

## ORIGINAL CIVIL.

*Before Mr. Justice Pontifex.*POORNO CHUNDER COONDOO *v.* PROSONNO COOMAR SIKDAR  
AND ANOTHER.1876  
Dec. 7.*Limitation—Act IX of 1871, Sched. II, cl. 157—Execution of  
Ex parte Decree.*

Notice of execution of decree is not sufficient "process for enforcing" it within the meaning of cl. 157, Sched. II, Act IX of 1871. Such process means actual process by attachment in execution of the person or property of the debtor.

APPLICATION on notice under s. 119 of Act VIII of 1859 to set aside an *ex parte* decree.

The decree had been made on 3rd July 1876; and, without proceeding to execute it, the original plaintiffs assigned it on the 7th September to Porno Chunder Coondoo, the present plaintiff, by whom, on the 21st September, a notice of execution was served on the defendants, calling on them to appear and show cause why execution should not issue against them. On the re-opening of the Court after the Durga Poojah vacation, the attorney for the defendant Ramnarain Dutt, on 16th November, attended before the Judge in Chambers, but the matter was ordered to stand over. On the 29th November, the defendant Ramnarain served the plaintiff with notice of the present application to set aside the decree.

Mr. T. A. Apar, for the plaintiff, objected that the application was barred by lapse of time. The provisions with respect to the time within which such an application must be made are laid down in Act IX of 1871, Sched. II, cl. 157, under which the time limited for making the application by a defendant is 30 days from the date of executing any process for enforcing the judgment. It is submitted that notice of execution is sufficient process for enforcing the judgment within this clause: see *Obhoychurn Dutt v. Mudoosudan Chowdhry* (1), a decision on the same words in s. 119, Act VIII of 1859.

(1) 5 Wm., 172.

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POORNO  
CHUNDER  
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v.  
PROSONNO  
COOMAR  
SIKDAR.

Mr. *Bonnerjee* for the defendant *Ramnarain*.—This is not a notice under s. 216 as in the case cited. Here the decree had been assigned, and we received notice of execution by a party who was not the original plaintiff. Such a notice would not necessarily give us any knowledge of the decree obtained by the original plaintiff. There are cases opposed to that cited. [PONTIFEX, J.—Another decision on that section lays down that the words mean process against the person or property of the defendant—*Shib Chunder Bhadoree v. Luckhee Debia Chowdrain* (1).]

Mr. *Apcar* in reply.—That case does not decide the present point. In the Full Bench case of *Ram Sahai Sing v. Sheo Sahai Sing* (2), it was held that the issue of a notice under s. 216 of Act VIII was a sufficient proceeding to enforce a decree within s. 20, Act XIV of 1859. [PONTIFEX, J., refers to the Full Bench decision in *Radha Benode, Chowdhry v. Digumburee Dabee* (3), where it was held that process for enforcing the judgment is executed within the meaning of s. 119, when attachment has taken place.] There it is not decided that notice of execution would not be a sufficient process. [PONTIFEX, J.—Suppose your application to execute had been refused, there would then have been no process.] The time is intended to run from the date when the defendant gets knowledge of the decree, which he would do by receiving notice of intention to execute it.

PONTIFEX, J.—I have very little doubt that process of execution means actual process by attachment in execution of the judgment-debtor's person or property. The case of *Obhoychurn Dutt v. Mudoosudan Chowdhry* (4) is opposed to this: but I prefer the decision in *Shib Chunder Bhadoree v. Luckhee Debia Chowdhrain* (1). In my opinion mere notice of execution is not sufficient process for enforcing the decree.

Attorney for the plaintiff: Mr. *W. G. Francis*.

Attorney for the defendant *Ramnarain Dutt*: Baboo *Nobin Chunder Burreal*.

(1) 6 W. R., Mis., 51.

(2) B. L. R., Sup. Vol., 492.

(3) B. L. R., Sup. Vol., 947; S. C., 9 W. R., 236.

(4) 5 Wym., 172.