

Suit No. 307 of 1865.

NA'RA'YAN SHA'MJI' and others *Plaintiffs.*
 THE GUJARA'T TRADING COMPANY..... *Defendants.*

Suit No. 917 of 1865.

MOTI'RA'M DALPATRA'M..... *Plaintiff.*
 THE GUJARA'T TRADING COMPANY..... *Defendants.*

*Staying of Suits under Act XIX. of 1857, Sec. 72—Civ. Proc. Code
 Secs. 284, 287, and 288.*

In an application under Sec. 288 of the Civil Procedure Code to execute an order of a District Court for the winding up of a company, by staying suits which had been filed against the company in the High Court:—

Held: 1st.—That the order can take effect only from the time when it is filed in the court to which it shall have been transmitted for the purpose of being executed; and that suits can only be stayed from that time.

2nd.—Where the decree in a suit has already been actually executed by the attachment of property of the defendants, although the sum decreed may not have been realised by a sale, there is no longer a suit or action to be stayed within the meaning of Sec. 72 of Act XIX. of 1857.

1866.
 February 27.
 O. S. Nos. 307
 & 917 of 1865.

THIS was an application, under Sec. 288 of Act VIII. of 1859, to execute a decree of the District Judge of Ahmedábád, ordering the winding-up of the Company, the head office of which was at Ahmedábád.

The winding-up order was made on the 8th of November 1865, and a copy thereof was transmitted by the District Judge, and filed in the High Court, in accordance with Sec. 287 of the Code. That section provides that the copy of a decree or order for execution, when filed in the court to which it has been transmitted for the purpose of being executed, shall for such purpose have the same effect as a decree or order for execution made by such court; and it was now sought to execute the winding-up order of the District

Judge by staying the above suits (which had been brought against the Company within the original jurisdiction of the High Court at Bombay), in accordance with Sec. 72 of Act XIX. of 1857, which enacted that "After the date of such order or decree for winding up the Company, all suits and actions against the Company shall, if the Court so orders, be stayed."

1866.
February 27.
O. S. Nos. 307
& 917 of 1865.

Bayley, in support of the application, referred to *In re The Waterloo Life Insurance Co. (a)*, *In re Keynsham (b)*, *Thomas v. Walls (c)*, *In re The Western Bank of Scotland (d)*.

Howard for *Motírám Dalpatrám*.—The sections of the Code, which provide for execution of a decree out of the jurisdiction of the court by which it was passed, do not apply to a case like this. By Sec. 296—"The rules contained in this Chapter (IV.) shall be applicable to the execution of any judicial process for the sale of property or for the payment of money which may be ordered by a Civil Court in any civil proceeding." Sec. 288 would seem to refer only to decrees *inter partes*, and not to an *ex parte* decree of this kind. Besides, the application, so far as the suit of *Motírám Dalpatrám* is concerned, is made too late; as judgment was recovered on the 10th of November, and the order for attachment issued on the 9th of December. As the property has been seized, the liquidators cannot come in. *Woodland v. Fuller (e)*, *Ex parte Parry (f)*. The object of restraining proceedings is to prevent suits being brought *malá fide*.

Cur. adv. vult.

COUCH, C.J. :—In the present case the head office of the Company is at Ahmedábád, and the order for winding up was properly made by the court there; but there are many cases where the order for winding up would be made by this court, and the Company would have property beyond the limits of its ordinary jurisdiction, and be liable to be sued in other courts in the Presidency; and it would cause much mischief

April 5.

(a) 9 Jur. N. S. 292. (b) *Ibid.*, 885. (c) 10 Jur. N. S. 543.

(d) 1 DeGex F. & J. 1. (e) 11 A. & E. (f) 33 Law J. Ch. 245.

1866.
April 5.
O. S. Nos. 307
& 917 of 1865.

if the decree or order for winding up, and staying suits and actions, could not be enforced by those courts.

Sec. 284 of the Code of Civil Procedure says: "A decree of any Civil Court within any of the British territories in India, or established by authority of the Governor General of India in Council in the territories of any foreign Prince or State, which cannot be executed within the jurisdiction of the court whose duty it is to execute the same, may be executed within the jurisdiction of any other such court, in the manner following;" and Sec. 287 says: "The copy of any decree, or of any order for execution, when filed in the court to which it shall have been transmitted for the purpose of being executed as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such court."

