtor is that the decree was already barred when the said petition, dated 30th November 1889, was made in the first Court of the Munsif at Patna and I think the contention is right."

He then found on an examination of the evidence adduced by the parties that the payment of Rs. 119 was not proved, and held that the decree was barred by limitation. On appeal the District Judge observed:

"The Munsif has thrown out the execution because he held it to be barred by limitation. But he was dealing with a transferred decree; and it is argued, as 1 find correctly, that his duty was to execute the decree as received as a good decree and not himself to set the decree aside.

"The direction of this Court, therefore, is that the Munsif of Behar shall proceed to execute the decree as received by him, If any reasonable objection is put before him he has discretion to stay his hand for a reasonable time, so that the party objecting may have an opportunity of applying to the transferring Court for recall of its order on the Court to which the transfer was made to execute the decree. The present order of the Munsif under appeal is set aside."

The judgment-debtors appealed to the High Court.

Babu Umakali Mukerjee for the appellant having stated his case. the Vakil for the respondent was called on by the Court.

Babu Karuna Sindhu Mukerjes for the respondent.-It was the duty of the original Court to try the question of limitation if the decree was already barred when the transfer was ordered by that Court. The judgment-debtors were bound, whether the order was with or without notice to them, to come to the original Court for a review or to appeal from the order. latest case on the point is Ramu Rai v. Dayal [PRINSEP, J.—That case refers to the case of Dhonkal Singh v. Phakkar Singh (2) which I think was overruled. So in the case

⁽¹⁾ I. L. R., 16 All., 390.

⁽²⁾ I. L. R., 15 All., 84.

of Husein Ahmad Kaka v. Saju Mahamad Sahid (1). [PRINSEP, J.— That case is not in point; the order here was for transmission only |. I would refer also to the rulings of this Court in the cases of Soomut Dass v. Bhoobun Lall (2) and Lootfoollah v. Keerut Peran Mulli. Chand (3). Pringer, J.—The law has been altered since those rulings. Reading sections 223 and 224 of the Civil Procedure Code and the form of certificate given in No. 134 of the schedule to that Code, it would appear that all papers were not transmitted, and the Court to which the execution was transferred was not in a position to try the question of limitation. [Ghose, J., drew attention to the case of Leake v. Daniel (4). The cases of Soomut Dass v. Bhoobun Lall and Lootfoollah v. Keerut Chand were decided after [PRINSEP, J., referred to the case of Nursing Doyal v. Hurryhur Saha (5) in which the case of Lootfoollah v. Keerut Chand was declared to be opposed to the Full Bench Ruling.] But the present question was not decided in Nursing Doyal's case. The distinction was pointed out in the case of Soomut Dass v. Bhoobun Lall. Sections 225 and 239 of the Code bear out the principle laid down in Soomut Lall Dass v. Bhoobun Lall and Lootfoollah v. Keerut Chand. [PRINSEP, J., referred to Jassoda Kooer v. Land Mortgage Bank of India (6) and Srihary Mundul v. Murari Chowdhry (7).

The judgment of the High Court (PRINSER and GHOSE, JJ.) was as follows:--

This is an appeal relating to an application to execute a The decree was passed on the 21st July 1886 by the Munsif of Patna on a compromise between the parties, and under its terms the sum of Rs. 70 was to be paid on the 14th August 1886 and the balance in sums of Rs. 10 monthly commoneing from Bhadro 1943, and it was declared that in default to pay three instalments the whole decree was capable of being It was found by the Munsif that no money was paid by the judgment-deltor, although the decree-holder alleged that

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^{(2) 21} W. R., 292. (1) I. L. R., 15 Bom., 28. (3) 21 W. R., 330: 13 B. L. R., Ap., 30. (4) B. L. R., Sap. Vol., 970; 10 W. R. F. B., 10.

⁽⁵⁾ I. L. R., 5 Ce c., 897. (6) I. L. R., 8 Calc., 916. (7) I. L. R., 13 Calc., 257.

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certain payments had been made. He accordingly held that execution under the terms of the decree could have been taken out after the 11th November 1886, that being the last date on PURAN MULL which the three instalments became due. This judgment was delivered by the Munsif of Behar to whom the decree had been transferred for execution by the Munsif of Patna who passed the decree, on an application made to him on the 30th November 1889. It is unnecessary to refer to the various attempts made to execute the decree in the Court of the Munsif of Behar, because we consider that the view taken by the District Judge of Patna on appeal from his decision is incorrect in law, and that we must remand the case in order that he may apply the law correctly to such facts as may be found by him. The District Judge seems to have misunderstood the decree itself. was no contract of compromise, but the decree was based on an agreement between the parties under which the defendant admitted the claim of the plaintiff, and both parties agreed that the payment should be made on certain terms and conditions. It was therefore for the Court of execution only to execute the decree in its terms. The point before the District Judge for determination was simply whether the decision of the Munsif of Behar was with jurisdiction, and, if with jurisdiction, whether he was right in declaring that execution was barred by limitation. The District Judge has held that the Munsif had no jurisdiction to consider whether the decree which was transferred to him for execution under section 223 of the Civil Procedure Code was barred by limitation. He seems to have thought that that was a point which could only be determined by the Court which passed the decree. It has been held by this Court so long ago as 1868, in the case of Leake v. Daniel (1), that when a decree has been transmitted by the Court which passed it to another Court for execution, the latter Court has jurisdiction to try whether. or not execution of the decree is barred by the law of limitation. No doubt there have been subsequently some cases by Division Benches of this Court which have somewhat limited the operation of this judgment, but we do not find that in any of those cases any reference was made to this judgment, although in some of

