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'RAN .....*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 Amín 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 construcing 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.

1866. December 12. Civil Petition.

THE petitioner, Bái U'dekúvar, had been sued in the court of the Judge of Ahmedábád, by Gautamji 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.

thereof to the Ṣadr Amín of Ahmedábád, by whom the application was rejected, as barred by the law of limitation.

On appeal, the District Judge, A. R. Grant, reversed the order of the Ṣadr Amín, recording the following decision :—

"This is an appeal from an order passed by the Ṣadr Amín of Ahmedábád, on an application for executing a judgment of prior date to the 1st of January 1862.

"The Ṣadr Amín was of opinion that no decree in force before that date can be executed after the 1st of January 1865, even if some proceedings shall have been taken to renew it within three years preceding the application for execution; and the ground on which he bases this opinion is that Sec. XXI. of Act XIV. of 1859, which refers to old decrees, specially enacts that nothing in the preceding section (in which an allusion is made to the revival of new decrees) shall apply to those in force before the Act *came into operation.* * * *

"Sec. XX. of Act XIV. of 1859 lays down, that what may be called the natural period of existence of decrees, is for the future to be three years only. This, however, would evidently have caused real injustice to the holders of old decrees, and we find that the next section goes on to enact that nothing in the preceding section shall apply to them (the old decrees); but that they may be executed, either within the time allowed by the former law, or within three years after the Act *had come into operation,* * which, by the limit being extended by Act XI. of 1861, is the 1st of January 1862.

"If the two sections are read together, it will be evident that Sec. XXI. is a necessary sequel to the preceding one, and that it must have been enacted with the express object of *protecting* the holders of old decrees. But the wording of the section is loose, and inasmuch as it merely says that nothing in the preceding section shall be applicable to old decrees, and as Sec. XX. adverts to the revival of (new) de-

* NOTE.—"At the time of *the passing of this Act*" are the words used in Sec. XXI.: *vide suprà*, p. 175.—ED.

1866. December 12. Civil Petition.

crees, this leaves room for the objection to be raised that old decrees are not capable of being renewed.

"The primary object of Sec. XX., however, was to reduce the time allowed for the execution of decrees; and the reservation in favour of such as may be revived, though it was, of course, most necessary, is introduced merely in the way of an *exception* to the general rule laid down. I am, therefore, of opinion that we should interpret Sec. XXI. as meaning that the general rule laid down in the preceding section is not applicable to old decrees. * * * For these reasons, I am of opinion that decrees passed before the 1st of January 1862 may be executed even after the 1st of January 1865, if some proceedings shall have been taken to keep them in force within three years preceding the application for execution; and I, therefore, reverse the Ṣadr Amín's order with costs."

Dhirajlál Mathurádás, on the 14th of June 1866, obtained a *Rule Nisi:* calling upon the opponent to show cause why the decision of the District Judge should not be set aside as illegal, and the order of rejection by the Ṣadr Amín allowed to stand.

Reid and *Páṇdurang Balibhadra*, for the opponent, asked that the case might be remanded to the District Court for further inquiry, as to whether any process of execution had been issued within the time provided for by Sec. XXI. of Act XIV. of 1859, as that point had not been expressly determined by either of the courts below.

COUCH, C.J.:—In this case, the decree was passed in 1831, and a payment made on the 2nd of February 1859 is indorsed on it. The decree was, therefore, in force at the time of the passing of Act XIV. of 1859.

Sec. XX. of that Act provides that: "No process of execution shall issue from any court not established by royal charter to enforce any judgment, decree, or order of such court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same

1866. December 12. Civil Petition.

in force, within three years next preceding the application for such execution."

And by Sec. XXI.: "Nothing in the preceding section shall apply to any judgment, decree, or order in force at the time of the passing of this Act; but process of execution may be issued, either within the time now limited by law for issuing process of execution thereon, or within three years next after the passing of this Act, whichever shall first expire."