The decree of the 8th of November 1865 has been transmitted to this court, and is now filed in it; and the only question is, from what period it is to have effect upon suits pending in this court.

I think it can take effect only from the time when it is filed here; and that the suits can only be stayed from that time. Until it was filed, this court could not take notice of it, and the proceedings in the suits were perfectly regular. Sec. 288 says: "When application shall be made to any court to execute the decree of any other court as aforesaid, the court to which the application shall be made or referred, shall proceed to execute the same according to its own rules in the like cases;" and there are no words which would authorise the court to give to the decree a retrospective effect, and treat it as a decree of the court of the date when it was originally made.

In one of the suits in this court, No. 917 of 1865, in which Motírám Dalpatráam was the plaintiff, the decree had, before this application was made, been executed by attachment of property of the defendants, consisting of shares in the Bombay Reclamation Company and the Bank of Bombay, and dividends due from the estate of Behrámjí Hórmasjí

Cáma; but no sale has yet been made. Where the decree has been actually executed by the attachment of property, I think, although the sum decreed may not have been realised by a sale, there is no longer a suit or action to be stayed within the meaning of Sec. 72 of Act XIX. of 1857.

1866.
April 5.
O. S. Nos. 307
& 917 of 1865.

Sec. 231 of the Companies' Act of 1862 in England enacts that "the court may, at any time after the presentation of a petition for winding up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory of the company, or against the company as hereinbefore provided, upon such terms as the court thinks fit;" and upon this Lord Justice Knight-Bruce, in *Ex parte Parry, in re The Great Ship Company (Limited)* (g), says:—"Now as to this section, two doubts have presented themselves to my mind: first, whether the section having been concluded by judgment and execution, and there being nothing more to be done in it but to raise the money by sale of the goods, such a case was within the language of this section, according to its true construction; the words being to 'restrain further proceedings in any action, suit, or proceeding against any contributory of the company or against the company.' It has been ably argued, on the part of the appellant, that the execution in this case was not within the provisions of this section; and I am not sure that the argument is not well founded." If this is the true construction of the English Act, still more would it be of the Indian Act, where the only words are "suits and actions," and the more extensive word "proceeding" is not used.

In the decree of the District Court I find this passage: "From this we have come to the opinion that the suits that may have been or may be hereafter brought against this company in Bombay should be stopped till we write again. Therefore, agreeably thereto, we wrote an English letter,

1866.
April 5.
O. S. Nos. 307
& 917 of 1865.

dated the 16th day of October of the year 1865, to the Honourable the High Court of Judicature in Bombay, whereupon an English letter, dated the 31st day of October of the year 1865, was received from the Acting Prothonotary Sáheb of that court to the effect, that the Judges Sáhebs of the Honourable the High Court could not make any order on the matter stated in our letter; but that any order that we might have passed should be filed in that court by some one of the parties interested, according to the rules of the Civil Procedure Act; and then, should any such party or parties present an application to the court, the Honourable the Judges Sáhebs would pass a proper order thereon."

The order for the attachment in Suit No. 917 of 1865 was made on the 16th of December 1865; and if, instead of adopting the irregular proceeding above mentioned, the Judge had directed the parties before him to proceed according to the provisions of the Code of Civil Procedure, it is probable that the suit would have been stayed before the attachment issued. Making all allowances for the novelty of the proceeding, the act of the Judge appears to show too little regard for the provisions of the law as to the procedure in the courts. But the mistake of the Judge will not authorise me to put a different construction in this than in any other case; and as regards Suit No. 917 the application must be refused.

In the other suit, No. 307 of 1865, in which Náráyan Shámjí and others are plaintiffs, no attachment has issued, and there is nothing to prevent the suit being stayed. As to that suit, therefore, the decree of the District Court is executed, by this court ordering it to be stayed, and that the plaintiff shall be entitled to add to his claim his costs in the suit incurred up to the time of this application.

Attorney for Motírám Dalpatráam : *Khanderáo Morojí.*

Attorney for defendants : *W. H. Thacker.*