⁽¹⁾ B. L. R., Sup. Vol., 970; 10 W. R., F. B. 10.

them Judges who were also members of the Full Bench were members of the Division Benches which delivered those judgments We may refer to the cases of Soomut Dass v. Bhoobun Lull (1) and Lootfoollah v. Keerut Chand (2). In the case of Nursing Porasi Mull., Doyal v. Hurryhur Saha (3) the learned Judges pointed out that the case of Lootfoollah v. Keerut Chand was opposed to the judgment of the Full Bench in Leake v. Daniel (4). We concur in this opinion. The Judges there held in accordance with the judgment of the Full Bench that the Court to which the decree had been sent for execution had jurisdiction to consider the objection raised whether execution was or was not barred by limitation. Section 239 enables a Court to which a decree has been sent for execution, on sufficient cause shown, to stay the execution of the decree for a reasonable time so as to enable the judgment-debtor to apply to the Court by which the decree was made for any order which might be necessary for the purposes of that execution. That section, however, does not deprive that Court from exercising the same powers in executing the decree as if it had been passed by itself as had been conferred by section 228. We agree in the view of the law laid down by Mitter and Maclean, JJ., in the case of Jassoda The Land Mortgage Bank (5). The District Judge in that case held that he had no jurisdiction to consider the plea of limitation raised in the execution of a decree transferred to him for execution by another Court. Mr. Justice Mitter expresses himself thus: "Under the Full Bench decision no doubt the Court to which the decree is transferred for execution may entertain objections like the present, but it is not laid down in that Full Bench decision that the Court cannot refer the objector to the Court which passed the decree. Under section 239 of the present Code, the Court to which a decree is transferred may refer the objector to the Court which passed the decree." And then the learned Judge proceeds to point out that the question whether the objection of limitation should or should not be decided by the Court to which a decree has been transferred for execution must

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^{(2) 21} W. R., 330: 13 B. L. R., Ap., 30. (1) 21 W. R., 292. (3) I. L. R., 5 Calc., 897.

⁽⁴⁾ B. L. R., Sup. Vol., 970 : 10 W. R., F. B., 10. (5) I. L. R., 8 Calc., 916,

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depend upon whether it could satisfactorily decide the matter upon the materials before it, or whether those materials would not be more readily available to the Court which passed the decree so as PURAN MULL to require that the objection should be made before and decided by that Court. So again in the case of Srihary Mundul v. Murari Chowdhry (1) the matter was considered. The point there was whether a decree having been transferred for execution to another Court, that Court should stay execution so as to leave the objection of limitation to be decided by the Court which passed the decree, and it was decided that either Court had jurisdiction to decide this matter. We, therefore, have no doubt on the decisions of this Court that the Munsif of Behar had jurisdiction to decide whether the execution of the decree which had been transferred to him by the Munsif of Patna was barred by limitation or not. We have been referred to the case of Ramu Rai v. Dayal Singh (2) in which a contrary opinion is expressed. We, however, find ourselves unable to concur in the view expressed by the learned Judges in that case, which is moreover opposed to the judgments of this Court. This case, therefore, must be remanded to the District Judge in order that he may consider whether, on the facts of the case before him, the application is barred by limitation. and whether the judgment of the Munsif under appeal is correct in this respect. The costs will abide the result.

S. Q. C.

Appeal allowed: case remanded.

APPELLATE CRIMINAL.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

1895 July 18. NISTARINI DEBI (PETITIONER) v. A. C. GHOSE, OVERSEER, HOWRAII MUNICIPALITY (OPPOSITE PARTY). o

Transfer of Criminal Case—Criminal Procedure Code (Act X of 1882), sections 526, 555-Incompetence of Magistrate who is Chairman of Municipality to try municipal cases." Any case," Meaning of-Prosecution under Bengal Municipal Act (Bengal Act III of 1884.)

An appeal against a conviction under section 217, clause 5, of the

Criminal Miscellaneous Case No. 29 of 1895,

(1) I. L. R., 18 Calc., 257.

(2) I. L. R., 16 All., 390.