

*Civil Petitions.**Ex parte* KA'LIDA'S DA'MODHAR.*Ex parte* BA'PUJI PITA'MBAR.*Execution of decrees—Limitation—Construction—Act XIV. of 1859,
Secs. xx. and xxi.*

Held that Sec. xx. (and not Sec. xxi.) of Act XIV. of 1859 applies to decrees or orders made after the 4th of May 1859; and that the words "in force at the time of the passing of this Act," must be construed to mean the time when the Act received the assent of the Governor General, namely, the 4th of May 1859, and not the 1st of January 1862, the time when (by Act XI. of 1861) it came into operation.

THE petitioner, *Kálidás Dámódhar*, obtained a decree 1866.
December 12.
Civil Petition. against *Vīṭhal Kúber* on the 23rd of March 1860, shortly after which application was made to the court to enforce it; and, on the 8th of February 1861, a warrant was issued to arrest the defendant and bring him before the court; but, as he was not found, the warrant remained unexecuted. A second warrant to arrest was issued on the 27th of June 1864; but the defendant then also could not be found.

In June 1865, application for process of execution was again made to the Munsif, who rejected it, on the ground that it was barred by the law of limitation, and his order was confirmed, on appeal, by A. Bosanquet, Senior Assistant Judge at *Khedá*, on the 14th of January 1866.

Nánábhái Haridás, on the 14th of June 1866, obtained a *Rule Nisi*: calling upon the opposite party to show cause why those orders should not be reversed; and the Senior Assistant Judge was directed to report upon the petition, and forward the proceedings, and also to state why he did not record his reasons in English, as required by Sec. 184 of Act VIII. of 1859, and Sec. 38 of Act XXIII. of 1861.

The *Ṣadr Amín* in charge at *Khedá*, in his report, stated that "the late Senior Assistant Judge, Mr. Bosanquet, taking into consideration the provisions of Sec. xxi. of Act XIV. of 1859, and Act XI. of 1861, decided that decrees in force at the time Act XIV. of 1859 came into operation, whether partly executed or not, cannot be enforced after 1st

1866.
December 12.
Civil Petition. January 1865 ;” and that “it was not the practice with Mr. Bosanquet to record his reasons in English in Miscellaneous Appeal cases.”

The rule coming on for hearing this day, the opposite party did not appear.

THE petitioner, *Bápuji Pitámbar*, obtained a decree against Keshav Kásidás and two others, on the 22nd of August 1859 ; and applications for process of execution were made on the 22nd of September 1862, and on the 7th of March 1863.

On the 5th of August 1865, application was again made to the Munsif, who rejected it, on the ground that it was barred by the law of limitation ; and his order was confirmed, on appeal, by A. Bosanquet, Senior Assistant Judge of Khedá.

Nánábhái Haridás obtained a *Rulé Nisi*, in terms similar to those of the last case ; and a similar report was returned by the *Şadr Amin*, in charge.

The rule coming on for hearing this day, the opposite parties did not appear.

Couch, C.J. :—The Senior Assistant Judge in these cases has erred in construing the words “at the time of the passing of this Act” as equivalent to the time of its coming into operation.

It has been held in several cases by the High Court at Calcutta, and in more than one case by this court, that those words must be construed to mean the time when the Act received the assent of the Governor General of India, namely, the 4th of May 1859, and not the 1st of January 1862, the time when (by Act XI. of 1861) it came into operation.

Both these cases come under Sec. xx. (and not under Sec. XXI.) of Act XIV. of 1859, as both the decrees were made after the passing of that Act.

We, therefore, reverse the decisions of the courts below, and remand the cases; in order that it may be ascertained, whether any proceedings had been taken to enforce these decrees or either of them, "or to keep the same in force within three years next preceding" the present applications for execution.

1866.
December 12.
Civil Petition.

NEWTON and WARDEN, JJ., concurred.

Cases remanded.

Civil Petition.

BA'I U'DEKU'VAR.....*Applicant.*
MULJI NA'ARAN*Opponent.*

*Execution of decrees—Limitation—Construction—Act XIV. of 1859,
Secs. xx. and xxi.*

In the case of a decree, which was passed in 1831, and part payment made on the 2nd of February 1859, so that it was "in force at the time of the passing of" Act XIV. of 1859 (4th May 1859), the Sadr Amin rejected an application for execution made on the 19th of April 1865; but the District Judge reversed his order, being of opinion that decrees referred to in Sec. XXI. of the Act might be saved from the operation of Sec. XX., even though no process of execution had issued within the time provided for by Sec. XXI. :—

Held that the right construction of the Act was to keep these sections distinct, by applying Sec. XX. to decrees or orders made after the passing of the Act, and Sec. XXI. to decrees or orders in force at the time of its passing; and that it was not necessary to resort to Sec. XX. in constructing Sec. XXI., if the word "may" in the latter section were read as equivalent to *must* or *shall*, on the principle that affirmative words sometimes imply a negative of what is not affirmed, as strongly as if expressed.

Semble, where the issuing of the execution within the time limited by Sec. XXI. was prevented by the delay of the court which was to execute the decree, such court would have power to prevent an unjust prejudice to the suitor by the delay unavoidably arising from its own act, by ordering the execution to issue as of the date when it would have been issued if there had been no such delay.

THE petitioner, Bai U'dekúvar, had been sued in the court of the Judge of Ahmedábád, by Gantamji Vaikutji and others, who obtained a decree against her, on the 15th of October 1831. This decree was purchased by Mulji Náran-dás, who, on the 19th of April 1865, applied for execution

1866.
December 12.
Civil Petition.