The rule for the construction of statutes is expressed by Mr. Justice Burton, in *Warburton* v. *Loveland* (*a*), in terms which have been approved of by eminent Judges in England: *Toldervy* v. *Colt* (*b*), *Edwards* v. *Hodges* (*c*); and many *dicta* to the same effect might be quoted from the judgments of the English courts. The same rule is followed in America: 1 Kent's Comm., 10th ed., 151. "I apprehend," says Mr. Justice Burton, "it is a rule in the construction of statutes that in the first instance the grammatical construction of the words is to be adhered to. If that is contrary to or inconsistent with any expressed intention, or any declared purpose of the statute, or if it would involve any absurdity, repugnance, or inconsistency in its different provisions, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but no further."

Now it appears to me that to read Secs. XX. and XXI. together, and apply Sec. XX. to decrees in force at the time of the passing of the Act, would be a violation of this rule. Except in those sections, the Legislature has expressed no intention with regard to judgments, decrees, or orders, in force at the time of the passing of the Act, and the intention expressed is, that Sec. XX. is not to apply to them. The words in Sec. XXI. "nothing in the preceding section shall apply to" cannot be rejected; nor do I perceive any repugnance or inconsistency in keeping the sections distinct, and applying Sec. XX. to decrees or orders made after the passing

(*a*) 1 Hudson and Brooke 648. (*b*) 1 M. & W. 264.
(*c*) 15 C. B. 484.

1866. December 12. Civil Petition.

of the Act, and Sec. XXI. to decrees or orders in force at the time of its passing.

This Court cannot say that, if the holder of a new decree is obliged to take some proceeding to enforce it within three years, it is unreasonable that the holder of a decree when the Act passed should be required to have process of execution issued upon it within the same time, or within the period allowed by the old law.

If may be said that, if the words of Sec. XXI. are read literally, there will be no limitation whatever to decrees obtained prior to the passing of the Act. The answer to this appears to me to be that affirmative words in a statute do sometimes imply a negative of what is not affirmed, as strongly as if expressed; that "may" here means *must* or *shall*, and it is not necessary to resort to Sec. XX.

If may also be said that in this construction there will be this difficulty, that, unless the actual warrant of execution is issued within the period allowed by the old law, or within three years from the time of the passing of Act XIV. of 1859, no process of execution can be issued upon a decree obtained before the passing of the Act, however diligent the execution creditor may have been in endeavouring to obtain execution; and the probability of the issuing of the execution within the time limited being prevented by the delay of the court which is to execute the decree, appears in some of the cases in the Calcutta High Court to have had an influence in the decision. It would certainly be unjust that a creditor who has been diligent in endeavouring to obtain execution, and has done all that it is necessary for him to do to have execution issued, should be barred of his right by the delay of the court. But this inconvenience may be avoided by construing the words to mean that the creditor shall do all that is necessary to procure execution to be issued within the time limited.

Indeed it may be that in such a case a court would have power to prevent an unjust prejudice to the suitor by the delay unavoidably arising from its act, by ordering the

1866. December 12. Civil Petition.

execution to issue as of the date when it would have been issued if there had been no such delay: *Evans* v. *Rees* (*d*).

It, therefore, appears to me that we shall construe Act XIV. of 1859 in accordance with the expressed intention of the Legislature, by holding that, in the case of a judgment, decree, or order, in force at the time of its passing, the creditor must, within the time limited, do all that is necessary to procure process of execution to be issued, and that if he fails to do so, the decree cannot be enforced.

It has not been shown that this was done in the present case, but it is contended that possibly process of execution might have been issued, and we are asked to remand the case for further inquiry on that point; but the bare possibility is not a sufficient ground for our doing so. If anything of the kind had occurred, it is not likely that it would not have appeared in the proceedings and before the Judge.

The order of the Judge (who, I may observe, is also in error as to the time from which the three years are to be calculated) must be reversed, and the order of rejection by the Ṣadr Amín will stand.

NEWTON AND WARDEN, JJ., concurred.

(*d*) 12 A. and E. 167.

Rule absolute.